

<b>JRPP No.</b>	2010SYE115
<b>DA No.</b>	DA 369/10
<b>Proposed Development</b>	Demolish three buildings on the corner of Edward Street and Riley Street and erect a single storey chapel, vestry and associated landscaping
<b>Applicant:</b>	Australian Catholic University Ltd
<b>Report By:</b>	PANEL SECRETARIAT

## Assessment Report and Recommendation

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Referred to the Joint Regional Planning Panel pursuant to section 89(2)(b) of the Environmental Planning and Assessment Act 1979

18 January 2011

### 1. EXECUTIVE SUMMARY

The Panel Secretariat has reviewed this application for the Regional Panel's consideration, including a consideration of the views of Council and the applicant.

North Sydney Council's resolution to require the height of the chapel roof to be reduced by one metre is not supported as Council's staff assessment has identified no issue with the chapel roof height. The chapel design is submissive to 'Rockleigh Grange' a heritage item listed in the North Sydney LEP.

Council's staff assessment recommended that the height of the chapel tower be reduced to no higher than the eaves line on the southern facade of 'Rockleigh Grange'. The applicant disagreed as it would compromise the symbolic nature and practical use of the tower. Following a discussion with Council officer, the applicant agreed to reduce the tower height by 400mm.

The Panel Secretariat considers that the design, bulk and scale of the tower as amended would not detract from the heritage significance of Rockleigh Grange. Particularly the chapel design is submissive to the 'Rockleigh Grange' and the tower will not be higher than the roofline of the heritage item. Accordingly the DA is recommended for approval, subject to conditions including the chapel tower height be reduced by 400mm.

### 2. SITE DESCRIPTION

The site is identified as No. 40 Edward Street, North Sydney, on the corner of Edward and Riley Streets and is within the Edward Street Conservation Area. Currently occupying the site is the Australian Catholic University.

The main building on the site fronts Edward Street and is known as 'Rockleigh Grange', a large two storey building in the Federation Queen Anne Style. It is listed as an heritage item in the North Sydney LEP. The rear of the site, to the west, is occupied by the James Carroll Building containing lecture rooms, a student lounge, library, nursing training facilities and undercover parking. South of 'Rockleigh Grange' and fronting Riley Street is a freestanding brick building, 'Carlo's Cottage', previously used as a chapel. A smaller one storey building is located east of 'Carlo's Cottage' and is currently used to store archival records.

Surrounding the site are residential apartment buildings and attached dwellings one and two storeys in height. The subject site has an area of approximately 1.072 hectares.

**Figure 1: Location Plan**



Source: SEE ACU Our Lady Seat of Wisdom Chapel, p3.

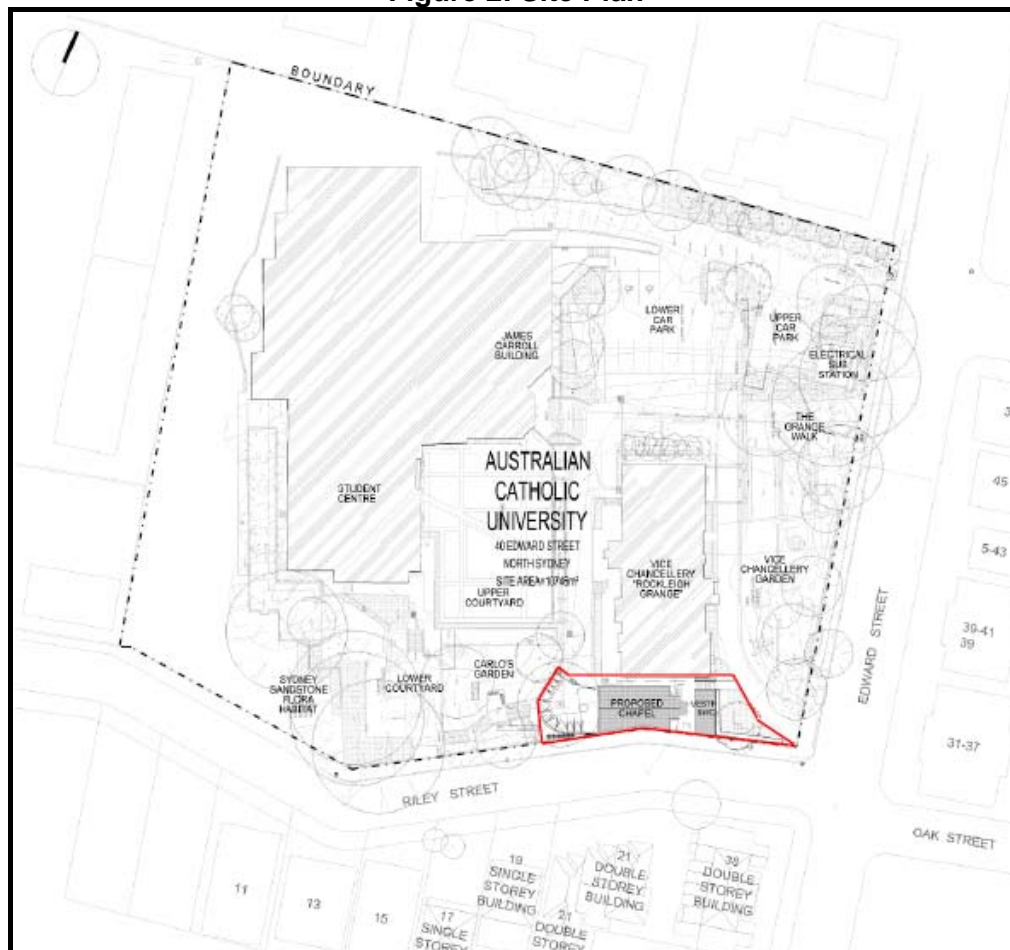
### 3. PROPOSAL

The application seeks consent for:

- Demolition of 'Carlo's Cottage' currently unoccupied. It is intended to retain the significant brick wall located along the southern boundary to Riley Street. Stabilisation and propping of the wall will be required during demolition and construction of the new Chapel.
- Demolition of a 1950s outbuilding found to the east of the cottage currently used as a storage facility.
- Demolition of a single storey building, adjoining Rockleigh Grange, to the east of the storage building. The brick building with tile roof is currently used as toilet facilities for Rockleigh Grange. Following demolition, conservation works are proposed to the corner of Rockleigh Grange where the buildings were joined.
- Provide a new purpose built Chapel, one storey in height with a tower designed to be read as a secondary item to "Rockleigh Grange". The Chapel is designed with load bearing external walls, simple massing, parapeted gables facing east and west, a strong semi-circular Rose Window facing west, brick facades and terracotta tiled roof finish.
- As a focal point prior to entering the Chapel, a Cloister is proposed and is to be constructed from sculptured class 1 hardwood columns, light weight roof frame (no roof covering proposed) forming the enclosure.
- Provide a new vestry, accessible toilet and stairway to the east of the Chapel. The one storey amenities' building is designed with masonry walls and a landscaped flat roof.

- New landscape works associated with the Chapel and Cloister includes, hard landscaping (concrete pavers), open grated area around the retained Chinese Elm, landscape works to the east of the amenities building.
- The masonry wall facing Riley Street has been set back approximately 1000mm and curving away from the boundary. Landscaping is proposed in front of the masonry wall softening the overall appearance and perceived height of the proposed wall to the 'Cloister Area'.

**Figure 2: Site Plan**



Source: SEE ACU Our Lady Seat of Wisdom Chapel, p4.

#### **4. BACKGROUND SUMMARY**

- 17 March 2010: Pre-lodgement meeting held with Council staff;
- 2 September 2010: DA 369/10 lodged with North Sydney Council;
- 1 October 2010: Owners of adjoining properties and the Edward and Union Precinct were notified of the proposed development, the DA was exhibited for 14 days and 7 submissions were received;
- 19 November 2010: Council's officer prepared an assessment of DA 369/10 recommending it be deferred to the applicant for concurrence with the draft conditions of consent. The elected Council adopted the report with a number of amendments;
- 23 December 2010: The Australian Catholic University referred the application to the Joint Regional Planning Panel and provided comments on North Sydney Councils determination;

- 12 January 2011: North Sydney Council commented on the applicants comments on North Sydney Councils determination;
- DA 369/10 has been referred to the JRPP as Council cannot impose a condition of consent that is not agreed to by the applicant where the Crown is the applicant.

## **5. ENVIRONMENTAL PLANNING INSTRUMENTS**

Under the North Sydney Local Environmental Plan 2001 the site is zoned Special Use (Educational Establishment) and the proposed development is permissible with consent. As the subject site is zoned Special Uses, the objectives of adjoining land must also be assessed, in this case the objectives of the Residential A2 zone. The proposed development is considered to satisfy the objectives of the Residential A2 zone.

The proposed development does not comply with clause 17 Building Height, Clause 19 Building Height Plan and clause 20 Landscaped Area of the North Sydney LEP.

A SEPP 1 objection has been lodged in relation to the breaches of Clause 19 and 20.

Council can consider a variation to the building height plane control (clause 19) where it is demonstrated that no material impacts will occur to overshadowing, privacy, views and daylight and ventilation. The Council assessment report concludes that the SEPP 1 objection is well founded and strict compliance with the building height plane control is unreasonable and unnecessary in the circumstances.

The proposed development will result in a reduction of the landscaped area by 0.093% to provide 40.1% of the site as landscaped. Council assessment report supports the SEPP 1 objection to Clause 20 as strict compliance to the clause would be unreasonable and unnecessary.

The subject site contains an item of heritage, 'Rockleigh Grange' and is located in a conservation area (Edward Street). There are no objections to the proposal on heritage grounds as the proposed chapel building is designed to be submissive to the adjacent heritage listed 'Rockleigh Grange'. However the proposed tower is considered to be excessively high and Council staff assessment recommends that it be reduced to minimise the heritage impact.

The application has been assessed against the relevant controls in the Edward Street Conservation Area Development Control Plan 2002.

The proposed development is generally consistent with:

- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- State Environmental Planning Policy No 55 - remediation of land

## **6. CONSULTATION AND PUBLIC EXHIBITION**

The proposal was advertised and notified from 1 October 2010 to 15 October 2010. A total of 7 submissions were received, all objecting to the proposal. The issues raised in submissions have been addressed in Councils assessment report (Attachment #)

## **7. JRPP's STATUTORY ROLE**

Section 89(1)(b) of the Environmental Planning and Assessment Act 1979 (EP&A Act) states that a consent authority must not impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.

Section 89(2)(b) of the Act provides that if a consent authority fails to determine a Crown DA within the prescribed time limit it may be referred by either the applicant or the consent authority to a JRPP.

In this case, given Council's resolution to impose conditions without the agreement of the applicant, the applicant has referred the application (DA 369/10) to the JRPP for determination.

## **8 CONSIDERATION OF SECTION 79C(1) OF THE EP&A ACT**

Council's officer has undertaken an assessment of the application with regard to the provisions of the EP&A Act and all matters specified under section 79C(1). The non compliance of the proposed development on the building height plane and landscaped area controls has been satisfactorily addressed in the SEPP 1 objection. The building height non compliance from the chapel tower is considered in Council's report as excessive. It is recommended that the height of the tower be reduced to the eaves of 'Rockleigh Grange'.

Council's assessment report recommends the DA be approved once the applicant provides written concurrence to the draft conditions of consent.

The Panel Secretariat considers the Council's assessment report has satisfactorily addressed all issues raised in the submissions and the recommendation to approve is reasonable.

## **9. POSITION OF EACH PARTY**

The views of Council and the applicant are summarised as follows:

### **North Sydney Council**

#### **Assessment staff**

- The assessment report recommends that the application be approved once the applicant has provided written concurrence to the draft conditions of consent.
- The height of the chapel tower should be no higher than the eaves of Rockleigh Grange.

#### **Elected representatives**

- On the 29 November North Sydney Councils resolved:
  - That the report be adopted subject to the following amendments:
    - "Replacing condition 11 with the following:  
**Hours of Use**  
11. The opening hours of the Chapel shall be the same as the university being limited to the following:  
8.00 am to 8.00 pm – Monday to Friday  
12.0 noon to 5.0 pm – Saturday  
In addition to 8.00 am to 8.00 pm Sunday
    - The applicant provided details of the acoustic ameliorations to be applied to the wall from the Chapel wall and courtyard
    - Prior to the issues of occupation certificate the applicant undertake landscaping detailed in DA consent 422/09
    - Reduction of the Chapel roof by 1m
    - Council staff investigate existing consent regarding staff and student numbers
    - That the maximum number of fig trees be retained".

### **Applicant – Australian Catholic University Ltd**

- The Australian Catholic University requests referral of DA 369/10 to the Joint Regional Planning Panel as Council has imposed a number of conditions on the DA that are not acceptable to the applicant.

The Australian Catholic University (ACU) has provided comments on the Council's Resolution from the 29 November 2010. The disputed amendments to the recommended approval are:

1. The applicant to provide details of the acoustic ameliorations to be applied to the wall from the Chapel wall and courtyard;
2. Prior to the issue of occupation certificate the applicant undertake landscaping detailed in DA consent 422/09
3. Reduction of chapel roof by 1m
4. Chapel tower to be no higher than the eaves of Rockleigh Grange
5. Council staff investigate existing consent regarding staff and student numbers
6. That the maximum number of fig trees be retained

## **10. DISCUSSION OF THE DISPUTED CONDITIONS**

Discussion of disputed amendments to the approval:

### **10.1 The applicant to provide details of the acoustic ameliorations to be applied to the wall from the Chapel wall and courtyard**

ACU have stated they will engage an acoustic engineer to provide advice on the effectiveness of minimising noise impact, with the intention of keeping additional noise (if any) to 5dB above background noise during hours of operation.

Council's Planner has concurred with the applicant and has advised that the requirement to engage an acoustic consultant to provide advice should be incorporated as a condition to be satisfied prior to the commencement of works.

The Panel Secretariat concurs with both the applicant and Council and recommends the following condition; 'An acoustic consultant shall be engaged to provide advice on minimising noise impact from the operations of the chapel to the satisfaction of Council before the commencement of works'.

### **10.2 Landscaping as detailed in DA consent 422/09 to be undertaken prior to issue of construction certificate**

The applicant has stated that this refers to an earlier development consent and is not relevant. As part of the current proposed works, ACU intends to undertake a further stage of its Landscape Master Plan.

Council's Planner notes that such a condition would reinforce the need to carry out these landscaping works, however the requirement to complete these works is already inherent in DA consent 422/2009. The proposed works will not affect the previous decision which restricts the use of the Riley Street areas to passive uses.

The Panel Secretariat agrees that the required work is inherent in the previous consent and is therefore not relevant to the current application, hence should not be included.

### **10.3 Reduction of proposed chapel roof by 1m**

North Sydney Council has resolved to require the applicant to reduce the height of the chapel roof by 1 metre.

ACU does not accept the condition requiring the overall height of the building to be reduced by one metre. ACU states that the height above Council controls has been addressed in the SEPP 1 objection and reduction in the overall height would compromise the quality of the chapel space.

Council's Conservation Planner found that the new chapel building has been located and designed to have minimal impact on 'Rockleigh Grange'. The building has also been lowered in the site to reduce its impact on the heritage listed building. The assessment report notes that no material impacts will occur to overshadowing, privacy, views, daylight or ventilation as a result of the overall chapel height. Council staff support the SEPP 1 objection. Council's Planner provided additional comments to the Panel Secretariat confirming that a reduction in the ridge height of the Chapel was not considered necessary.

The Panel Secretariat notes the Council's Conservation Planner's comments and considers that the applicant has designed the chapel to be submissive to 'Rockleigh Grange'. It is set back from the 'Rockleigh Grange' frontage to Edward Street and only secondary views of the building from Riley Street are affected. As such, a reduction in the height of the chapel roof by 1 metre is not necessary.

#### 10.4 Reduction of proposed Chapel tower to be in line with the eaves of 'Rockleigh Grange'

Council's Conservation Planner notes that the proposed tower projects approximately 1.35 metres above the eaves line of 'Rockleigh Grange'. It is considered that the tower should be more submissive to the heritage item and its current height has an excessive impact on 'Rockleigh Grange'. As such, the Conservation Planner has recommended that the height of the tower be reduced to no higher than the eaves of 'Rockleigh Grange'. This recommendation has been included in the draft conditions of consent.

ACU has stated that the reduction of the tower will compromise the building from both a symbolic and practical view. ACU does not support reducing the height of the tower to be in line with the eaves of 'Rockleigh Grange'. ACU advises that it has subsequently discussed with Council officers a reduction of 400mm in the height of the tower which is mutually acceptable.

Council has confirmed that it supports the condition requiring the tower to be reduced to the eaves line, which is a reduction of about 1200 mm and not by 400 mm as agreed by ACU.

The Panel Secretariat considers that the chapel building has been designed to be submissive to the heritage listed 'Rockleigh Grange', this includes the tower element. A reduction in the height of the chapel tower to the eaves line of 'Rockleigh Grange' will significantly alter the design and impact on the function of the chapel building. Given the scale and bulk of the tower, the Panel Secretariat considers it will not detract from the heritage significance of Rockleigh Grange as viewed from Edward Street as the tower will not be higher than the heritage building.

The Panel Secretariat considers that as the applicant is willing to reduce the height of the tower by 400 mm this is a suitable compromise. As such it is recommended that the condition requiring the reduction of the tower to the eaves line of 'Rockleigh Grange' is replaced by the following; the tower of the Chapel building shall be reduced in height by 400 mm.

#### 10.5 Council staff to investigate existing consent regarding staff and student numbers

ACU state that this statement is not relevant to the application and should be removed. Council's Planner notes that no condition to this effect is suggested. The Panel Secretariat agrees that the statement is not a relevant condition of consent.

#### 10.6 That the maximum number of fig trees be retained

ACU state that this statement is not relevant to the application and should be removed. Council's Planner has recommended that a condition should be imposed indicating that no vegetation other than that expressly approved for removal by the consent should be removed. The proposed development does not involve the removal of any fig trees. The Panel Secretariat considers the additional condition is unnecessary as the landscaping condition requires works to be carried out in accordance with the landscaping master plan

which include details of tree plantings and removal already. Any additional tree removal will require Council approval as required under Council's Tree Preservation Order policy.

## 11. RECOMMENDATION

It is recommended that the JRPP:

- (A) **consider** all relevant matters prescribed under the *Environmental Planning and Assessment Act 1979*, as contained in the findings and recommendations of this report;
- (B) **approve** the development application, subject to conditions set out in Schedule 1, pursuant to section 80(1)(a) and section 89 of the *Environmental Planning and Assessment Act 1979*, having considered all relevant matters in accordance with (A) above;

Prepared by:

Endorsed by:

Emily Dickson  
Panel Secretariat

Paula Poon  
Panel Secretariat

## 12. ATTACHMENTS

- i) Schedule 1 - Proposed conditions of consent
- ii) Council officer's assessment report, dated 29 November 2010
- iii) Minutes of Council meeting, dated 29 November 2010
- iv) Applicant's comment on North Sydney Councils resolution, dated 23 December 2010
- v) Council staff comments on North Sydney Council resolution, dated 12 January 2011



## **ATTACHMENT I**

### **NORTH SYDNEY COUNCIL, CONDITIONS OF DEVELOPMENT APPROVAL 40 EDWARD STREET, NORTH SYDNEY, DEVELOPMENT APPLICATION NO. 369/10**

#### **A.     *Conditions that Identify Approved Plans***

##### **Development in Accordance with Plans**

- A1.     The development being carried out in accordance with drawings numbered DA-000D, DA-001C, DA-002G, DA-003G and DA-004F, dated 30 August 2010, and landscape master plan, dated July 2010, all drawn by HBO + EMTB and received by Council on 22 September 2010, and endorsed with Council's approval stamp, except where amended by the following conditions.

(Reason:       To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

##### **Plans on Site**

- A2.     A copy of all stamped approved plans, specifications and documents shall be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

(Reason:       To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

##### **No Demolition of Extra Fabric**

- A3.     Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans. No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is shown to be retained.

(Reason:       To ensure compliance with the approved development)

##### **Approved Landscaping Plan**

- A4.     Landscaping works on the site are to be undertaken generally in accordance with the landscaping plans titled landscape master plan, prepared by HBO + EMTB, dated July 2010 and received by Council on 22 September 2010.

(Reason:       To ensure appropriate landscaped area and landscaping amenity at the final inspection stage of the development)

#### **D.     *Prior To Any Commencement***

##### **Construction and Traffic Management Plan**

- D1.     Prior to any commencement, the Applicant must have a Construction and Traffic Management Plan prepared. The following matters must be specifically addressed in

the Plan:

- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
  - i. Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways;
  - ii. Signage type and location to manage pedestrians in the vicinity;
  - iii. The locations of any proposed Work Zones in the frontage roadways;
  - iv. Locations and type of any hoardings proposed;
  - v. Area of site sheds and the like;
  - vi. Location of any proposed crane standing areas;
  - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
  - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
  - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
- b) A Traffic Control Plan(s) for the site incorporating the following: -
  - i. Traffic control devices proposed in the road reserve must in accordance with the RTA publication "Traffic Control Worksite Manual" and designed by a person licensed to do so (minimum RTA 'red card' qualification). The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each.
- c) A detailed description and route map of the proposed route for vehicles involved in spoil removal, material delivery and machine floatage must be provided detailing: -
  - i. Light traffic roads and those subject to a load or height limit must be avoided at all times; and
  - ii. A copy of this route is to be made available to all contractors, and shall be clearly depicted at a location within the site.
- d) A Waste Management Plan in accordance with the provisions of Section 19 of the North Sydney DCP 2002 must be provided. The plans should include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

In addition, this plan must specify:

- a) Evidence of RTA concurrence where construction access is provided directly or within 20m of an Arterial Road;
- b) A schedule of site inductions to be held on regular occasions and as determined necessary to ensure all new employees are aware of the construction management obligations. These must specify that construction-related vehicles to comply with the approved requirements;

- c) For those construction personnel that drive to the site, the Applicant shall attempt to provide on-site parking so that their personnel's vehicles do not impact on the current parking demand in the area.

A suitably qualified and experienced traffic consultant shall prepare the Construction and Traffic Management Plan. The construction management measures contained in the approved plan shall be implemented in accordance with the plan prior to the commencement of, and during, works on-site. As the plan has a direct impact on the local road network, the plan must be submitted to and reviewed by Council. A written acknowledgment from Council engineers as to the result of this review shall be obtained (attesting to this condition being appropriately satisfied) and must be sighted as part of the supporting documentation lodged with the Certifying Authority for approval of the Construction Certificate application.

Notes:

- 1) North Sydney Council's adopted fee for certification of compliance with this condition shall be payable on lodgement, or in any event, prior to the issue of the relevant approval.
- 2) Any use of Council property shall require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction and Traffic Management Plan be lodged with Council as early as possible.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed above.

(Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the demolition and construction process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)

### **Sydney Water Approvals**

- D2. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Care Centre to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to "Your Business" section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see Building and Renovating under the heading Building and Developing, or telephone 13 20 92. The appointed PCA must ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans before the commencement of building works.

(Reason: To ensure compliance with Sydney Water requirements)

### **Colours, Finishes and Materials**

- D3. The external colours, finishes and materials shall be similar to traditional colour schemes appropriate to the type and architectural style of the building, and be complimentary to similar buildings in the immediate vicinity.

(Reason: To ensure that the completed colours, finishes and materials of the works are complimentary to the heritage value of the building)

### **Photographic Survey**

- D4. A photographic survey of the existing buildings that are to be demolished, in accordance with the guidelines of the Heritage Council, is to be submitted to Council prior to commencement. The survey should include detailed photographs of any structures to be removed, and their wider setting. These documents, including a hard copy, must be to the written approval of North Sydney Council's Conservation Planner.

(Reason: To provide a historical record of works on the site for archival purposes)

### **Reduction in height of tower**

- D5. The tower of the Chapel building shall be reduced in height by 400 mm

(Reason: To reduce the impact of the proposal on the adjacent heritage item)

### **Fencing to roof garden above amenities block**

- D6. No approval is given for mesh fencing. The fencing to the roof garden shall be metal palisade style, painted in a recessive colour.

(Reason: to reduce the impact of the proposal on the adjacent heritage item)

### **Dilapidation Report (Public Infrastructure)**

- D7. The applicant must submit to North Sydney Council a photographic record and report on the visible condition of the existing public infrastructure over the full site frontage and adjacent areas (in colour). The photos must include detail of:

- The existing footpath;
- The existing kerb and gutter;
- The existing full road surface between the opposite kerb;
- The existing verge area;
- The existing driveway and layback where to be retained;
- Any existing drainage infrastructure including pits, lintels, grates.

Particular attention must be paid to accurately recording any pre-developed *damaged* areas on the aforementioned infrastructure so that Council is fully informed when assessing damage to public infrastructure caused as a result of the development (which is not to be repaired by the Applicant as part of the development). The developer may be held liable to all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded in detail and demonstrated under the requirements of this condition.

(Reason: Maintenance of public assets)

## **Asbestos & Hazardous Material Survey**

- D8. A survey of the existing building fabric shall be undertaken identifying the presence or otherwise of asbestos contamination. Any works subsequently required to address asbestos contamination shall be undertaken in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and Work Safe Australia.

The Certifying Authority must ensure that the specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily)

## **Public Liability Insurance – Works on Public Land**

- D9. 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 works within Council's road reserve. The Policy is to note Council as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works.

(Reason: Safety and statutory)

## ***E. During Demolition and Building Work***

### **Stormwater Disposal**

- E1. Stormwater runoff generated by the approved development shall be conveyed by gravity to the existing site stormwater drainage disposal system. A licensed tradesman shall install plumbing components to achieve this requirement in accordance with the BCA and current plumbing standards and guidelines.

(Reason: To ensure appropriate provision for disposal and stormwater management arising from the development)

### **Damage to Public Infrastructure**

- E2. The applicant shall bear the cost of all restoration works to Council's property damaged during the course of this development. The applicant shall advise Council, in writing or by photographic record, of any existing damage to Council property before commencement of the development. A dilapidation survey of Council's assets, including photographs and written record, must be prepared by a suitably qualified person and submitted to Council prior to the issuing of any Construction Certificate.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicant's interest for it to be as full and detailed as possible.

(Reason: To ensure the protection of existing built public infrastructure)

## **Temporary Disposal of Stormwater Runoff**

- E3. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to manage and control runoff as far as the approved point of stormwater discharge.

(Reason: Erosion and Sediment Control)

## **Sediment Control**

- E4. Techniques used for erosion and sediment control on development sites are to be adequately maintained at all times and must be installed in accordance with the "North Sydney Council Guidelines on Sediment and Erosion Control". All techniques shall remain in proper operation until all demolition and development activities have been completed and the site fully stabilized.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

## **Sediment Control Sign**

- E5. A durable sign, which is available from Council, shall be erected during construction works in a prominent location on site, warning on penalties should appropriate erosion and sedimentation control devices not be maintained.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

## **Noise**

- E6. Noise emissions and vibration must be minimised where possible and work is to be carried out in accordance with Environment Protection Authority guidelines for noise emissions from construction/demolition works and must also comply with the provisions of the Protection of the Environment Operations Act 1997.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

## **Dust Emission and Air Quality**

- E7. Materials must not be burnt on the site.

Vehicles entering and leaving the site with soil or fill material must be covered.

Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction. Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

### **Vibration from Works**

- E8. Vibration from works is to be undertaken in accordance with industry best practice, to ensure excessive levels of vibration do not occur to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

### **Applicant's Cost of Work on Council Property**

- E9. The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(Reason: To ensure the proper management of public land and funds)

### **Special Permits**

- E10. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development are to occur entirely on the property. The applicant, owner or builder must apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property pursuant to S138 of the Roads Act. A minimum of forty-eight (48) hours notice is required for any permit:-

(1) **On-street mobile plant**

Eg. cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the applicant's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

(2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

(3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

**(4) Kerbside restrictions, construction zones**

The applicant's attention is drawn to the existing kerbside restrictions adjacent to the development. Should the applicant require alteration of existing kerbside restrictions, or the provision of a construction zone, the appropriate application must be made and the fee paid. Applicants should note that the alternatives of such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

**Construction Hours**

E11. Building construction shall be restricted to within the hours of 7.00 am to 5.00 pm Monday to Friday and on Saturday to within the hours of 8.00 am to 1.00 pm inclusive, with no work on Sundays and Public Holidays.

Demolition and excavation works shall be restricted to within the hours of 8.00 am to 5.00 pm Monday to Friday only. For the purposes of this condition:

- i. "Building construction" means any physical activity on the site involved in the erection of a structure, cladding, external finish, formwork, fixture, fitting of service installation and the unloading of plant, machinery, materials or the like.
- ii. "Demolition works" means any physical activity to tear down or break up a structure (or part thereof) or surface, or the like, and includes the loading of demolition waste and the unloading of plant or machinery.
- iii. "Excavation work" means the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders, or 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 and includes the unloading of plant or machinery associated with excavation work.

The builder and excavator shall display, on-site, their twenty-four (24) hour contact telephone number, which is to be clearly visible and legible from any public place adjoining the site.

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

**Applicant not to alter existing public parking restrictions**

E12. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking restrictions are only to be approved via the North Sydney Local Traffic Committee. The Applicant will be held responsible for any breaches of this condition, and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)



## Road Reserve Safety

- E13. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works. Construction materials and plant must not be stored in the road reserve without approval. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site. Where public infrastructure is damaged, repair works must be carried out when and as directed by Council officers. Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) *"Traffic Control Devices for Work on Roads"*. **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: To ensure public amenity and safety)

## Applicant responsible for all Services in, on or over Site

- E14. Council accepts no responsibility whatsoever for any matter arising from its approval of this application involving any influence upon service infrastructure not previously identified on the site (including but not limited to stormwater pipes, phone lines, water mains, sewer, gas, electricity and the like). It is the Applicants full responsibility to ensure the approved development does not create undue impacts on the same, and to ascertain the impacts of the proposal upon such services. Where required, the adjustment or inclusion of any new service infrastructure must be carried out by the applicant and in accordance with the requirements of the relevant authority.

These works shall be at no cost to Council. It is the Applicants full responsibility to make contact with the relevant utility authorities.

(Reason: The Applicant is responsible for ensuring the development is compatible with the services on the land)

## Prohibition on Use of Pavements

- E15. Building materials shall not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand) and a suitable sign to this effect shall be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

## Plant & Equipment Kept Within Site

- E16. All plant and equipment used in the erection of the building, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, shall be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like shall be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

(Reason: To ensure public safety and amenity on public land)

*F. Operational Conditions imposed under EP&A Act and Regulations and other relevant Legislation*

**Building Code of Australia**

F1. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

(Reason: Prescribed - Statutory)

*I. On-Going / Operational Conditions*

**Hours of Use**

The opening hours of the Chapel shall be the same as the University being limited to the following:

8.00 am to 8.00 pm – Monday to Friday

12.00 noon to 5.00 pm – Saturday

In addition to 8.00am to 8.00pm Sunday

(Reason: Information to ensure that amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality)

**Noise from Chapel**

The noise from the chapel shall not cause a sound level in excess of 5 dB(A) at any time above the background noise level at any point along the nearest residential boundary. An acoustic consultant shall be engaged to provide advice on minimising noise impact from the operations of the chapel to the satisfaction of Council before the commencement of works.

(Reason: To ensure compliance with acceptable levels of noise established under best practice guidelines)

**Riley Street Access**

No consent is granted for vehicular or pedestrian access via Riley Street. The gate is to be used for emergency purposes only. A notice to this effect is to be placed on the existing gate.

(Reason: To ensure compliance with the terms of consent for the University)



**MEETING HELD ON 29/11/10**

**Attached:** Site Plan  
Proposed Plans  
SEPP 1 objections

**REPORT TO THE GENERAL MANAGER**

**ADDRESS/WARD:** 40 Edward Street North Sydney (V)

**APPLICATION No:** DA.369/10

**PROPOSAL:** Demolish three buildings on the corner of Edward Street and Riley Street and erect a single storey chapel, vestry with associated landscaping.

**PLANS REF:** Drawings numbered DA-000D, DA-001C, DA-002G, DA-003G and DA-004F, dated 30 August 2010, landscape master plan, dated July 2010, drawn by HBO + EMTB, and received by Council on 22 September 2010.

**OWNER:** Catholic Archdiocese of Sydney

**APPLICANT:** Australian Catholic University Ltd

**AUTHOR:** Geoff Mossemeneer, Executive Planner

**DATE OF REPORT:** 19 November 2010

**DATE LODGED:** 22 September 2010

**AMENDED:** 19 November 2010

**RECOMMENDATION** Deferral

## EXECUTIVE SUMMARY

This development application seeks Council's approval to demolish three buildings on the corner of Edward Street and Riley Street and erect a single storey chapel, vestry with associated landscaping.

The application is reported to Council for determination due to the amount of public interest in the proposal.

Council's notification of the proposal has attracted seven submissions raising particular concerns about scale of building, impact on amenity, increase in traffic, overshadowing and breach of controls. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

Under Section 226 of the Environmental Planning and Assessment Regulation 2000, the University is prescribed as Crown Development as it is an Australian University within the meaning of the Higher Education Act 2001. Section 116C of the Environmental Planning and Assessment Act 1979, specifies that Council may not impose a condition of consent of any development approval, for which the Crown is the applicant, without first obtaining the written approval of the Crown.

Following this assessment the development application is considered to be reasonable in the circumstances and is recommended for **deferral** subject to acceptance by the applicant (or the Minister) of the recommended conditions.

## LOCATION MAP

Property/Applicant   ●   Submitters   -   Properties Notified

## **DESCRIPTION OF PROPOSAL**

Works proposed under this application include:

- Demolition of 'Carlo's Cottage' currently unoccupied, requiring significant structural and waterproofing works to make it habitable. It is intended to retain the significant brick wall located along the southern boundary to Riley Street. Stabilisation and propping of the wall will be required during demolition and construction of the new Chapel.
- Demolition of a 1950s outbuilding found to the east of the cottage currently used as a storage facility.
- Demolition of a single storey building, adjoining Rockleigh Grange, to the east of the storage building. The brick building with tile roof is currently used as toilet facilities for Rockleigh Grange. Following demolition, conservation works are proposed to the corner of Rockleigh Grange where the buildings were joined.
- Provide a new purpose built Chapel, one storey in height with a tower designed to be read as a secondary item to "Rockleigh Grange". The Chapel is designed with load bearing external walls, simple massing, parapeted gables facing east and west, a strong semi-circular Rose Window facing west, brick facades and terracotta tiled roof finish.
- As a focal point prior to entering the Chapel, a Cloister is proposed and is to be constructed from sculptured class 1 hardwood columns, light weight roof frame (no roof covering proposed) forming the enclosure.
- Provide a new vestry, accessible toilet and stairway to the east of the Chapel. The one storey amenities' building is designed with masonry walls and a landscaped flat roof.
- New landscape works associated with the Chapel and Cloister includes, hard landscaping (concrete pavers), open grated area around the retained Chinese Elm, landscape works to the east of the amenities building.
- The masonry wall facing Riley Street has been set back approximately 1000mm and curving away from the boundary. Landscaping is proposed in front of the masonry wall softening the overall appearance and perceived height of the proposed wall to the 'Cloister Area'.

## **STATUTORY CONTROLS**

North Sydney LEP 2001  
Zoning – Special Use (*Educational Establishment*)  
Item of Heritage - Yes  
In Vicinity of Item of Heritage – Yes (*8 Riley Rd*)  
Conservation Area – Yes (*Edward Street*)  
Environmental Planning & Assessment Act 1979  
SEPP 55 – Contaminated Lands  
SREP (Sydney Harbour Catchment) 2005

## **POLICY CONTROLS**

DCP 2002

The site is located on the western side of Edward Street with a site area of 1.072Ha. Currently occupying the site is the Australian Catholic University.

No. 40 Edward Street – “Rockleigh Grange” presents as a fine example of the Federation period Queen Anne style. The latest additions and alterations to the original Conrad Martens Building was an addition to the north carried out in the 1940s. The Australian Catholic University (ACU) added the 1980s building 'James Carroll Building' which covers the majority of the rear of the allotment to the west. The building contains lecture rooms, a student lounge, library, nursing training facilities and undercover parking.

To the south of the larger lecture room on the upper floor and above the underground parking an open student seating area is located and contains park type bench seating and raised garden beds with established planting.

Directly south of Rockleigh Grange and fronting onto Riley Street is a freestanding brick building, 'Carlo's Cottage' with a terracotta roof previously used as a chapel. A smaller one storey brick building with a terracotta roof is located east of Carlo's Cottage and is currently being used as a storage area for archival recording.

Surrounding the site are several residential apartment buildings and attached dwellings.



## RELEVANT HISTORY

30 October 1984 - Council refused Development Application **No. 1074/84** proposing the erection of a four level building to be used as a teachers' college, including 76 carparking spaces and vehicle access to both Edward and Riley Streets.

22 November 1984 - the applicant lodged an appeal with the Land & Environment Court.

24 April 1986 – L & E Court granted consent.

Development Application **No. 385/07** received on 11 September 2007, proposing to install three rainwater tanks, associated irrigation equipment, landscaping works and a timber bench seat around the edge of the new paving.

At its meeting of 10/12/2007 Council **RESOLVED:**

***THAT** Council delegates to the General Manager, pursuant to Section 377 of the Local Government Act 1993 (as amended), in respect of development application No.385/07 authority to:*

*(a) Grant consent to the application, but subject to conditions including:*

*(i) those conditions which the General Manager determines are appropriate;*

*(ii) conditions to achieve the following objectives, if the General Manager concludes that these objectives can be satisfactorily achieved by the imposition of a condition or conditions to provide:*

*- the paving around the 48 kilolitre tank shall be removed and the area returned to landscaping*

*- the issue of noise from the tanks is to be addressed*

*- the area shall be for passive use only and not an area for students to congregate.*

*(b) In the event that, pursuant to (a) above, the General Manager concludes that the objectives cannot be satisfactorily achieved by the imposition of a condition or conditions, application No. 385/07 be referred back to the Council for determination.*

***THAT** the condition of the sandstone wall on the corner of Riley Street be inspected to ensure its safety.*

Consent was granted under delegation 18 /12/2007.

The Australian Catholic University had a pre lodgement meeting with Council staff concerning a proposal to upgrade the campus on 31 August 2009. The University was advised to consider the proposal to ascertain how much of the proposal is either exempt or development permitted without consent. Any remaining development would require development consent from Council. The applicant could prefer to divide the works into the two categories and submit the proposal not requiring consent for consultation with Council and a separate Development Application for the other works. Should the only parts of the proposal requiring consent be the removal of trees (ie. trees that don't pose a risk to human health or safety or if the removal or lopping is not in accordance with the State government publication School Facilities Standards—Landscape Standard—Version 22 (March 2002)) then the applicant should apply for removal under Council's Tree Preservation Order.



The report concerning a proposed upgrade of the Catholic University Campus under State Environmental Planning Policy (Infrastructure) 2007 was before Council at its meeting of 23 November 2009 when it was resolved:

***THAT** the matter be deferred to a Councillor inspection in order for Councillors to understand the complete issues on the site.*

*Note: Councillor inspection to be held on Saturday, 28 November 2009 at 9.00am.*

The inspection was held and the matter was reported back to Council at its meeting of 30 November 2009. At its meeting of 30 November 2009 Council resolved as follows:-

***THAT** Council respond to the applicant within the required 21 day period raising the following matters for consideration:*

- *The proposed half court basketball court is located 3.8m from the property boundary and therefore does not comply with the basic requirement of having to be more than 5m from the boundary.*
- *Concern with the impact on residential amenity from activities at the proposed lower courtyard near Riley Street. All activity should be limited to between 8am and 6pm and lighting limited to bollard security lighting only.*
- *The applicant provide Council with an Arborist report listing the trees that are claimed to be exempt under the SEPP and the trees that they are seeking removal under Council's Tree Preservation Order. The Fig trees to the west of the site should be replaced with a more appropriate species provided good reason for their removal is given in the Arborist report. The arborist report should also detail compliance or otherwise with the Landscape Master Plan approved in 1988.*
- *The area to the west of the development is not to be used for any purpose by students or staff in accordance with the conditions imposed by the Land & Environment Court. The Fig trees proposed to be removed shall be replaced with more appropriate species to the satisfaction of Council's Tree Preservation Officer*
- *Resolution of location and design of the proposed staircase located on the south of 'Rockleigh Grange' as referred in the Heritage Impact Statement but not shown on the architectural drawings.*
- *Whether any conservation works are still to be undertaken to 'Rockleigh Grange' and that these works be documented.*
- *The pedestrian decomposed granite pathway and the paved Grange Entry be separated by soft landscaping as the scale of the overall paved area is uncharacteristic to the Edward Conservation Area streetscape.*

The applicant responded to the matters as follows:

- The Landscape Plan has been amended to delete the half basketball court.
- The Landscape Plan only specifies low bollard personal illumination to the lower courtyard area. This lighting will reduce and restrict all activity and will negate any impact on the residential amenity of the surrounding area.
- A qualified horticulturalist has been engaged to write a report detailing:
  - Listing trees that are claimed to be exempt under SEPP and those trees that are seeking to be removed under the Councils Tree Preservation Order.
  - Nominating an appropriate species to replace existing Fig Trees located to the west of the site with qualification of their removal.

- Review compliance or otherwise of approved 1988 Landscape Master Plan.
- The Landscape Plan proposes to restore the embankment to the west of the site with appropriate indigenous plant species. The new planting will provide a habitat area for local birds as well as providing appropriate screening and aesthetic landscape qualities for the local neighbourhood amenity.
- The existing Fig Trees which are proposed to be removed shall be replaced with a grove of Kentia Palms to the satisfaction of Council's Tree Preservation Officer. This planting will introduce a landscape feature to the lower courtyard area as well as being a suitable species planted adjacent the heritage brick wall.
- The resolution of the staircase located on the south of 'Rockleigh Grange' as referred in the Heritage Impact Statement has been resolved and can be moved and a handrail replaced.
- Conservation works will only result where the grade is to be lowered at the rear of the building and will be scheduled immediately following demolition or lowering of grade.
- The Landscape Plan addressing the Edward Street entrance has been reviewed. The decomposed granite terrace has been separated from Edward Street by the continuation of the boundary fence and ornamental hedge. This landscape treatment will reduce the scale of the university entrance as well as complimenting the Edward Street Conservation Area streetscape.
- The existing colour scheme to 'Rockleigh Grange' will not be affected and/or altered at this time. No works are proposed to the exterior significant fabric.
- Signage for students to major transport nodes as well as a green travel plan will be included as part of detailed design for future works.
- A heritage sign for 'Rockleigh Grange' already exists on the driveway gate pier to the property.

On 4 March 2010, the applicant provided a copy of the Landscape Upgrade Arboricultural Assessment Report. The trees were inspected by Council's Tree Preservation Officer (Melanie Hamilton) and Landscape Development Officer (Brian Smith) on 15 March 2010. From the information submitted, the following observations and conclusions were provided by the Tree Preservation Officer:-

*The row of Ficus hillei (Weeping Figs) growing between the heritage listed wall and the western wall of the University building are poorly located in shallow soils within 3m of the foundations of both structures. The root system of the trees and large branches are damaging the foundations and roof/guttering of the building and the proposed removal of 5 of the Figs (numbered 61,63 & 65-67) and 1 Brushbox Tree (no.64) and pruning of 2 Figs (no.59 & 60) near the Riley Street boundary is supported.*

*The trees situated along the Edward Street boundary are important landscape features for the streetscape and contain many trees that are listed on Council's Significant Tree Register as important screen plantings. Council's Tree Preservation Order 2006 states that "A Development Application must be lodged with Council to apply for the removal of any tree on private property listed on North Sydney Council's Significant Tree Register".*

*Trees that are listed on the STR along the Edward Street boundary include - Bunya & Hoop Pine, Silky Oak, Illawarra Flame Tree, Plum-Fruited Yew, Camphor Laurels, Brushbox, Jacaranda and Coral Trees.*

*The submitted plan proposes to remove the Plum Fruited Yew (Decussocarpus falcatus) growing between the Bunya & Hoop Pines for a new entrance staircase. At the time of the inspection, the tree was a healthy specimen and provided screening and aesthetic amenity for the streetscape.*

*The Hoop Pine adjacent to it does not have any branches low down on the trunk where the Plum-Fruited Yew branches have been growing near it and these branches will not regrow if the Plum Fruited Yew is removed. The 3 trees have been growing together for many decades (Est. over 100 years in the STR) and the appearance and health of the trees will be compromised if one is removed. The removal of the Plum Fruited Yew (tree no.35) is not supported.*

*Furthermore, the plan does not provide any detail on the proposed entrance staircase design or construction. The excavation and covering of the critical root zone of the Hoop & Bunya Pine under hard surfaces has a high potential of causing the trees to decline or die.*

*The report raises some concerns about the condition of the Brushbox tree (no.30) next to a brick wall structure because of potential termite damage and damage to the trees root system when the brick wall is removed. However, no testing has been conducted for termite activity or decay and protection measures could be implemented to retain the tree during construction. The tree is listed on Council's STR and is visible from the street front.*

*The remaining trees proposed for removal on the plan are under ten metres and are not protected by Council's TPO 2006. The removal and/or pruning of these trees will have minimal impact on the surrounding area if they are replaced with suitable trees or shrubs on the site.*

The trees situated along the Edward Street boundary contain trees that are listed on Council's Significant Tree Register as important screen plantings. Trees that are listed on the STR along the Edward Street boundary include - Bunya & Hoop Pine, Silky Oak, Illawarra Flame Tree, Plum-Fruited Yew, Camphorlaurels, Brushbox, Jacaranda and Coral Trees. Council's Tree Preservation Order 2006 states that "A Development Application must be lodged with Council to apply for the removal of any tree on private property listed on North Sydney Council's Significant Tree Register".

A pre lodgement meeting with Council staff was held on 17 March 2010 with regard to the current application for a new chapel.

DA 442/10 was lodged on 10 November 2010 to remove one of the significant trees (Lophostemon confertus) on the Edward Street frontage (adjacent and south of sub station) as part of the landscape works to improve pedestrian access to the campus.

## **REFERRALS**

### **Building**

The proposal would have to comply with the Building Code of Australia. A condition can be imposed to ensure compliance.

## Heritage

The comments of Council's Conservation Planner (L Trueman) are reproduced as follows:

### *"1. Heritage status and significance*

- The property contains a heritage item of local significance listed in NSLEP 2001, being Rockleigh Grange 'important association with original house and resident, the artist, Conrad Martens, with property relatively intact. Secondary associations with administration of Catholic Church and the Australian Papal Visit of 1970. Also owned (and altered) by prominent Australian politician. Interesting architecturally for its' altered form. Major early mansion on the North Shore, with long colourful history'*
- In the vicinity of heritage item at 45 Edward Street, and contributory items at 9 – 19 Riley Street and 36 and 38 Edward Street (across road)*
- The property is located within the Edward Street Conservation Area.*

### *2. The Property*

*The property was inspected internally and externally on 6 October 2010. The property contains the Australian Catholic University Campus, which includes a variety of buildings and structures from various eras. The site is dominated by the significant 'Rockleigh Grange' House, formerly home to Conrad Martens, which now houses the university administration. A number of service buildings are located on the area that is the subject of the proposed new chapel building. These buildings, which are proposed to be demolished, do not have heritage significance.*

### *3. Proposal*

*The proposal is for the demolition of three existing service buildings and the construction of a new Chapel building, with associated external works and landscaping. The new building is to be located at the Riley Street edge of the campus, adjacent to 'Rocklea Grange'*

### *4. Heritage Assessment and Recommendations*

*An assessment of the proposed works at No. 40 Edward Street has been undertaken in relation to Clause 44 and 48 (Heritage Items), Clause 49 (Conservation Areas) Clause 50 (development in the vicinity of Heritage Items) of the North Sydney LEP 2001 and Section 8.8 (Heritage Items and Conservation Areas) of the North Sydney DCP 2002.*

*No objection is raised to the demolition of the existing 'Carlo's Cottage' building, storage building and amenities wing. These buildings do not have heritage significance. The buildings appear to have been built in the 1950s and have no distinguishing features.*

*The new chapel building has been located and designed to have minimal impact on the significant 'Rockleigh Grange'. The building has been located at the side of the building, away from its primary (West and East) facades. The building has been lowered in the site in order to reduce its impact on the listed building. An existing significant brick wall, located on the property's boundary to Riley Street, is to be retained, with the chapel located behind the wall, obscuring views of the Chapel from the street. This wall is the only original fabric that remains in the location of the proposed chapel and Council advised at pre-lodgement stage that its retention was required.*

*Although the proposed building will obstruct some views of the listed 'Rockleigh Grange', these views are of the secondary south façade, and will not affect views to the primary facades. The demolition of the existing amenities wing that is attached to Rockleigh Grange will have a positive impact by removing an attached non-original element, and by allowing better views of the building from the Edward Street/Riley*

*Street corner. The demolition of Carlos's Cottage and the location of the proposed Chapel also allow greater views of the primary western façade from Riley Street. This is an improvement, in heritage terms, on the existing condition.*

*The proposed Chapel building has been designed to minimise any impact on Rockleigh Grange. The materials and details are generally consistent with the listed building and its setting, but clearly new works in accordance with conservation principles. The built form, with the exception of the tower element, is submissive in scale to the listed building. As discussed above, its impact on the setting and views of the listed building are an improvement on the existing condition.*

*The proposed tower element projects approximately 1.35m above the eaves line of Rockleigh Grange, having an excessive impact on the building. It is considered that the tower should be more submissive to the listed building. Therefore, it is recommended that the height of the tower be reduced to no higher than the eaves of the adjacent heritage item.*

*In addition, the proposed mesh fence to the roof garden of the amenities block is not considered appropriate and will impact on the setting of the listed building. It is recommended that a more sensitive style of fence be used in this location, in order to reduce the heritage impact.*

## **5. Conclusion and Recommendations**

*No objections are raised to the proposal on heritage grounds. As detailed above, the proposal does not involve demolition or removal of original fabric, the proposed Chapel building is submissive in scale to the adjacent heritage listed 'Rockleigh Grange', it has been designed to reflect the character of the building, and only secondary views of the listed building are affected. However, the proposed tower is considered to be excessively high and it is recommended that its height be reduced to reduce the heritage impact.*

*Should the application be approved, it is recommended that the following conditions be placed on the approval:*

### **Standard Conditions**

- A4 No demolition of extra fabric*
- C14 Colours, Materials and Finishes*
- E 11 Removal of extra fabric*

- D1. Photographic Survey (Heritage Items) (amended). A photographic survey of the existing buildings that are to be demolished, in accordance with the guidelines of the Heritage Council, is to be submitted to Council prior to the release of the Construction Certificate. The survey should include detailed photographs of any structures to be removed, and their wider setting. These documents, including a hard copy, must be to the written approval of North Sydney Council's Conservation Planner.*

*(Reason: To provide a historical record of works on the site for archival purposes)*

### **Site specific conditions**

*Reduction in height of tower: The tower of the Chapel building shall be reduced in height to no higher than the eaves line on the northern façade of 'Rocklea Grange'*

*(Reason: to reduce the impact of the proposal on the adjacent heritage item)*

*Fencing to roof garden above amenities block: No approval is given for mesh fencing. The*

*fencing to the roof garden shall be metal palisade style, painted in a recessive colour.*

*(Reason: to reduce the impact of the proposal on the adjacent heritage item)"*

## **SUBMISSIONS**

The owners of adjoining properties and the Edward and Union Precinct were notified of the proposed development on 1 October 2010. The notification resulted in the following submission from the Edward Precinct raising a number of concerns. The submission from the Edward Precinct is reproduced in full for Council's information, the other submissions are summarised:

### **Edward Precinct**

#### **Basis of Submissions**

- The ACU campus was originally approved in 1986 by Land & Environment Court decision for approx 400 students. Since then there has been a steep increase by stealth to the 1000's of visitations per day now. This increase has not, to Precinct's knowledge, been formally approved. The ACU recently undertook work on the campus w/o council DA process i.e. via SEPP infrastructure reliance. This seems to be aimed at facilitating more student entertainment at 40 Edward whilst taking classes in satellite buildings. This concentrates noise and impacts in the residential area and especially through outdoor use. As part of these changes they dismantled the chapel facility that was in the Rockleigh Grange building.
- This application seeks expansion on use of the site by an oversized chapel which requires SEPP1 variations to enable major breach of the building height plane and obscure and heritage building from a Conservation Area.
- Precinct is concerned about the bulk and massing of the proposed building. The chapel largely occupies an existing courtyard and has a height of 7m at least to the roof pitch and 10m to the protuberance. This takes it close to the eave of Rockleigh Grange (RG) and obscures the heritage building from Edward and Riley Streets and neighbouring properties. It also causes overshadowing in midwinter on Riley St premises.
- Overshadowing: The 9am midwinter shadow indicates that sometime after this the new building may increase the shadow on the front of 21-27 Riley and especially the protuberance/tower. Further diagrams should be requested or the roofline lowered and tower removed.
- Heritage: There doesn't appear to be an opinion expressed in the heritage statement. The pitched roof and tower obscure part of the icon building in the Edward St Conservation Area i.e. RG. The tower presents poorly from the street as it conflicts with the RG façade as it pokes above the amenities and is inconsistent with what was possibly a secular building for most of its history.
- BHP: The roof and tower clearly breach with earlier mentioned consequences. The new rear wall on Riley St also does and should not be supported. The internal northern wall should remain to prevent the existing and recently increased noise from the SEPP infrastructure changes crossing to the quiet chapel entry area and to the neighbouring residences. A fence or screening should be used for the street side. The western wall should also be reduced or removed as it may reflect noise from the central covered area onto particular residences in Rely. It will also encourage the ACU to retain the Riley St side as a quiet passive use area as originally stated in 1986. The statues of the Cross may also breach the BHP and private residences would prefer not to look at religious icons.
- Noise: The recent SEPP infrastructure changes which had limited notification and consultation have concentrated the noise that hits the Riley St side. No.19 Riley has had continuing issues with the ACU over this. It seems wrong that the ACU be allowed to encircle their own chapel quiet space with a high brick wall and let the neighbours wear the consequences of either noise bouncing off the walls and out to residences or by the chapel area being walled off and insulated from their own noise generation. An acoustic opinion should be encouraged on minimisation of noise to residents.
- Landscaping: There is an existing stairway to the rear of the plan which is to be demolished. Under the SEPP infrastructure changes, a raised floating walkway was to be built which was opposed by residents. The lodged drawings have inconsistent drawings of this. Just what the ACU intends to do should be clarified. And a lowered rear wall encouraged to support quiet use of this area. The original landscaping plan by Joanne Green in 1986 and the drawings promised to Council Planning staff under the SEPP infrastructure changes sought and reviewed for consistency. Access along the N side of the chapel should be blocked off to prevent this becoming the shortest (and most used lazy student) exit from the site. There is no existing access through here.
- Capacity: 40 seats are shown giving this the potential to be used for weddings, births etc. Capacity should be reduced - with related lowering of roof lines etc. And a DA condition put in it about no use outside current hours. And no use for weddings, baptisms etc.
- Summary: Precinct has concerns on the creeping expansions of the ACU and their facilities that it also

potentially has adverse impacts onto community and residential amenity via heritage development, overshadow, noise and bulk/height of walls and visual impacts. Precinct does not support it in its current form. The tower should be removed and the size reduced.

- That in view of the unclear terms of the application, the Precinct requests Council to pay careful attention to the impact of the development on heritage items and the proposed use of the chapel including the generation of vehicular and other traffic arising from this use.

#### **Other Submissions**

- Parking and traffic from building work
- Construction noise
- Change nature of area outside home
- New brick wall on Riley St too large
- Stairs and walkway to lower garden
- Passage will increase pedestrian traffic and noise
- Need for chapel with another so close
- Noise from weddings etc. and capacity
- Should engage acoustic expert
- Height of chapel and dome
- object to display of religious icons
- shadow impacts
- chapel unnecessary with one nearby
- out of scale
- increase traffic
- breach of building height plane
- excessive bulk
- obscures heritage building
- too close to heritage building
- too high needs to be reduced
- overshadowing
- increase to capacity of university
- size of rear wall
- noise controls
- conditions required to limit hours of use
- Change nature of area outside home
- New brick wall on Riley St too large
- Stairs and walkway to lower garden
- Passage will increase pedestrian traffic and noise
- Noise from weddings etc. and capacity
- Should engage acoustic expert
- Height of chapel and dome

#### **CONSIDERATION**

The relevant matters for consideration under Section 79C of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

The application has been assessed against the relevant numeric controls in NSLEP 2001 and DCP 2002 as indicated in the following compliance tables. More detailed comments with regard to the major issues are provided later in this report.

## Compliance Table

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
	Existing (being demolished)	Proposed	Control	Complies
Building Height (Cl. 17) (max)	5m	9.1m	8.5m	NO
Building Height Plane (Cl.18) South Elevation	3.2m	4.7m	45° height plane @ 1.8m above each boundary	NO
Landscape Area (Cl. 20) (min)	40.2% (4320m <sup>2</sup> )	40.1% (4310)m <sup>2</sup>	60%	NO

## DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	<i>complies</i>	<i>Comments</i>
<b>7.1 Function</b>		
Maintaining residential accommodation	NA	The site does not contain residential accommodation at present. Therefore no change
<b>7.2 Environmental criteria</b>		
Views	Yes	Views are not affected by proposal
Solar access	Yes	<p>The shadows cast by the proposed chapel will fall largely within the existing shadows cast by 'Rockleigh Grange' on the street surface and do not impact on the adjacent dwellings internal living areas and private open space. The two properties affected by overshadowing by existing shadows from Rockleigh Grange and proposed shadows from the Chapel are 38D Edward Street, and 27 Riley Street.</p> <p>38D Edward Street Midwinter 9am, 12noon, 1:30pm, The proposed Chapel does not impact on this dwelling's internal living areas and private open space. Midwinter 3pm The proposed Chapel does not impact on this dwelling's internal living areas and private open space. The shadow cast by the proposed development occurs within the existing shadow cast by Rockleigh Grange, which affects the side yard, a portion of the rear and front yards, and the north facing ground floor windows. No additional shadow impacts are proposed beyond what is currently being cast from 'Rockleigh Grange'.</p> <p>27 Riley Street. Midwinter 9am, 12noon, 1:30pm, The proposed Chapel does not impact on this dwelling's internal living areas and private open space.</p>



		<i>Midwinter 3pm</i> The proposed Chapel does not impact on this dwelling's internal living areas and private open space. The shadow impacts at this time are minimal and only affect the front steps, driveway and a small portion of the garage.
Acoustic privacy	Yes	Can be conditioned
Visual privacy	Yes	No privacy impacts from proposal
<b>7.3 Quality Built Form</b>		
Context	Yes	The proposed Chapel building has been designed to minimise any impact on Rockleigh Grange. The materials and details are generally consistent with the listed building and its setting, but clearly new works in accordance with conservation principles. The built form, with the exception of the tower element, is submissive in scale to the listed building.
Form, massing & scale	Yes	Satisfactory with regard to Rockleigh Grange
Built form character	Yes	Satisfactory - see heritage comments
Colours and materials	Yes	Satisfactory - see heritage comments
<b>7.4 Quality urban environment</b>		
Car parking	Yes	No additional parking to be provided on campus – use is ancillary and does not generate additional visitors to site
<b>7.5 Efficient use of resources</b>		
Energy efficiency	NA	Basix not relevant

## NORTH SYDNEY LEP 2001

**Permissibility within the zone:** The proposal is permissible with consent as an ancillary use to a Catholic University. A chapel is also a permissible use in the Residential A2 zone opposite.

### Special Use Zone Objectives

The subject site is zoned Special Use. The objectives of the Special Use zone are to identify land on which special uses are carried out, and minimise the impact of the use of that land on adjoining land. The proposed development is not considered to affect the amenity of adjoining residential land and is consistent with the objectives of the control.

The specific objectives of the Special Use Zone provide:-

#### **Clause 34: Special Use Zone and Private Recreation Zone**

**(3)** A building must not be erected on land to which this clause applies unless:

**(a)** The building is consistent with the objectives and permissible uses that apply to the land adjoining the site and land directly across a road from the site, and

**(b)** The building complies with the relevant development standards, for the particular type of building, that apply to the land adjoining the site, and land directly across a road from the site.

**(4)** If the site adjoins, or is directly across a road from, land in more than one zone, the objectives, permissible uses and development standards that are applied by subclause (3) are the most restrictive development standards.

Owing to the provisions of Clause 34(4), consideration of, and assessment against the provisions of the Residential 'A2' zone objectives is necessary.

The particular objectives of the Residential 'A2' zone provide:

**(a)** "Maintain lower scale residential neighbourhoods of mainly detached and duplex housing;

- (b) Assist in the conservation of heritage and other sensitive areas;*
- (c) Encourage the retention of existing contributory items or neutral items in conservation areas;*
- (d) Promote affordable housing; and*
- (e) Minimise the impact of non-residential uses and ensure these are in character with the zone.”*

The proposed development is considered to be sympathetic to the heritage item (*Rockleigh Grange*) and will have minimal impacts on the adjoining properties. Therefore, the proposal is considered to satisfy the relevant objectives of the Residential A2 zone.

### **Building Heights**

The tower is in breach of the height control of 8.5m by approximately 600mm. No SEPP 1 objection was submitted with the application. The proposed tower element projects approximately 1.35m above the eaves line of *Rockleigh Grange*, having an excessive impact on the building. It is considered by Council's Conservation Planner (and the Assessment Planner concurs) that the tower should be more submissive to the listed building. Therefore, it is recommended that the height of the tower be reduced to no higher than the eaves of the adjacent heritage item. This will ensure full compliance with the height control and no need for a SEPP 1 objection.

### **Building Height Plane**

The proposed building is non-compliant with the BHP in its relationship with the southern boundary of the site which faces onto Riley Street and breaches the BHP projected from this boundary by up to 4.7m. The applicant has submitted a SEPP 1 objection in support of the proposed breach and is assessed having regard to the requirements of clause 18(5) and the objective of the development standard below.

Under Clause 18(5) Council may consider the variation to the building height plane control, where it is demonstrated that no material impacts will occur to:

- (a) Overshadowing-* The shadows cast by the proposed chapel will fall largely within the existing shadows cast by 'Rockleigh Grange' on the street surface and do not impact on the adjacent dwellings internal living areas and private open space. The shadow cast by the proposed building will not be material.
- (b) Privacy –* The proposed building will not have any impacts to existing residential properties.
- (c) Views -* The proposal will not impact on views
- (d) Daylight and Ventilation-* The proposed building will not have any impact on daylight and ventilation currently enjoyed by any surrounding properties.

It is therefore considered that the proposed development results in no material impacts upon the amenity of the surrounding area, and Council can therefore use SEPP 1 as a mechanism to vary the development standard where the objectives of the control are satisfied as follows:

Having regard to the primary objectives of the control:

- (a) Control the bulk and scale of buildings –* The proposed Chapel building is submissive in scale to the adjacent heritage listed 'Rockleigh Grange', it has been designed to reflect the character of the building, and only secondary views of the listed building are affected. However, the proposed tower is considered to be excessively high and it is recommended

that its height be reduced to reduce the heritage impact.

- (b) *Provide separation between buildings* – The proposed breach to the BHP will not have any significant impact upon separation between buildings as the southern boundary of the site is separated from the nearest dwellings by Riley Street.
- (c) *Preserve the amenity of existing dwellings in terms of shadowing, privacy, views, ventilation and solar access* – It has been demonstrated above that the proposed development results in no material impacts upon the amenity of the surrounding area

It is concluded that the SEPP 1 objection demonstrates that the objectives of the building height plane requirements are satisfied. The SEPP 1 objection is well founded, and demonstrates that strict compliance with the building height control is unreasonable and unnecessary in the circumstances.

### **Landscaped Area**

As the entire site adopts the development standards of the residential zone. For a site of this area, Clause 20 of NSLEP 2001 requires 60% of the site to be provided as landscaped area.

The proposal will result in a small decrease of the amount of landscaped area provided for on the site as determined by Clause 20 of the NSLEP 2001. An assessment of the application indicates a reduction of **0.093%** in landscaped area to **40.1%**, would be provided onsite.

The applicant provided Council with a SEPP No.1 objection to seek a variation to this control. It is considered the proposal does not hinder the satisfaction of the objectives of Clause 20 of NSLEP as follows: -

- (a) *Promote the character of the neighbourhood* – The site is currently being used as a University. The site consists of several large paved surfaces as well as several soft landscaped areas. The proposal is considered to maintain the existing character of the site. The proposed works will maintain that character of the neighbourhood as they are relatively small in scale, and are located within the site to the side of the existing building.
- (b) *Provide useable open space* – The proposal represents an increase of about 10m<sup>2</sup> in soft landscaping.
- (c) *Promote a landscaped buffer between adjoining properties* – The existing landscaping is proposed to be retained with the addition of screen planting along the southern boundary.
- (d) *Maximise and retention and absorption of surface drainage water* – The proposal will allow for the retention and absorption of surface drainage water.
- (e) *Minimise obstruction of underground flow of water* – The relatively minor landscaping and building works will not significantly obstruct underground flow of water.
- (f) *Promote substantial landscaping* – The proposed landscaping plan introduces additional planting improving overall landscape amenity for the site and its neighbours.
- (g) *Control site density* – The proposal is considered to be acceptable due to the character of the existing site. As the site is currently zoned as an Educational Establishment, the site density is substantially higher than the surrounding residential area. The school provides approximately 60% of the site as open space, for the use of the students, however not all is defined as landscaped area. The proposed development is relatively minor and the actual site density will not be increased and effectively achieving the 60% Landscaped Area standard.
- (h) *Minimal site disturbance* – Due to the large size of the site, the disturbance of the site will be

kept to a minimum. No natural land features will be removed and the development is considered acceptable in minimising site disturbance.

In view of the above, the submitted SEPP 1 objection to the Landscaped Area standard is supported, as the proposal satisfies the objectives of Clause 20. The strict imposition of the landscaping standard would be unreasonable and unnecessary in this circumstance. Therefore, it is recommended that the SEPP 1 objection be allowed.

### **Heritage Conservation**

No objections are raised to the proposal on heritage grounds. As detailed above, the proposal does not involve demolition or removal of original fabric, the proposed Chapel building is submissive in scale to the adjacent heritage listed 'Rockleigh Grange', it has been designed to reflect the character of the building, and only secondary views of the listed building are affected. However, the proposed tower is considered to be excessively high and it is recommended that its height be reduced to reduce the heritage impact.

### **SEPP 55 and Contaminated Land Management Issues**

The subject site has been considered in light of the Contaminated Lands Management Act and it is considered that as the site has been used for residential/educational purposes for many years, contamination is unlikely.

### **SREP (Sydney Harbour Catchment) 2005**

The subject site is not within part of North Sydney that is required to be considered pursuant to SREP (Sydney Harbour Catchment) 2005.

### **DEVELOPMENT CONTROL PLAN 2002**

#### ***Relevant Planning Area (Edward Street Conservation Area)***

The application has been assessed against the relevant controls in DCP 2002.

### **ALL LIKELY IMPACTS OF THE DEVELOPMENT**

All likely impacts of the proposed development have been considered within the context of this report.

<b>ENVIRONMENTAL APPRAISAL</b>	<b>CONSIDERED</b>
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes

5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	NA
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

#### **CLAUSE 14 NSLEP 2001**

##### ***Consistency With The Aims Of Plan, Zone Objectives And Desired Character***

The provisions of Clause 14 of NSLEP 2001 have been examined.

It is considered that the development is consistent with the specific aims of the plan and the objectives of the zone and of the controls.

As such, consent to the development may be granted.

#### **SUBMITTORS CONCERNS**

The concerns relating to the breach of controls, overshadowing, heritage and scale have been addressed within the report. Some matters raised are not relevant to the application and will not be commented on. The remaining concerns are addressed as follows:

##### *Parking and traffic from building work*

A Construction Management Plan would be required to be submitted and approved prior to commencement of building work.

##### *Construction noise*

Council's standard condition will be imposed to limit the hours of construction to lessen the impact on neighbours.

##### *Object to display of religious icons*

The religious icons are contained within the walls of the chapel and courtyard. The use as a chapel is permitted and chapels contain religious icons. To prohibit such would be discriminatory.

##### *Chapel unnecessary with one nearby*

It is not uncommon for Universities to have their own chapel. The capacity is relatively small and provided for the use of students and staff and is a permitted use.

##### *Increase traffic*

There should be no additional traffic to the area as the facility is ancillary to the University to be used by students and staff already on campus for their studies.

##### *Increase to capacity of university*

The building is for a chapel and not a classroom, the facility is ancillary to the University to be

used by students and staff already on campus for their studies.

*Conditions required to limit hours of use*

Agreed a condition needs to be imposed to limit hours of use.

*Change nature of area outside home*

The chapel will change the appearance of the southern elevation of the University, however the building has been assessed on heritage terms as acceptable.

*New brick wall on Riley St too large*

There is an increase in the height of the wall towards the rear of the chapel for about 3.5m. The wall of the courtyard is setback from the street alignment to allow for landscape screening.

*Passage will increase pedestrian traffic and noise*

The passage on the northern side of the chapel allows access to the vestry and altar. Any use by students will be shielded from Riley Street by the chapel and courtyard.

*Noise from weddings etc. and capacity*

The chapel has limited capacity suitable for the number of students at the University. It is not intended for use for weddings. In any case the limited number of persons in attendance would limit impacts. There is no bell tower proposed. Hours of use should be conditioned as well limits on noise. Any further restrictions on the use of the building would be unreasonable and difficult for Council to enforce.

## **CROWN DEVELOPMENT**

Under Section 226 of the Environmental Planning and Assessment Regulation 2000, the University is prescribed as Crown Development as it is an Australian University within the meaning of the Higher Education Act 2001.

Schedule 1 of the Higher Education Act 2001 lists the Universities as follows:

Australian Catholic University  
Charles Sturt University  
Macquarie University  
Southern Cross University  
The University of New England  
The University of New South Wales  
The University of Newcastle  
The University of Sydney  
University of Technology, Sydney  
University of Western Sydney  
University of Wollongong

Section 116C of the Environmental Planning and Assessment Act 1979 No. 203, specifies that Council may not impose a condition of consent of any development approval, for which the Crown is the applicant, without first obtaining the written approval of the Crown.

It should be noted that development by the Crown is not subject to the issue of a Construction Certificate as such, with the Crown being able to certify its developments, and bonds cannot be

required in consents for Crown development.

## CONCLUSION

The application has been assessed with regard to the controls under NSLEP 2001 and NSDCP 2002 and generally found to be acceptable with the SEPP 1 objections well founded and supportable.

The proposed Chapel building is submissive in scale to the adjacent heritage listed 'Rockleigh Grange', it has been designed to reflect the character of the building, and only secondary views of the listed building are affected. However, the proposed tower is considered to be excessively high and it is recommended that its height be reduced to reduce the heritage impact.

Conditions are required to ensure that amenity impacts are minimised. Conditions are recommended as attached. The applicant or the Minister must give written approval before the conditions can be imposed. The application is reported to Council for determination of the application and appropriate conditions prior to the applicant being requested to agree to the conditions.

## RECOMMENDATION

- A. **THAT** the applicant be requested to provide written concurrence to the attached conditions.
- B. **THAT** upon receipt of the concurrence from the applicant, Council as the consent authority, assume the concurrence of the Director General of the Department of Planning and invoke the provisions of SEPP 1 with regard to the building height plane and landscape area and grant consent to development application No.369/10.
- C. **THAT** Council delegates to the General Manager pursuant to Section 377 of the Local Government Act 1993 the following functions in respect of Development Application No.369/10:
  - (i) in the event that written concurrence is provided by the applicant to the conditions (or similar wording to a condition provided it is consistent with the reason for the condition), to issue the consent subject to the agreed conditions
- D. **THAT** in the event that the written concurrence is not provided, the application be referred back to the Council for determination.

**DECISION OF 3565th COUNCIL MEETING  
HELD ON 29 NOVEMBER 2010**

**767. PDS14: 40 Edward Street North Sydney (V) DA.369/10**

Applicant: Australian Catholic University Ltd

Report of Geoff Mossemeneer, Executive Planner - 19 November 2010

Works proposed under this application include:

- Demolition of 'Carlo's Cottage' currently unoccupied, requiring significant structural and waterproofing works to make it habitable. It is intended to retain the significant brick wall located along the southern boundary to Riley Street. Stabilisation and propping of the wall will be required during demolition and construction of the new Chapel.
- Demolition of a 1950s outbuilding found to the east of the cottage currently used as a storage facility.
- Demolition of a single storey building, adjoining Rockleigh Grange, to the east of the storage building. The brick building with tile roof is currently used as toilet facilities for Rockleigh Grange. Following demolition, conservation works are proposed to the corner of Rockleigh Grange where the buildings were joined.
- Provide a new purpose built Chapel, one storey in height with a tower designed to be read as a secondary item to "Rockleigh Grange". The Chapel is designed with load bearing external walls, simple massing, parapeted gables facing east and west, a strong semi-circular Rose Window facing west, brick facades and terracotta tiled roof finish.
- As a focal point prior to entering the Chapel, a Cloister is proposed and is to be constructed from sculptured class 1 hardwood columns, light weight roof frame (no roof covering proposed) forming the enclosure.
- Provide a new vestry, accessible toilet and stairway to the east of the Chapel. The one storey amenities' building is designed with masonry walls and a landscaped flat roof.
- New landscape works associated with the Chapel and Cloister includes, hard landscaping (concrete pavers), open grated area around the retained Chinese Elm, landscape works to the east of the amenities building.
- The masonry wall facing Riley Street has been set back approximately 1000mm and curving away from the boundary. Landscaping is proposed in front of the masonry wall softening the overall appearance and perceived height of the proposed wall to the 'Cloister Area'.

**Recommending:**

- A. **THAT** the applicant be requested to provide written concurrence to the attached conditions.
- B. **THAT** upon receipt of the concurrence from the applicant, Council as the consent authority, assume the concurrence of the Director General of the Department of Planning and invoke the provisions of SEPP 1 with regard to the building height plane and landscape area and grant consent to development application No.369/10.
- C. **THAT** Council delegates to the General Manager pursuant to Section 377 of the Local Government Act 1993 the following functions in respect of Development Application No.369/10:
  - (i) in the event that written concurrence is provided by the applicant to the conditions (or similar wording to a condition provided it is consistent with the reason for the condition), to issue the consent subject to the agreed conditions
- D. **THAT** in the event that the written concurrence is not provided, the application be referred back to the Council for determination.

Addendum to Item PDS14 was brought forward and dealt with at this stage.



**Addendum to report of Geoff Mossemeneer -29 November 2010, DA.369/10**

This development application seeks Council's approval to demolish three buildings on the corner of Edward Street and Riley Street and erect a single storey chapel, vestry with associated landscaping.

The application is recommended for **deferral** subject to acceptance by the applicant (or the Minister) of the recommended conditions.

It has come to my attention that one of the recommended conditions attached to the report is incomplete.

Condition I1. Hours of Use (page 11 of the conditions) should read as follows:

**Hours of Use**

11. The opening hours of the Chapel shall be the same as the University being limited to the following:  
8.00 am to 8.00 pm – Monday to Friday  
12.00 noon to 5.00 pm – Saturday  
In addition to 8.00am to 8.00pm Sunday  
(Reason: Information to ensure that amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality)

**Recommending:**

That the conditions attached to the report of Geoff Mossemeneer, Executive Planner dated 19 November 2010 be amended by replacing condition I1 with the following:

**Hours of Use**

11. The opening hours of the Chapel shall be the same as the University being limited to the following:  
8.00 am to 8.00 pm – Monday to Friday  
12.00 noon to 5.00 pm – Saturday  
In addition to 8.00am to 8.00pm Sunday  
(Reason: Information to ensure that amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality)

The Mayor, Councillor McCaffery declared an interest in this item and left the Chamber taking no part in debate or voting. Councillor Reymond took the Chair.

MsSchwenk, Mr Finney, Mr Rochrig and Mr Claridge addressed the meeting.

It was moved by Councillor Baker and seconded by Councillor Gibson

**THAT** the report be adopted subject to the following amendments:

- replacing condition I1 with the following:  
**Hours of Use**  
11. The opening hours of the Chapel shall be the same as the University being limited to the following:  
8.00 am to 8.00 pm – Monday to Friday  
12.00 noon to 5.00 pm – Saturday  
In addition to 8.00am to 8.00pm Sunday
- The applicant provided details of the acoustic ameliorations to be applied to the wall from the Chapel wall and courtyard
- Prior to the issue of occupation certificate the applicant undertake landscaping detailed in DA consent 422/09
- Reduction of the chapel roof by 1m
- Council staff investigate existing content regarding staff and student numbers
- That the maximum number of fig trees be retained

It was moved as an amendment by Councillor Carland and seconded by Councillor Marchandean

**THAT** the report be adopted subject to the following amendments

- replacing condition I1 with the following:  
**Hours of Use**

11. The opening hours of the Chapel shall be the same as the University being limited to the following:  
 8.00 am to 8.00 pm – Monday to Friday  
 12.00 noon to 5.00 pm – Saturday  
 In addition to 8.00am to 8.00pm Sunday  
*(except for Christmas eve)*

- The applicant provided details of the acoustic ameliorations to be applied to the wall from the Chapel wall and courtyard
- Prior to the issue of occupation certificate the applicant undertake landscaping detailed in DA consent 422/09
- Council staff investigate existing content regarding staff and student numbers
- That the maximum number of fig trees be retained

The amendment was put and **lost**.

Voting on the amendment was as follows: For/Against 5/5

Councillor	Yes	No	Councillor	Yes	No
McCaffery	<b>Doi</b>		Zimmerman	<b>Absent</b>	
Gibson		N	Baker	N	
Christie		N	Robjohns	N	
Reymond		N	Carland		Y
Marchandau	Y		Burke		Y
Raymond	<b>Absent</b>		Pearson		Y
Barbour	Y				

Voting being equal the Deputy Mayor used his casting vote against amendment

The motion was put and **carried**.

Voting was as follows: For/Against 8/2

Councillor	Yes	No	Councillor	Yes	No
McCaffery	<b>Doi</b>		Zimmerman	<b>Absent</b>	
Gibson	Y		Baker	Y	
Christie	Y		Robjohns	Y	
Reymond	Y		Carland		N
Marchandau	Y		Burke	Y	
Raymond	<b>Absent</b>		Pearson		N
Barbour	Y				

#### **RESOLVED:**

**THAT** the report be adopted subject to the following amendments:

- replacing condition I1 with the following:  
**Hours of Use**  
 11. The opening hours of the Chapel shall be the same as the University being limited to the following:  
 8.00 am to 8.00 pm – Monday to Friday  
 12.00 noon to 5.00 pm – Saturday  
 In addition to 8.00am to 8.00pm Sunday
- The applicant provided details of the acoustic ameliorations to be applied to the wall from the Chapel wall and courtyard
- Prior to the issue of occupation certificate the applicant undertake landscaping detailed in DA consent 422/09
- Reduction of the chapel roof by 1m
- Council staff investigate existing content regarding staff and student numbers
- That the maximum number of fig trees be retained

The Mayor resumed the Chair at 8:54pm.

23 December, 2010

Panel Secretariat - Sydney East Region  
Joint Regional Planning Panel  
GPO Box 3415  
Sydney NSW 2001

Crown Application: Referral to JRPP  
40 Edward Street, North Sydney: Development Application 369/10

At its meeting on 29 November 2010, North Sydney Council considered ACU's application for the construction of a small Chapel on its North Sydney site. Council's resolution included a number of conditions. Conditions such as restrictions on hours of usage, a change in a perimeter fence to steel picket rather than mesh are acceptable.

Conditions also include a requirement to reduce the height of the proposed tower and a further requirement to reduce the overall height of the building by 1 metre. While reduction in the height of the tower compromises the building from both symbolic and practical considerations, ACU has subsequently discussed with Council officers some reduction in the height of the tower (about 400mm) and this would be mutually acceptable.

The Joint Regional Planning Panel is requested to review North Sydney Council's decision.

ACU's comment on North Sydney's draft conditions of consent is as follows:

**Condition E: (acoustic amelioration)** – the building is a single storey brick and tile building to be used as a chapel; there is a small forecourt largely to be used as a quiet space, but which may from time to time be used as part of services. ACU will engage an acoustic engineer to provide advice on the effectiveness of minimising noise impact, with the intention of keeping additional noise (if any) to 5dB above background during hours of operation.

**Condition F: (landscaping)** – this refers to an earlier Development consent and is not relevant. As part of the proposed works, ACU intends to undertake a further stage of its Landscape Master Plan in this area. The proposed works will not impact on the previous decision which restricted the use of the Riley Street areas to passive uses;

**Condition G: (reduce height by 1 metre)** – not acceptable. The acknowledged height above Council controls has been fully addressed in the SEPP1 objection which accompanied the Development Application. The proposed reduction in the overall height of the building is unreasonable and serves no purpose; it would compromise the quality of the chapel space

**Conditions H and I:** - not relevant to this application as conditions and should be struck out.

For any further information, please contact the undersigned on (02) 9739-2102.

Con O'Donnell  
Director of Properties

## RESPONSE TO APPLICANTS SUBMISSION DATED 23 December 2010

**SUBJECT:** 40 Edward Street North Sydney.  
**APPLICATION NO:** DA 369/2010  
**AUTHOR:** Stephen Beattie Manager Development Services  
**DATE:** 12 January 2011

Attachments: Submission from the Australian Catholic University 23 December 2010.

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### SUMMARY

The Australian Catholic University has made a submission in regard to North Sydney Council determination of DA 369/2010.

Particular comment was made in regard to parts E through to I of Councils resolution dated 29 November 2010. Taking each part in turn;

**Part E:** (acoustic amelioration) – The ACU indicates that the proposal is a single storey brick and tile building to be used as a chapel; there is a small forecourt largely to be used as a quiet space, but which may from time to time be used as part of services. The ACU will engage an acoustic engineer to provide advice on the effectiveness of minimising noise impact, with the intention of keeping additional noise (if any) to 5dB above background during hours of operation.

*Council Planners Comment;*

*The requirement to engage an acoustic consultant to provide advice should be incorporated as a condition to be satisfied prior to the commencement of works.*

**Part F:** (landscaping) – The ACU points out that this refers to an earlier Development consent and is not relevant to this application. Further, as part of the proposed works, the ACU intends to undertake a further stage of its Landscape Master Plan in this area. The proposed works will not impact on the previous decisions which restricted the use of the Riley Street areas to passive uses.

*Council Planners Comment;*

*The imposition of such a condition would reinforce the need to carry out these landscaping works. However the requirement to comply with this is already inherent in the relevant DA consent 422/2009.*

**Re: DA369/2010 – 40 Edward Street North Sydney.**

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**Part G:** (reduce height by 1 metre) – The ACU is not prepared to accept this condition. The acknowledged height above Council controls has been fully addressed in the SEPP1 objection which accompanied the Development Application. The proposed reduction in the overall height of the building is unreasonable and serves no purpose; it would compromise the quality of the chapel space.

*Council Planners Comment;*

*A reduction in the ridge height of the Chapel was not considered necessary by the reporting officer. It is noted that the ACU appears to accept the requirement that the bell tower be reduced in height as required by condition B5.*

**Parts H and I:**

The ACU indicates that they are not prepared to accept these requirements and they should be struck out.

*Council Planners Comment;*

*Part H requires that the numbers of staff and students attending the ACU be investigated by Council staff with reference to previous consent. No condition is suggested and no action is required on behalf of the ACU.*

*Part I requires that a maximum number of fig trees be retained. A condition should be imposed indicating that no vegetation other than that expressly approved for removal by this consent should be removed.*

**RECOMMENDATION:**

That the comments provided above be considered by the Joint Regional Planning Panel in its determination of Development Application No 369/2010.

SIGNED \_\_\_\_\_

**Stephen J Beattie**  
**Manager Development Services**  
**North Sydney Council.**