



## Land and Environment Court New South Wales

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Case Title: Australian Catholic University Limited v  
Minister for Planning and Infrastructure and  
Anor

Medium Neutral Citation: [2014] NSWLEC

Hearing Date(s): 2 - 5 June, 17 October 2014

Decision Date: 18 November, 2014

Jurisdiction: Class 1

Before: Fakes C and O'Neill C

Decision: 

1. The appeal is allowed in respect of the Concept Plan application for the proposed upgrading of the Australian Catholic University at 167-169 Albert Road and 179 Albert Road, Strathfield, in the manner and subject to the conditions and the Statement of Commitments set out in Schedules 1, 2 and 4 to Annexure A.
2. Each party pays its own costs of the proceedings.
3. It is noted that it is intended that when the Planning and Assessment Commission (as delegate for the Minister) approves the Concept Plan application, it will exercise the powers under the former section 75P of the *Environmental Planning and Assessment Act 1979* in the following manner:
  - (a) pursuant to section 75P(1)(a) and 75P(2)(c) of the *Environmental Planning and Assessment Act 1979*, that the further environmental assessment requirements for approval to carry out the development are as set out in Schedule 3 to Annexure A; and
  - (b) pursuant to section 75P(1)(b) of the *Environmental Planning and Assessment Act 1979*, that all future stages of the Concept Plan approval are subject to Part 4 of that Act.

Catchwords: APPEAL: Concept Plan application for the expansion of the Australian Catholic University's Strathfield campus; increase in population; impact of on-street parking on the amenity of the residential area; impact of the height, bulk and scale of the building envelopes on the heritage significance of the campus and the adjoining residential development; hours of operation.

Legislation Cited: Environmental Planning and Assessment Act 1979  
Land and Environment Court Act 1979  
Strathfield Local Environment Plan 2012  
Strathfield Planning Scheme Ordinance 1969

Cases Cited: Australian Catholic University Limited v Strathfield Council [1994] NSWLEC 205  
Jonah Pty Ltd v Pittwater Council (2006) LGERA 408  
Anglican Church Property Trust v Sydney City Council (2003) 139 LGERA 231  
Comino v Council of the City of Sydney [2014] NSWLEC 1211

Texts Cited:

Category: Principal judgment

Parties: Australian Catholic University (Applicant)  
Minister for Planning and Infrastructure (1<sup>st</sup> Respondent)  
Strathfield Municipal Council (2<sup>nd</sup> Respondent)

Representation

- Counsel: Mr A. Galasso SC (Applicant)  
Ms S. Duggan SC (1<sup>st</sup> Respondent)  
Mr D. Baird Solicitor (2<sup>nd</sup> Respondent)

- Solicitors: Clayton Utz (Applicant)  
Department of Planning and Infrastructure (1<sup>st</sup> Respondent)  
HWL Ebsworth Lawyers (2<sup>nd</sup> Respondent)

File number(s): 10350 of 2013

## JUDGMENT

- 1 **COMMISSIONERS:** The Strathfield Campus of the Australian Catholic University occupies the site of three former Victorian Estates which were purchased by the Christian Brothers in 1907. Since that time, the site has been used for a range of educational and training purposes. It became part of the Catholic College of Education in 1981-2 and part of the Australian Catholic University in 1993. Several development consents have been approved for the construction of new educational facilities and alterations and additions to others.
  
- 2 In December 2010 the applicant lodged a Major Project Application under the now repealed Part 3A of the *Environmental Planning and Assessment Act 1979* (EPA Act) entitled 'Concept Plan Application for a master plan for the Australian Catholic University Campus' at Strathfield.
  
- 3 This is an appeal pursuant to the former s 75Q(2) of the EPA Act, against the refusal of the Minister for Planning and Infrastructure (the Minister), via his delegate, the Planning Assessment Commission (PAC), of elements of a staged Concept Plan (the proposal) for the Mount Saint Mary Campus of the Australian Catholic University (ACU Strathfield campus) at 167-169 Albert Road and 179 Albert Road, Strathfield (the site).

### **The site and its context**

- 4 The five hectare main campus of ACU Strathfield campus (main campus) is on the northern side of Barker Road and the primary vehicular and pedestrian entry to the site is from Barker Road. Albert Road terminates at its south-western end at the main campus, with pedestrian access to the main campus. St Patrick's College, Strathfield, is to the north of the main

campus, with shared playing fields on the northern side of the main campus.

- 5 There is a second, smaller campus that forms part of the ACU Strathfield campus, the Edward Clancy campus, on the north-western side of Albert Road, a short distance from the main campus.
- 6 The ACU Strathfield campus is approximately 1.5km from Strathfield town centre and Strathfield Railway Station (exhibit A1, tab 3, p10).
- 7 The main campus is characterised by buildings enclosing formal courtyards, within a landscaped setting. At the heart of the main campus and near the crest of the hill is the Edmund Rice Building, which comprises the two storey Queen Anne style villa mansion, 'Mount Royal' (c.1887) and substantial later additions. Other important buildings on the site including the Barron Chapel (1925) and the Mullens Building (1931). The site has a long history of evolution and the architecture, landscaping and layout of the main campus evidences three phases, the Victorian villa phase, the Christian Brothers phase and the ACU phase (exhibit A1, tab 10, pp ii-v).
- 8 The principal view corridors towards the site from the public domain occur along Barker Street from the east and along Albert Street, through the Mount Royal gates looking west towards the Edmund Rice Building (exhibit A1, tab 10, pp. 167-174).
- 9 Surface car parking is distributed across the main campus with the primary parking area at the eastern end of the site adjacent to Albert Road (exhibit A1, tab 3, p 10).

### **The proposal**

- 10 The Concept Plan seeks approval for a master plan for the site to accommodate student growth over the next decade. It includes the following (exhibit A2, tab 40):

- approval for building envelopes, within four precincts, between two and four storeys in height;
- an increase in population to a maximum of 2200 people on site at any one time, including a maximum of 2000 students on site at any one time;
- an increase in hours of operation, including weekends;
- an increase in on-site parking from the current 346 spaces to 747 spaces, including the construction of basement car parks;
- new pedestrian and vehicular circulation into and within the site; and
- landscaping.

## Background

### Previous consents

11 Development consent 93/164 was approved, subject to conditions, on 16 December 1994 by Talbot J of the NSW Land and Environment Court (*Australian Catholic University Limited v Strathfield Council* [1994] NSWLEC 205) (the 1994 consent) for the erection of a three storey building for lecture rooms and teacher office accommodation on the main campus. The consent includes the following conditions (exhibit 2, tab 12):

- Classes should be conducted only between the hours of 8am and 9pm Monday to Friday. The library shall be open between the above hours and 8am to 5pm Saturday (condition 30).
- On days when classes at the University are followed by evening classes, the time between cessation and commencement of classes shall not be less than 30 minutes (condition 31).
- The number of students enrolled at the University at any one time shall not exceed 1100 by day and 700 by night and the number of teachers employed shall not exceed 190, without the prior approval of Council. The number of students in attendance on the site at any one time shall not exceed 510 between the hours of 8am and 5pm

Monday to Friday and 247 between 5pm and 9pm Monday to Friday (condition 32).

- 12 Development consents 0102/252 (15 October 2002) (the 2002 consent) and 2011/165 (21 December 2011) were both for alterations and additions to the Edward Clancy Building. Both consents included a condition that restrict the hours of operation to 8am to 9pm, Monday to Friday and student numbers are not to exceed a maximum of 240 at any given time (exhibit A1, tab 3, p 30).

### **Background to this appeal**

- 13 The applicant lodged a request for Part 3A Declaration, Concept Plan Authorisation and Director-General's Requirements (DGRs), dated 10 December 2010 (exhibit 2 tab 1). On 7 January 2011 the Executive Director of the Department of Planning, as the Minister's delegate, declared the proposal to be a major project to which Part 3A of the EPA Act applied, (exhibit 2, tab 2) and authorised the submission of a Concept Plan application (exhibit 2, tab 3). The Concept Plan application was allocated reference no. MP 10\_0231 (exhibit B, p 1).
- 14 The Environmental Assessment Requirements for the Concept Plan application were provided to the applicant by the Director-General (DGRs) dated 17 February, 2011, pursuant to the former s 75F(2) of the EPA Act (exhibit A1, tab 2).
- 15 In response to the DGRs, the applicant submitted a Concept Plan Environmental Assessment (EA), prepared by Hassell dated 22 December 2011, pursuant to the former s 75H(1) of the EPA Act (exhibit A1, tabs 3-18).
- 16 The proposal, (as exhibited) sought Concept Plan Approval for:

- Six building envelopes, across four precincts, between two and four storeys in height;
  - Increased on-site car parking from 346 to 674 spaces in basement and at ground level;
  - Access arrangements;
  - Pedestrian linkages throughout the campus; and
  - Increases in student and staff numbers and hours of operation.
- 17 The proposal was publically exhibited from 18 January to 29 February 2012, with a subsequent extension to 14 March 2012. The proposal received 672 public individual submissions and 6 submissions from local and state government agencies. The applicant submitted a Preferred Project Report and Response to Submissions (PPR), prepared by Hassell dated 9 July 2012, pursuant to the former s 75H(6) of the EPA Act (exhibit A2, tabs 19-28). The PPR modified the proposal. The PPR was placed on further public exhibition and received 933 public submissions and 4 submissions from local and state government agencies. On 24 October 2012, the Applicant submitted a Response to the PPR submissions, which included further additional material to clarify certain issues raised in submissions (exhibit A2, tabs 36 p(1) and 40 p(i)).
- 18 In 2011, the NSW Government repealed the Part 3A provisions of the EPA Act and the proposal became a transitional Part 3A project application, pursuant to cl 2(1)(c) of Schedule 6A of the EPA Act. The Minister's determination function was delegated to the PAC on 14 September 2011.

#### **Director-General's Terms of Approval**

- 19 Pursuant to the former s 75I of the EPA Act, the Director-General's Environmental Assessment Report was issued on 11 January 2013 with a recommendation that the PAC approve the application, subject to the Terms of Approval (Schedule 2), the Future Environmental Assessment Requirements (Schedule 3) and the applicant's Statement of Commitments (Schedule 4) (exhibit A2, tabs 40-43).

20 Schedule 2 – Part A – Terms of Approval included the following key terms:

Concept Plan approval is granted to the following development:

- 2,000 students on the Campus at any one time and 2,800 students across the day;
- 260 Full Time Equivalent (FTE) teaching staff;
- 6 new building envelopes to a maximum height of 4 storeys;
- Basement and ground car parking for 717 vehicles to be used by the Australian Catholic University and 30 spaces to be used by St Patrick's College [747 spaces];
- Road works to support the development;
- Pedestrian linkages and landscaping throughout the site;
- Staging of the development in four stages.
- Any future application must demonstrate that the mode share targets within the Green Travel Plan can be consistently complied with;
- The Green Travel Plan to be amended to provide sufficient changeover time between morning and afternoon sessions;
- Prior to any development applications submitted in accordance with this Concept Plan, a Student Travel and Campus Monitoring Plan must be submitted;
- The hours of operation are limited to 7.00 am to 10.00 pm on Monday to Friday; and from 8.00 am to 5.00 pm on Saturday and Sunday; only post-graduate classes on weekends;
- A complaint handling register is to be provided;
- Approval of the Concept Plan to last 5 years;
- In the event of any inconsistency, the terms of Approval and modifications of the Concept Plan shall prevail.

**PAC Approval**



- 21 The Concept Plan application was referred by the Minister to the PAC, as the delegated consent authority, for determination, on 14 January, 2013.
- 22 On 27 March 2013 the PAC issued a Concept Plan approval for the application which approved the Concept Plan, subject to the Terms of Approval (Schedule 2) (see below), the Future Environmental Assessment Requirements (Schedule 3) and a revised Statement of Commitments (Schedule 4) (exhibit A2, tab 47). The PAC amended the Director-General's Environment Assessment Report terms of approval to only approve the underground car park and Precinct 1 and to exclude the other development proposed in the Concept Plan application. The PAC recommended that the increase in student numbers, extended hours of operation and building envelopes in Precincts 2, 3 and 4 should only be contemplated once the ANU can demonstrate effective and on-going implementation of the Green Travel Plan, including evidence regarding achievement of mode shift targets (exhibit A2, tab 48, p 9).
- 23 The PAC granted approval to the following elements of the concept plan. These are more limited than the terms drafted by the Department. Schedule 2 – Part A – Terms of Approval states (plan numbers not shown):

#### A1. DEVELOPMENT DESCRIPTION

Concept Plan approval is granted to the following development as described below:

- (a) Precinct 1 comprising 2 new building envelopes to a maximum height of 4 storeys and basement car parking for 174 vehicles;
- (b) Underground parking for 262 car spaces to be used by the Australian Catholic University and 30 spaces to be used by St Patrick's College;
- (c) Road works to support the development, including new access points off Barker Road and Edgar Streets;
- (d) Pedestrian linkages and landscaping; and
- (e) Staging of the development in two stages.

Subject to compliance with the terms and modifications of this approval.

## A2. DEVELOPMENT IN ACCORDANCE WITH PLANS AND DOCUMENTATION

The approval shall be generally in accordance with MP 10\_0231 and the Environmental Assessment prepared by Hassell dated December 2010, except where amended by the Preferred project Report prepared by Hassell dated July 2012 and Response to Preferred Project Report Submissions prepared by Hassell dated 23 October 2013 and the following drawings: [not shown] except as expressly modified in this approval pursuant to Section 75O(4) of the Act.

## A3. CAR PARKING

The number of car parking spaces to be provided for the development shall comprise:

- a 436 spaces for the use of staff and students of the Australian Catholic University, comprising 262 spaces in the underground car park and 174 spaces in Precinct 1; and
- b 30 spaces for the use of staff of St Patrick's College in the underground car park.

## A4. STAGING OF DEVELOPMENT

The construction of Precinct 1 must not commence until the underground car park has been constructed and a final occupation certificate issued.

## A5. LAPSING OF APPROVAL

Approval of the Concept Plan shall lapse 5 years after the determination date shown above in this in this Instrument of Approval, unless an application is submitted to carry out a project or development for which concept approval has been given.

## A6. INCONSISTENCY BETWEEN DOCUMENTATION

In the event of any inconsistency between Terms of Approval or modifications of the Concept Plan approval identified in this approval and the drawings/ documents including Statement of Commitments referred to above, the Terms of approval and modification of the Concept Plan shall prevail.

- 24 Schedule 3 of the Concept Approval provides 'Future Environmental Assessment Requirements' for : built form; access, transport and traffic impacts; construction management; complaints handling register;

ecologically sustainable development; public domain and landscaping; contamination; crime prevention through environmental design; drainage and stormwater management; utilities; and construction and operational impacts.

## Issues

25 The applicant's contention is that the Minister should have approved the Concept Plan generally in the manner of the Director-General's recommendation for approval and the Court should uphold the appeal and determine the application in a manner that would approve those aspects of the Concept Plan that were not approved by the Minister. The matters requiring the Court's consideration include, in summary, the following:

- whether the increased student/staff numbers proposed by the Application will adversely affect the amenity of the surrounding area such that the Application should be refused, despite the public benefits of the Application;
- whether conditions proposed in the Director-General's recommendation for approval (in particular A4, A5 and A6) are sufficient to ameliorate the impacts on the amenity of the surrounding area such that the Application should be approved in the terms proposed by the Director-General's recommendation for approval;
- whether the applicant's proposed development of several new building envelopes should be approved;
- whether the extended hours of operation sought by the applicant, ACU, should be approved.

26 The Minister says that the Court should grant a Concept Plan approval for only that part of the application that was approved by the PAC (as the Minister's delegate). The Minister's contentions are, in summary, as follows:

- the Concept Plan lacks sufficient parking survey information and if approved in its entirety, is likely to have unacceptable parking impacts on the surrounding area generally and particularly on the adjacent residential streets;
- the student travel and campus monitoring plan is inadequate and does not demonstrate how the travel plan targets will be achieved; and
- the hours of operation should not be altered from the hours that were approved in the 1994 consent.

27 The Council says that the Court should grant consent only to the underground car park that was approved by the PAC and should exclude Precinct 1 (which was approved by the PAC), or otherwise the appeal should be dismissed for the following reasons:

- the Concept Plan application fails to provide the actual number of students and staff attending the campus at any one time;
- the height, bulk and scale of the multi-storey building envelope in Precinct 1, proposed under the Concept Plan application, is unacceptable as it is unsympathetic to the existing heritage buildings on the site and out of character with the adjoining residential development and the existing streetscape;
- the applicant has provided insufficient parking survey information to properly assess the potential traffic and parking impacts, of an increase in the number of students/staff and an increase in the hours of operation of the ACU, on the surrounding area and adjacent residential streets; and
- the increase in hours of operation of ACU would have unacceptable amenity impacts on the surrounding residential development caused by increased motor vehicle and pedestrian traffic, noise, litter, anti-social behaviour and privacy.

## **Planning Framework**

- 28 Pursuant to the former s 75M(2) of the EPA Act, an application for approval of a concept plan does not require a detailed description of the proposal.
- 29 The Minister, when deciding whether or not to give approval for a concept plan, is to consider the following, pursuant to the former s 75O(2) of the EPA Act:
- (a) the Director-General's report on the project and the reports and recommendations (and the statement relating to compliance with environmental assessment requirements) contained in the report, and
  - (b) if the proponent is a public authority—any advice provided by the Minister having portfolio responsibility for the proponent, and
  - (c) any findings or recommendations of the Planning Assessment Commission following a review in respect of the project.
- 30 Pursuant to the former s 75O(3) of the EPA Act, the Minister, in deciding whether or not to give approval for the concept plan for a project, may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. The environmental planning instruments and policies that we consider we should have regard to in these proceedings (but are not bound to apply) are:
- *Strathfield Planning Scheme Ordinance 1969 (SPSO)*
  - *Strathfield Local Environment Plan 2012 (SLEP 2012)*
  - *Strathfield Development Control Plan 2005 Part M*
- 31 Pursuant to the former s 75O(4) of the EPA Act, approval for a concept plan may be given with such modifications of the concept plan as the Minister may determine.
- 32 When giving approval for a concept plan, the Minister may make any, or any combination of, the following determinations, pursuant to the former s 75P(1) of the EPA Act:

(a) the Minister may determine the further environmental assessment requirements for approval to carry out the project or any particular stage of the project under this Part (in which case those requirements have effect for the purposes of Division 2),

(b) the Minister may determine that approval to carry out the project or any particular stage of the project is to be subject to the other provisions of this Act (in which case the project or that stage of the project ceases to be a project to which this Part applies),

(c) the Minister may determine that no further environmental assessment is required for the project or any particular stage of the project (in which case the Minister may, under section 75J, approve or disapprove of the carrying out of the project or that stage of the project without further application, environmental assessment or report under Division 2).

33 If the Minister determines that approval to carry out the project, or any particular stage of the project, is to be subject to the other provisions of this Act, the following provisions apply, pursuant to the former s 75P(2) of the EPA Act:

(a) the determination of a development application for the project or that stage of the project under Part 4 is to be generally consistent with the terms of the approval of the concept plan,

(a1) any consent granted for the project or that stage of the project under Part 4 is to be subject to such conditions as the Minister directs for the purpose of fulfilling the obligations in a statement of commitments submitted by the proponent (in which case those conditions cannot be modified without the approval of the Minister and a person cannot appeal to the Court under this Act in respect of the direction or any such conditions imposed by the consent authority)

34 The main campus is zoned 5(a) Special Uses (Ecclesiastical) and the Edward Clancy site is zoned 5(a) Special Uses (School), under SPSO.

35 SLEP 2013 came into effect on 29 March 2013. The main campus is zoned SP2 Educational Establishment (Sheet LZN\_002 of LEP 2012) and the Edward Clancy site is zoned R2 Low Density Residential (Sheet LZN\_005 of LEP 2012), under SLEP 2012. The objectives of the SP2 zone in the Land Use Table of SLEP 2012 are as follows:

To provide for infrastructure and related uses.

To prevent development that is not compatible with or that may detract from the provision of infrastructure.

To ensure that development does not have an adverse effect on adjoining land.

- 36 The main campus has no maximum height or maximum floor space ratio (FSR) development standards (Sheet HOB\_002 and 005 and Sheet FSR\_002 and 005 of SLEP 2012).
- 37 The main campus is listed as a heritage item, 'Australian Catholic University, Strathfield Campus (includes former "Mount Royal") - various buildings and landscape' (I92, Schedule 5, SLEP 2012).

### **Public submissions**

- 38 The hearing commenced at the Strathfield Town Hall, to enable resident objectors to be present and for nine of those resident objectors to give evidence. Their concerns can be summarised as:
- The students of the ACU park on the residential streets surrounding the ACU and this parking is at capacity, leaving no on-street parking for residents or their visitors;
  - Students driving to the campus and the operation of the ACU shuttle buses, combined with school drop-off and pick-ups, creates significant traffic congestion in the area;
  - The speed that students drive their cars along residential streets creates a significant safety hazard and a hazard for residents reversing out of their driveways, to the extent that some residents choose to park their cars on the street early in the morning to avoid having to reverse out of their driveway during the day;
  - The students and their parents obstruct residents' driveways by parking or stopping in front of the driveway crossover;
  - The proposed entry to the underground carpark from Barker Road will obstruct the existing outlook from 78 Barker Road;

- The proposal will have a detrimental impact on the heritage significance of 'Mount Royal' and its curtilage; and
- The bulk and scale of the Precinct 1 proposal will have a detrimental impact on views to the ACU and on the amenity of nearby residences.

### **Expert evidence**

- 39 Mr Tim Rogers (traffic engineering), Mr Tim Blythe (planning) and Mr Guy Paroissien (arboriculture) gave expert evidence on behalf of the University.
- 40 Mr Ken Hollyoak (traffic engineering) gave expert evidence on behalf of the Minister.
- 41 Mr Craig McLaren (traffic engineering), Mr Nigel Dickson (planning) and Mr Russell Kingdom (arboriculture) gave expert evidence on behalf of the Council.

### **Student numbers, parking and traffic**

- 42 The key issue in this matter is the impact of student parking, and associated traffic, on nearby residential streets. This issue is forefront in the hundreds of submissions received from local residents. Indeed, traffic, parking and access issues were raised in 94% of written submissions. It is the Minister's fundamental contention and a key element of the Council's contentions.
- 43 Much of the evidence concerned previous consents (refer to paragraphs [11] and [12]) pertaining to the expansion and operation of the ACU Strathfield campus. It is therefore useful to include some background to the current proposal in the context of parking issues.



- 44 The principal issues in the 1994 consent between ACU and the Council were the extent of traffic impact and demand for parking generated by the proposed increase in student and staff numbers.
- 45 In the 1994 consent, Talbot J accepted that 318 parking spaces could be provided on site. He disagreed with Council's position that parking demand should be assessed against maximum attendance. In His Honour's opinion, it was unreasonable from a planning point of view to require a developer to meet a contingency of peak demand.
- 46 At the time, the ACU charged for parking on site. The Council argued for free parking. His Honour acknowledged that free parking could divert travellers from using the adequate bus service from Strathfield Station. Subsequently, a condition was imposed (No. 34) requiring on-site parking to be provided at a reasonable cost.
- 47 Amongst other things, the 1994 approval required changes to the locations and configuration of entry points, internal driveways and car parks. Condition 32 required:
32. The number of students enrolled at the University at any one time shall not exceed 1,100 by day and 700 by night and the number of teachers employed shall not exceed 190, without the prior approval of Council. The number of students in attendance on the site at any one time shall not exceed 510 between the hours of 8.00am and 5.00pm Monday to Friday and 247 between 5.00pm and 9.00pm Monday to Friday.
- 48 Classes were confined to between the hours of 8.00am and 9.00pm Monday to Friday. In addition, the library was permitted to open on Saturday between 8.00am and 5.00pm.
- 49 In October 2002 Strathfield Council granted approval for the Edward Clancy Building campus, a former nursing home, to be used for educational purposes. Student numbers were capped at 240 at any one time. The hours of operation were limited to 8.00 am to 9.00 pm Monday to Friday.

50 In 2011, council approved alterations and additions to the Edward Clancy campus; student numbers and hours of operation were unchanged.

51 The proposal is outlined at paragraph [10]. In essence, the applicant seeks approval for an eventual increase in the campus population to 2,200 people at any one time; an increase in the hours of operation, including weekends; and a staged increase in on-site parking from 346 spaces to 747, of which 30 spaces are to be dedicated for the use of St Patrick's College.

52 The proposal is supported by a Transport and Accessibility Study undertaken by ARUP in 2011 (exhibit A, tab 9) and updated in 2012 in response to submissions and feedback from the Department (exhibit A, tab 21). The 2012 report indicates final on-site parking numbers of 717.

53 Table 1 represents the proposed on-site car parking by stage (Exhibit 5).

Area or Precinct (P)	Present	Stage 1A (Oval)	Stage 1B (P1)	Stage 2 (P4)	Stage 3 (P2)	Stage 4 (P3)
North east	99	99	99	99	70	70
West	75	75	75	75	75	0
Main entry	27	15	15	15	15	15
South east	107	107	0	0	0	0
Clancy	38	38	38	38	38	38
Oval *	-	262	262	262	262	262
P1*	-	-	174	174	174	174
P3*	-	-	-	-	-	158
<b>Total</b>	<b>346</b>	<b>596</b>	<b>663</b>	<b>663</b>	<b>634</b>	<b>717</b>

\* refers to underground car parks; the others are at grade

54 A critical component of the proposal is a Green Travel Plan prepared by ARUP. The aim of the plan is to encourage greater use of alternative means of travel, which have less environmental impact than a car. The plan proposes a mode share target of 30% of students driving to the campus. In order to achieve this target, the plan suggests measures to increase pedestrian access, increased use of bicycles, greater use of public transport, car-pooling, and increased operation of a free shuttle bus between the campus and Strathfield Station.

## The Director-General's Environmental Assessment Report

- 55 The following key parameters arising from the previous consents provided the starting point for the Director-General's assessment of the proposal (exhibit A2 tab 40).
- 1,100 enrolled students by day and 700 by night, totalling 1,800 enrolled students per day. This only applies to the main campus, as the Edward Clancy Building campus has no cap.
  - The number of students on the main campus and the Edward Clancy Building campus is limited to:
    - 750 between the hours of 8.00am and 5.00pm;
    - 487 between the hours of 5.00pm and 9.00pm;
  - 190 teachers limited to the main campus and no limits applied to the Edward Clancy Building campus.
- 56 The report notes that these student number restrictions do not correlate with the number of students enrolled. Inconsistency in how the number of students is counted and reported has led to a disparity in the information provided with the application.
- 57 In order to inform its assessment of the key traffic related issues with the current and expanded ACU, in December 2013, the Department obtained independent advice from a traffic specialist, Parsons Brinkerhoff (PB) (exhibit A2, tab 43). PB reviewed the various traffic assessments carried out on behalf of various parties supporting or opposing the proposal. PB's detailed and comprehensive review focussed on traffic and parking assessments and strategies prepared for the ACU by ARUP (which include surveys carried out by Colston Budd Hunt & Kafes (CBHK)) and by McLaren Traffic Engineering (MTE) for the Council).
- 58 After further consultation with the parties, their own observations of on-street parking, and additional analysis of the issues, the PB "Traffic Review

of MP 10\_02131 – Concept Plan for Australian Catholic University, Strathfield Campus “ dated December 2012, relevantly found:

1. The traffic reports produced in support of and opposing the proposed expansion have provided a partial and sometimes inconsistent picture of current traffic, parking and transport access to the University.
2. It appears from parking and shuttle bus data that some of the proposed increase in student number limits may have already occurred. However, the impact of this increase has been reduced by the success of the shuttle bus between Strathfield station and the University.
3. Parking surveys have indicated a gradual increase in on-street parking, which has created opposition with surrounding residents. Observations by Parsons Brinkerhoff have endorsed the ACU area of parking influence provided in Figure 3 of the PPR.
4. The shuttle bus to Strathfield Station has been successful in accommodating a large share of the increase in students, although passenger number surveys are either inconsistent or show a significant drop in patronage throughout the year.
5. It is likely that the increase in on-street parking has been matched with a corresponding increase in traffic volumes on surrounding streets. Traffic volumes on Barker Road are within the functional capacity of a collector street, but are in excess of the environmental capacity without the influence of University related traffic.
6. The PPR claims that the increase in on-site parking will offset the increase in student numbers are supported. However, this is heavily dependent on the difference between the current [2012] peak number of students on site at any one time and the 2,000 student limit. It is also dependent on the ability of the shuttle bus to achieve the mode share target. Depending on these variables, there is a range of potential impacts, from a 240 vehicle increase to a 300 vehicle decrease [on 2012 levels of on-street parking].
7. The mode share proposed in the Green Transport [sic] Plan is considered achievable, but only if the Strathfield Station to University shuttle bus is currently achieving the claimed 1,650 students during peak times. There is uncertainty about how representative this survey is, as a survey in August reported approximately half the number of bus passengers. If the August survey is representative the proposed mode share targets are considered unrealistic.

8. Access intersection arrangements appear reasonable but need to be confirmed at the Project Application stage.
9. The proposed list of 'sustainable transport initiatives' in the Green Travel Plan are a step in the right direction, but lack detail and tangible commitments on what infrastructure is required to achieve the mode share target, and may therefore be considered aspirational. Additional work is required to assess pedestrian and cycling routes and evaluate what improvements are required. The number and location of bicycle infrastructure within the campus needs to be identified.

59 Notwithstanding these findings, the PB report recommends:

However, it is recommended that provided the parking facility under the playing fields is constructed and opened before any increase in student numbers, the expansion of the University could be considered with a limit of 1,600 students at any one time (which is lower than currently proposed limit of 2,000 students at any one time). Further if it can be demonstrated through independent surveys that the current mode share to car driver for students would not result in an increase of on-street parking (with the construction of the additional on-site parking), the maximum student number limit could be increased to the extent it will not cause an increase beyond the 506 surveyed in March 2012, up to a maximum of the 2,000 students at any one time as proposed in the Concept Plan.

60 The PB report makes additional recommendations in regards to surveys and monitoring, and lists the additional information to be submitted with the Project Application. These recommendations were adopted by the Director-General.

61 The Director-General's Environmental Assessment Report of January 2013 (DG's report) states:

Critically, the independent [traffic] assessment concluded that the subject site is capable of providing for additional students subject to the successful implementation of the proposed transport management measures. These include increased on-site parking, a new student timetable and adherence to the mode share targets in the Green Travel Plan.

In order to ensure the mode share targets are achieved and to manage the impacts associated with the expansion of the university, the department has recommended a staged increase of student numbers as follows:

- No increase in student numbers until the construction of the basement car parking area beneath the existing sports fields is complete and operational (existing requirements are maintained with no more than 750 students permitted on the site at any one time between the hours of 8.00am and 5.00pm);
- An increase to 1,600 students (at any one time) once the basement car parking area is constructed and is operational; and
- An increase to 2,000 students (at any one time) and 2,800 per day when it can be demonstrated that the mode share targets and reduced on-street parking associated with the operation of the university are being consistently achieved.

Through the successful implementation of the transport management measures included in the Green Travel Plan, the impact of the operation of the university upon the surrounding residential locality will be offset. On this basis, the proposed increase in student and staff numbers can be supported.

62 The Instrument of Approval (Concept Approval) prepared by the DPI in the light of the Director-General's consideration includes the following relevant Terms of Approval in Schedule 2 Part A summarised as:

- A3. Car Parking: 717 spaces for use by staff and students of ACU and 30 spaces for the use of staff of St Patrick's College;
- A4. Green Travel Plan – any future application submitted in accordance with this Concept Plan approval must demonstrate consistent compliance with the mode share targets identified in the Green Travel Plan. The plan is to be amended to provide sufficient changeover time between morning and afternoon sessions.
- A5. Student numbers – as above in [59];
- A6. Student Travel and campus Monitoring Plan – required before submitting any development applications in accordance with the Concept Plan approval. Must monitor the travel behaviour of students consistent with the objectives and mode share targets of the Green Travel plan as well as monitoring of student numbers consistent with the staged increase in student numbers. The Term

lists a number of criteria that must be included in the monitoring plan.

- 63 The Director-General's Environmental Assessment Report recommends that the Planning Assessment Commission (PAC), as delegate for the Minister, consider the recommendations of the report, approve the Concept Plan Application, and sign the Instrument of Approval.

#### **Planning and Assessment Commission**

- 64 Under delegation from the Minister, the PAC assessed the proposal and issued the Terms of Approval given in [23] of this judgment.

- 65 Term of Approval A3 covers car parking. It states:

The number of car parking spaces to be provided for the development shall comprise:

- (a) 436 spaces for use of staff and students of the Australian Catholic University, comprising 262 spaces in the underground car park and 174 spaces in Precinct 1; and
  - (b) 30 spaces for the use of staff of St Patrick's College in the underground car park.
- 66 No approval was given for any increase in numbers or any change to operational hours. Only Precinct 1 was approved and PAC Term of Approval A4 requires that the construction of Precinct 1 must not commence until the underground (oval) car park has been constructed and final occupation certificate issued.
- 67 The PAC's reasons for limiting the approval and not adopting all of the Director-General's recommendations include: current ACU activities are generating significant impacts on traffic safety and street parking to the detriment of local residents; and doubts about the effectiveness of the Green Travel Plan and the mode shift targets.

#### **Contention particulars**

68 The Minister's contentions can be summarised as:

- Insufficient parking survey information; this includes insufficient information on the existing student population and on-site/ on-street parking demands for different periods; insufficient detail to assess the ameliorative impact of the Green Travel Plan.
- Unacceptable parking impacts arising from the potential requirement of 667 on-street parking spaces should the proposal be approved;
- Unacceptable reliance on student travel and campus monitoring plan in order to achieve the ambitious mode share targets in the Green Travel Plan; and
- No changes to the hours of operation.

69 The Council's related contentions reiterate those of the Minister's.

#### **Parties' expert opinion**

70 The traffic experts prepared individual reports, two joint reports and gave oral evidence.

71 Over the past twenty years, traffic and parking surveys have been undertaken on at least 16 occasions. Similarly, at least 8 population surveys have been carried out. The surveys conducted between 2009 and 2013 are summarised in Mr McLaren's statement of evidence (Exhibit 101, pp. 5-6).

72 Much of the discussion and conferencing revolved around the number of students approved in the previous consents. To a large extent this was to provide some kind of benchmark in assessing the impact on traffic and parking arising from those numbers and the likely impact arising from eventually more than doubling the number of people permitted on the campus at any one time.



- 73 The experts agree that it is somewhat unclear as to how many students and staff were permitted to be on site at any one time as a result of the 1994 and 2002 consents for the main campus and the Edward Clancy Building, as well as the partial use of adjoining educational facilities at St Patrick's College and Seventh Day Adventist School.
- 74 The experts vary in their opinions as to the accuracy and efficacy of the survey methods used to determine the number of people on site and the extent of ACU on-street parking.
- 75 Notwithstanding these difficulties, the experts agree on the following best estimates and assumptions:
- A total of 918 people (750 students + 168 staff) permitted (by consents) on site at any one time;
  - Approval for 346 on-site parking spaces (308 on main campus and 38 on EC site);
  - On-site parking is at capacity between 9.00am and 3.00pm on week days during the teaching semesters; peak demand for on-street parking is between these hours;
  - ACU parking extends into the surrounding streets, in particular streets to the south;
  - Parking in the surrounding streets is generally unrestricted;
  - In the absence of accurate information on numbers, a conservative design level of 95% be used to determine possible impacts on parking;
  - Any significant reduction in % car drivers will be difficult and the reduction to 30% proposed in the ARUP Green Travel Plan is unrealistic;
  - The mode share % of car drivers varies during the day. As a general rule the more people on campus the lower the % of car drivers. When parking is available on site (before 9.00am) the % of car drivers is highest. Percentage of drivers <50% occurs late morning (10.00-11.00am);

- Peak population on campus occurs when the shuttle bus use is at a maximum;
- The best way to reduce on-street parking would be the introduction of time-limited parking in surrounding streets, as there is currently no disincentive to doing so. Any restricted parking scheme would have to cover a reasonable radius to avoid pushing the problem to outlying streets;
- Any introduction of a fee for parking on-site will result in overspill parking on surrounding streets that have unrestricted kerbside parking.

76 There is an underlying assumption that any impacts arising from an approval should be no worse than at present. However, Mr Hollyoak and Mr McLaren consider the starting point should be the likely impacts and parking overspill established by the earlier consents and based on approved numbers of students and staff.

77 In establishing an appropriate benchmark for on-street parking spaces as a consequence of the earlier consents, Mr Rogers has extrapolated results from two May 2012 surveys and calculated the average number of ACU cars parked on the street to be 204 when 918 people are on site. Mr Hollyoak refers back to the 1994 surveys and the recorded modal splits of 45% of students and 71% of staff driving to ACU. Using a figure of 0.69 spaces per student, derived from the original Colston report, in his statement of evidence, Mr Hollyoak calculates an overspill of 155 spaces. However, his recalculated figures in the first joint report are between 68 and 106 cars spilling onto the streets. Mr McLaren notes in his statement of evidence that both sides in the 1994 case agreed that about 30 cars used on-street parking [as stated in the 1994 Colston report]; however, he believes the intent in that decision was to accommodate all parking on-site.

78 Of the three most recent surveys conducted on 2 May 2012 and 19 May 2012 by MTE, and 22 August 2013 by CBHK, the number of people on the

campus were 1,424, 1438 and 1,117 respectively. The numbers of ACU cars parked on the streets were 417, 397 and 243 respectively.

- 79 The survey techniques varied. For example, MTE personnel had limited access to the site but a more extensive area was surveyed for on-street parking. The CBHK used a combination of in-class counting by ACU and a head count in other parts of the campus, and concentrated the parking survey on streets to the south. The methods used, and the acknowledged deficiencies, are detailed in the individual statements of evidence of Mr McLaren and Mr Rogers. Notwithstanding the differences, these figures have been used by the experts in assessing the likely impacts of the proposal on on-street parking.
- 80 The experts considered the likely modal shift that might be achieved from the Green Travel Plan. All experts agree that the 30% target for car drivers indicated in the plan is unrealistic. In their first joint report, Mr McLaren indicates the percentage of drivers at peak times is 51%, Mr Rogers and Mr Hollyoak suggest 46% as an average. However, after the first day of the hearing and a review of some of their assumptions, the experts prepared a supplementary joint report and considered that on their assumed base campus population of 918 people, the percentage of car drivers should be 59% (this accounts for staff in the 1994 surveys – see [72]). Mr McLaren and Mr Hollyoak suggest a 3% shift away from driving is possible if a robust travel plan is put in place. Mr Rogers considers the measures in the ARUP plan are appropriate to reduce the percentage of car drivers by 5%.
- 81 The traffic experts considered the likely impacts of the proposal on overspill into the surrounding streets. Table 2 illustrates the overflow parking on to the surrounding streets for a maximum of 1800 people on the site for the range of % of car drivers discussed above. A design population of 95% or 1701 is used.

Table 2: Figures extracted from Table 1 in Exhibit 5 but including stage 1B

% car driver	Parking required	New parking stages 1A, 1B & 4	Existing on street TR/CM	Future on street parking stages 1A, 1B and 4
59 <sup>1</sup>	1009	596 663 717	204/397-417	413 346 292
56	958	596 663 717	204/397-417	362 295 241
54	923	596 663 717	204/397-417	327 260 206
51 <sup>2</sup>	872	596 663 717	204/397-417	276 209 155
48	821	596 663 717	204/397-417	225 158 104
46 <sup>3</sup>	787	596 663 717	204/397-417	191 124 70
43	735	596 663 717	204/397-417	139 72 18
41	701	596 663 717	204/397-417	105 38 0

<sup>1</sup>based on 918 people on site; <sup>2</sup>based on MTE results for 1500 people on site; <sup>3</sup>based on CBHK results for 1200 people on site; \* excludes 30 spaces allocated to St Patrick's College; TR = Tim Rogers extrapolation of 204 vehicles on street when 918 people on site; CM = Craig McLaren (MTE) survey. The other figures indicate either a 3% or 5% reduction to take account of transport initiatives.

82 As the applicant seeks approval to eventually expand the university to accommodate up to 2200 people at any one time, the traffic experts calculated the expected impact on on-street parking arising from this population – see Table 3. This table uses a design population of 2090 people. The notes below Table 2 apply.

Table 3: Figures extracted from Table 2 in Exhibit 5 and including stage 1B

% car driver	Parking required	New parking stages 1A, 1B & 4	Existing on street TR/CM	Future on street parking stages 1A, 1B and 4
59 <sup>1</sup>	1233	596 663 717	204/397-417	637 570 516
56	1170	596 663 717	204/397-417	574 507 453
54	1150	596 663 717	204/397-417	554 487 433
51 <sup>2</sup>	1066	596 663 717	204/397-417	470 403 349
48	1003	596 663 717	204/397-417	407 340 286
46 <sup>3</sup>	961	596 663 717	204/397-417	365 298 244
43	899	596 663 717	204/397-417	303 236 182
41	857	596 663 717	204/397-417	261 194 140

83 The parking assessments in Tables 2 and 3 do not include the 30 spaces in the underground oval car park allocated to St Patrick's College. However, the experts expect the provision of these spaces will have an overall positive impact on parking in the area near the College.

84 With respect to the Green Travel Plan, Mr Rogers agrees it is a guidance document but considers the improvements and incentives set out in the

plan are appropriate for reducing the car driver mode share. Mr Hollyoak in his statement of evidence provides a list of positive measures that could be introduced (such as free or subsidised public transport tickets, interest free bike loans). In his opinion, the measures suggested in the Green Travel Plan are too broad and unlikely to guarantee any significant modal shift.

- 85 Condition A6 of the Director-General's Concept Approval requires the preparation of a Student Travel and Campus Monitoring Plan (STCM). The experts agree monitoring and surveying of the progress of the Green Travel Plan measures, and student numbers, should be undertaken over a period of at least two years. In his statement of evidence, Mr Rogers makes a number of recommendations in regards to the monitoring process. Amongst other things, he recommends the types of counts used in his previous surveys. Mr McLaren prefers interview type surveys of staff and students as a more robust way of determining travel and parking behaviour, in particular, car parking demand.

#### **Strathfield Council resolution**

- 86 In August 2013, McLaren Traffic Engineering advised Council of the RMS requirements for eligibility for a resident parking scheme. Most relevant is the requirement that a resident have either no on-site parking or limited on-site parking and no unrestricted on-street parking close to their residence.
- 87 A survey of properties within an 800m radius of the ACU found only one residence with no off-street parking.
- 88 At an Extraordinary Meeting on 27 May 2014, the five Councillors in attendance unanimously resolved to not support the introduction of a resident parking scheme in the residential area surrounding the ACU.

#### **Submissions**

- 89 Ms Duggan for the Minister maintains the Court should adopt the PAC's findings and not permit any increase in student numbers but allow the construction of the car park beneath the oval in Stage 1A, then once completed and operational, allow the construction of the library and underground car park in Precinct 1.
- 90 The Minister's concerns remain in regards to insufficient parking survey information to enable an understanding of the current situation in terms of population, numbers of university related cars on the street and modal splits, and therefore the likely impacts of increased numbers of students and staff and the success or otherwise of the Green Travel Plan. Ms Duggan submits that no new surveys have been undertaken since 22 August 2013. She questions the reliability of independent data given Mr McLaren's more restricted access to the site. In support of the Minister's position, she cites the wide range of opinion regarding modal splits and the inconsistencies in sampling and monitoring.
- 91 Ms Duggan submits that the current and future overspill onto local roads is, and will continue to be, unacceptable. She contends that the starting point for determining an appropriate benchmark for on-street parking should be the previous consents and not Mr Rogers' extrapolated figures. She maintains the base level of overspill should be between 30 and 106 and not 204. In regards to the 30 parking spaces proposed for St Patrick's college, Ms Duggan argues these should not be counted as a benefit to the university.
- 92 With respect to the Green Travel Plan, Ms Duggan asserts that even on the applicant's own expert evidence, the Green Travel Plan is inadequate without further refinements. She contends that this is not something that should be deferred.
- 93 Ms Duggan contends that the hours of operation should not be extended to weekends; however, she considers if the Court is against her on that then the number of people attending the university on weekends should be

capped at the number of on-site parking spaces. Similarly, Ms Duggan suggests if the Court were to contemplate an increase in numbers, the population should be capped at 1800 with no expectation of an increase to 2200.

- 94 Mr Baird for the Council reminds the Court of the requirement in s 39(4) of the *Land and Environment Court Act 1979* to have regard to not only any relevant Act or instrument, but also to the circumstances of the case and the public interest. In essence he adopts the Minister's submissions on traffic, parking and the Green Travel Plan; however he maintains the Council's and residents' objections to any increase in numbers, hours or weekend attendance.
- 95 Given the existing extent of disruption to local residents, the divergence of opinion on parking, modal splits and so on; Mr Baird presses the Council's position that the Court must dismiss the appeal. However, if the Court were to consider approving anything, it should be limited to the underground car park beneath the oval.
- 96 Mr Galasso submits that the basis of the proposal and the appeal is the expansion of the approved, existing university and is not about the current consents; however the effect of an approval would neutralise the current consents and consolidate the sites for the ACU's future operation as a whole.
- 97 Mr Galasso contends that there are Class 4 proceedings currently on-foot, in which the Council seeks declarations as to the breach of one or both of the development consents, to the extent that those consents may be said to impose a limit on the number of students and teachers at the ACU Strathfield campus. Mr Galasso submits that the past conduct of the ACU, or conduct imputed to the ACU, is not a relevant factor to the determination of the Concept Plan approval, as *Jonah v Pittwater Council* (2006) LGERA 408 (at [34]) established that past unlawful use is irrelevant

to the consideration of an application concerned with future use (Exhibit A2, tab 46).

- 98 In regards to the many concerns about on-street parking, Mr Galasso contends that it was anticipated in the original consent, and given the current conditions of unrestricted parking in nearby streets, is inevitable. The Strathfield Campus is not an isolated site and parking is therefore very difficult to monitor. While restraints on on-street parking would assist, it not within the Court's power to grant.
- 99 Mr Galasso relies on Mr Rogers and Mr Hollyoak's calculations using 46% mode share as the appropriate starting point for assessing impact. He notes that Mr Hollyoak's estimate of 106 vehicles on streets was a desktop calculation while Mr Rogers' figure of 204 was measured. Mr Galasso agrees that expansion should not worsen the current situation. He contends that the calculations in Exhibit J for 1800 people using a design level of 95%, a mode split of 46% drivers and a parking demand for 787 spaces, even on Mr Hollyoak's figures, there will be an improvement in on-street parking after completion of Stage 4, and on Mr Rogers' figures, after completion of Stage 1A. If the 30 spaces for St Patrick's are included, the benefit is achieved on Mr Hollyoak's figures after Stage 1B with an even greater benefit using Mr Rogers' figures.
- 100 Mr Galasso stresses that the applicant's intent to eventually increase numbers from 1800 to 2,200 is contingent on the university consistently achieving the mode splits in the Green Travel Plan, and is therefore not guaranteed. He accepts there is work to do to develop, implement and monitor a detailed strategy.

#### **Findings – Parking and student numbers**

- 101 As required by (repealed) s 75(2)(a) of the EPA Act, the Court, "standing in the shoes of the Minister", is required to consider the Director-General's Report and any recommendations contained in the report.



- 102 We note the introduction to the department's consideration in the report and concur with it.

As a premise to its assessment, the department acknowledges the wider public benefits associated with the best possible utilisation of existing educational facilities in New South Wales. The department also understands that there is a need to manage the intensity of the use of the site in order to maintain a reasonable amenity for surrounding residents.

- 103 In this matter, a balance must be struck to enable the reasonable expansion and necessary upgrading of facilities of an existing university and managing the impacts of any expansion on the surrounding residential area.

- 104 Universities are dynamic places. It is clear from the many surveys and the expert evidence that student/ staff numbers vary throughout the day, throughout the week and throughout the year. Peak numbers on site occur from about 10.00 on Mondays to Thursdays (Fridays are less busy) at the beginning of semesters, in particular at the beginning of Semester 1. Apart from scheduled holidays, exam weeks and enrolment periods, students may be off-site for extended periods undertaking activities associated with their course of study (e.g. Practice teaching). Not everyone on campus is in a classroom/ laboratory – they may be in the grounds /canteen /offices /workshops /library. Flexible and blended delivery study programs add to variability in numbers and some students may rarely visit the campus. Not all staff teach. Other people may be on site including visitors and contractors. Therefore, determining the number of people on campus at any time is difficult.

- 105 We agree with Mr Galasso's submission that the ACU is located in an area with available, generally unrestricted parking. People who attend, work at or visit the ACU Strathfield campus undoubtedly use some of these parking spaces. However, identifying those users and accounting for local

residents and their visitors or contractors, as well as any other vehicles that may be parked in the street, is difficult.

106 It is also clear from the many parking, shuttle bus use and census surveys that there is no consistency in time of year, time of day, area surveyed or method of survey. Some surveys occurred in holiday and non-teaching periods while others were undertaken in teaching weeks at the beginning of semesters. These deficiencies are recognised in the Director-General's Report.

107 We agree that the surveys undertaken by ARUP, CBHK and MTE and assessed by the PB report indicate the peak attendance numbers on campus have reached approximately 1,450. However, the decision of Preston CJ in *Jonah* is relevant. In that matter His Honour found amongst other things: the mere unlawfulness of past use was not relevant as a predictor of future unlawful use ([34]); the lawfulness or otherwise of the use of a premises is a matter for determination in Class 4 proceedings ([36]); past use/conduct, regardless of lawfulness, might have given rise to unacceptable impacts and, the experience of the impacts of the past use could be relevant in evaluating the likely impacts of, for example, the intensification of the use, the acceptability of the likely impacts, and appropriate measures that ought to be adopted to mitigate the likely impacts to an acceptable level ([37]-[39]).

108 Therefore, we propose to put aside any submissions regarding the lawfulness or otherwise of the numbers of people currently attending the ACU Strathfield campus and focus on the impacts that may arise from the expansion of the ACU.

109 Perhaps the most significant impact on the residential amenity, as articulated in the many submissions from residents, is the extent of on-street parking. The residents maintain that the extent of parking makes it difficult and dangerous for them driving out of their driveways onto busy roads. Students frequently park across driveways thus causing more

inconvenience. Parking by students limits access for guests, tradespeople and community workers who may be visiting or working on nearby residential properties.

- 110 We note the statement in the Director-General's report at p. 22 that there are no specific car parking rates that apply to the redevelopment of the site. On-site parking is determined by a requirement under Council's DCP to prepare a traffic study for the proposal; the ARUP Traffic and Accessibility Study and the Green Travel Plan provides this. Therefore there is no specific assistance provided by any council controls.
- 111 There is a difference of opinion between the traffic experts and the ARUP and PB reports as to the appropriate base level of on-street parking against which any future impacts of increased student numbers can be assessed. The differences include whether the on-street parking should be pegged against the 1994/2002 approvals or based on assessments carried out in 2012 in the preparation of the PPR and Director-General's report.
- 112 The opinions of Mr Rogers (base level of 204), Mr Hollyoak (68-106/ 155) and Mr McLaren (0-30 in 1994 and 397/417 in 2012) are given in paragraph [77] and Tables 2 and 3. The ARUP 2012 PPR Transport and Accessibility Report relies on a March 2012 parking survey indicating 506 cars parked on the street as the starting point. (The report also notes that 40 on-site spaces were unavailable at that time because of construction work.)
- 113 PB adopts the ARUP number but interprets the PPR figures as inclusive of all users including residents and other non-university related vehicles (p27). PB estimates 88 vehicles are not related to ACU and therefore the number reduces to about 418. PB ultimately relies on the commitment in the PPR for a target reduction in student on street parking to 230.

- 114 In order to gain a greater appreciation of the experts' differing opinions, we have undertaken our own analysis of the numbers proposed in the earlier consents as our starting point.
- 115 On our assessment of the numbers, if we assume the 1994 consent permitted 510 students between 8.00am and 5.00pm (peak times) and 45% drive, 230 parking spaces would be required. A total of 190 staff was approved; assuming 130 per day and 71% drive, an additional 92 parking spaces would be required. Total parking spaces required = 322. On site, 318 spaces were approved. Therefore there is a basic demand for 4 on-street spaces; however, there is no allowance in this calculation for visitors. The 2002 consent permitted an additional 240 students at any one time. Assuming no changes to staff and that these numbers apply to the peak times during the day and 45% drive, the number of additional spaces required is 108. The Edward Clancy Building provides an extra 38 spaces therefore the excess/ on street is a minimum of 74 with no allowance for visitor parking.
- 116 The information from 1994 also reported that 20% of students elected to park on the street. Therefore there may have been another 42 – 46 spaces used on the street at that time. If 20% of students of the 108 students driving to university following the 2002 consent elected to park on the street, this would equate to another 22 spaces. Therefore the on-street parking from the earlier consents ranges from a minimum of 74 to at least 142.
- 117 While we do not hold ourselves up to be traffic experts or mathematicians, the exercise demonstrates that depending on the method used and any underlying assumptions, a range of numbers can be generated for the same purpose.
- 118 Our '1994' calculations appear to concur with Mr McLaren's primary assumption that the original consent envisaged a generally parking-neutral outcome however there is no allowance in that for human behaviour and a

preference by some to use convenient on-street parking. While our figures are closer to Mr Hollyoak's, we have no reason to reject Mr Rogers' figure of 204 based on his extrapolation of data from the 2012 surveys. The PPR target of 230, adopted by the PB report is also within range.

- 119 The other linked factor is the assumed mode share of people travelling to the university attributable to car drivers. As previously stated, the 1994 reports considered a mode share of 45% for students and 71% for staff. Paragraph [77] considers the range of percentages assumed by the parties' experts.
- 120 The PB report considers a range of percentages derived from a number of surveys. PB notes the results of two on-line surveys of new students in their first semester conducted in 2011 and 2012 (p.21). These surveys indicated 47% car use in 2011 and 41% in 2012. PB calculates the results from the March 2012 ARUP give a mode share of 35% car driver (p.39). In response to submissions from residents received in November 2012 and their estimates of student/staff numbers and methods by which they arrived, PB estimates the mode share of drivers to be about 53% (pp.26-27). Based on August 2012 surveys, PB assumes a 'worst case' mode share of 57% in assessing the likely impact of an increase in student numbers to 2,000 (exhibit A2, tab 43, Table A.2 Appendix A).
- 121 We accept that getting an accurate assessment of the mode of transport used by students and staff is difficult and given human behaviour, there is no guarantee there will ever be a fixed and definable split. For example, someone who regularly catches public transport and uses the shuttle bus may occasionally choose to drive. Changes in train and bus timetables, changes in teaching timetables, flexible learning options, and even the weather, may affect how someone travels to and from the campus.
- 122 However, it is not unreasonable to assume that over the last 20 years, car ownership has increased and more people elect to drive, and to that end, relying on figures from 1994 is unlikely to represent the current situation,

particularly when there is easily accessible on-street parking. That said, we have no reason to dispute the PB findings at point 4 [58], that the use of the shuttle bus has been very successful.

- 123 We consider that some on-street parking is reasonable in the circumstances. Therefore for the purpose of establishing a baseline for on street parking, given the somewhat bewildering array of figures, and a realistic mode share %, we have taken a range within the middle ground based on Mr Rogers' 204 on-street spaces and the PB report / PPR target of 230 on-street spaces. Given the acknowledged spread of % of car drivers throughout the day and the time of year, we have based our determination on average of 51% at peak times, Mr McLaren's figure in the in the first joint report. We concur with the findings of Talbot J in the 1994 judgment that requiring an applicant to meet a contingency of peak demand is unreasonable.
- 124 We have applied these figures to the scenarios presented in Table 2 (at [76]). Despite Mr Galasso's reliance on the additional benefits to be gained from the 30 spaces to be provided for the use of St Patrick's College, we agree with Ms Duggan that they should not be counted, however, we accept the opinion of the traffic experts that there is likely to be some benefit and improvement of on-street parking in the vicinity of the College.
- 125 Table 2 shows that for 1800 people on site at any one time with an agreed conservative design level of 95% to take account of the variability of survey results, and assuming an average mode split of 51% drivers, 276 on-street spaces would be required after completion of Stage 1A and 209 on-street spaces would be required after completion of stage 1B, that is, the construction of the car park beneath the oval and the library precinct and its associated underground car park. In our opinion, based on the 2012 survey results (see [78]) this will result in an improvement in the existing level of on-street parking and, by the completion of Stage 1B should achieve the PB/PPR target overflow of 230 on-street spaces. Without any reduction in mode share, the situation will be improved by the

completion of stage 4; if the percentage of car drivers declines, the benefits improve.

- 126 Therefore, we propose to allow an increase in the total number of people on site at any one time to 1800 once stages 1A and 1B have been completed. It was agreed that during construction, some disruption will be inevitable however in Mr Rogers' opinion this could be managed by timing activities during vacation periods and staging the works.
- 127 In regards to whether the number should eventually be increased to 2200 once the targets in the Green Travel Plan have been established, we have considered the data in Table 3, the opinions of the experts, calculations carried out by Parsons Brinkerhoff in Appendix A of their report to the Department, the Department's consideration in the Director-General's report and the findings of the PAC.
- 128 It is common ground between the experts that the mode share of 30% car drivers in the Green Travel Plan is unrealistic. Mr Hollyoak and Mr McLaren consider a 3% decrease possible, Mr Rogers takes a more optimistic view of a 5% reduction. Using Mr McLaren's starting point of 51% and reducing it to 48%, there is a net increase in on street parking spaces required after all stages. Taking Mr Hollyoak's 46% and reducing it to 43%, no net benefits are achieved until Stage 4. Applying Mr Rogers' 46% and reducing it to 41% sees an improvement after Stage 1B.
- 129 While the PB report at point 6 [58] and at [59] ultimately support the increase in student numbers to 2,000, they make it clear that this is heavily dependent on the success of the Green Travel Plan and at the very least, the maintenance of the peak levels of use of the shuttle bus, as well as extensive monitoring and surveys of other elements of the plan.
- 130 Notwithstanding the findings in the PB report in regards to the disparities between student numbers and shuttle bus patronage, the Department considered the Green Travel Plan provides three key measures that are

likely to mitigate the current and predicted impacts associated with the operation of the university: a 107% increase in on-site parking spaces, a new timetable to reduce student trips, and strict compliance with the mode share targets. The Department notes that achieving the mode share targets is critical to any student number increases.

131 We agree with the experts that there is no disincentive to driving to the site. The experts suggested a range of measures that could be introduced should Council so wish. Whilst we note the ineligibility of the area for a resident parking scheme, some type of time-limited parking appears to be the most effective method of limiting the impact of overspill parking on residential streets; we agree it is not something the Court can impose.

132 Similarly, we note that the PAC's determination includes the following comments:

As noted above, the Commission is not convinced that the Green Travel Plan can be successful without a concomitant introduction of parking restrictions in surrounding streets. While it is acknowledged that the introduction of parking restrictions may result in students parking in other residential areas where restrictions are not in place the Commission considers that with an effective Green Travel plan in place this impact can be contained. The university should make its best endeavours to work with Council and the community regarding the introduction of parking restrictions, whether this involves a resident parking scheme or some other form of restrictions, it should also explore other initiatives which help reduce on street parking e.g. financial incentives for students to catch public transport.

133 While we acknowledge the findings in the Director-General's report, we agree with the experts that the 30% mode share for drivers appears overly optimistic, unrealistic, and unachievable at this stage or in the foreseeable future, especially given the current availability of on-street parking. We consider a more realistic target would be closer to 45% mode share for drivers. Based on extrapolated data in Table 3, a mode share in this range would maintain the excess/ on-street parking to around 230 vehicles after completion of all four stages. This would result in fewer university-related cars on the nearby streets than current numbers indicate. Clearly, any



further reduction in the number of people driving to the campus would be a bonus.

- 134 Given that parking on nearby streets is a critical issue in these proceedings, it is our view that a key goal of the Green Travel Plan should be to limit university-related parking on nearby streets to around 230 vehicles. To this end the submitted Green Travel Plan dated 17 October 2012 should be updated to set more realistic mode share targets that provide for a reasonable level of on-street parking outlined above. The review of the Green Travel Plan could also consider some of the incentives outlined by the experts in [84] of this judgment.
- 135 On the evidence before us, we are not satisfied that thus far, the applicant's surveys of student travel behaviour and numbers of people on campus are sufficiently robust in their methodology to provide the basis for the Student Travel and Campus Monitoring Plan (STCMP) recommended on p. 25 of the Director-General's report. We agree with the experts that future expansion cannot be contemplated unless there is credible, independent data proving achievement of the targets in the modified Green Travel Plan. We agree with Mr Galasso's submission that the increase in numbers to 2,200 at any one time is contingent on consistent achievement of the mode splits in the Green Travel Plan and therefore is not guaranteed.
- 136 In our view, and based on Figure 3, an increase to 2200 people on site at any one time, with an overflow of about 230 vehicles or thereabouts onto the surrounding streets could only be achieved after completion of all four stages. A Campus Travel and Monitoring Plan (CTMP) is to be prepared for the Strathfield campus, to monitor and report on the travel behaviour of staff and students and the achievement or otherwise of the targets in the updated Green Travel Plan. We agree with the experts that an appropriate period of demonstrated achievement of the mode share targets and reduced on-street parking is a period of at least 48 consecutive months.

We also agree with the Director-general that timetabling of educational activities should include consideration of impacts on traffic and parking.

### **Findings - Traffic**

- 137 In regards to other concerns about traffic and unlawful parking raised in Council's contentions and in the public submissions, we make the following comments.
- 138 While we acknowledge the annoyance and inconvenience caused to local residents by unlawful and thoughtless parking by others, it is beyond the Court's jurisdiction to make any findings of any legal standing. The power to deal with this problem ultimately rests with the Council and the police. While not canvassed by any party, line marking to delineate driveways may be something council could consider. We accept that the ACU should be a good neighbour and note the proposed term of approval for the establishment of a complaints handling procedure and register. This is something recommended by the Department in response to community concerns about vehicles parked across driveways and littering.
- 139 With respect to traffic, no detailed evidence was adduced by any party. Mr McLaren opined that students driving around looking for parking spaces would be a source of increased traffic in the local streets surrounding the university. He suggested one way of reducing this could be to have electronic monitoring and signage of on-site parking availability.
- 140 Most resident concerns related to Barker Road; however residents in other nearby streets are also concerned about exiting their properties onto increasingly busy roads, particularly when parking in the street restricts visibility.
- 141 The Director-General's report states that Barker Road is a collector road. It and the other nearby streets service through traffic and other traffic associated with residential and educational establishments within the

locality. There are reported to be 16 educational institutions in Strathfield. There are three entrances to the university off Barker Road and one from Albert Road.

- 142 We note findings in the 1994 Colston Budd Hunt and Twiney report that Barker Road was already performing a role beyond that of either a local or collector road, and the university contribution was modest. In regards to the current proposal, the RMS commented that there would be no significant impact on traffic and raised no objections but deferred comments to Strathfield Council. Strathfield Council engaged MTE to provide advice. ARUP conducted traffic surveys, as did local residents. PB, on behalf of the department, reviewed the studies.
- 143 PB found that traffic volumes on Barker Road are currently within the functional capacity (i.e. between 2,000 and 10,000 vehicles per day) of a collector road with or without the influence of university related traffic. They determined that any additional traffic generated by the proposal, between 1.7% and 2.1%, would be acceptable for a collector road.
- 144 The department accepted the PB findings. The Director-General's report noted the measures in the Green Travel Plan have the added benefit of reducing traffic generation.
- 145 The report also takes the PB opinion that design of the new access point into the underground car park complies with appropriate standards but the detailed design can be further considered as part of the assessment of future applications. To that end, we are also satisfied that the location of the driveway on Barker Road to the underground car parking under Precinct 3 and under the playing fields is appropriately located and agree that further details will be more appropriately provided and considered at a later stage.
- 146 After considering the traffic studies and reports in evidence, we concur with the Director- General's report and the impacts on residential streets

from additional traffic arising from an expansion of the ACU are relatively minor and provide no basis for refusal.

## **Precinct 1 Building Envelope – contentions, evidence and submissions**

### **Contention Particulars**

147 The Council contends that the height, bulk and scale of the multi-storey buildings proposed under the Concept Plan application for ACU Strathfield campus are unacceptable, unsympathetic to the existing heritage buildings, and out of character with the adjoining residential development and the existing streetscape. The Council's contentions regarding the Precinct 1 building envelope (Library and Learning Commons) are as follows:

- The Precinct 1 building envelope is located in the south-eastern corner of the main campus on the boundary of Barker Street, and at four storeys in height is of excessive scale, compared to both the existing ACU buildings, the streetscape and the surrounding (and predominately single storey) residential development.
- The Precinct 1 building envelope has an excessive lengths (82m along Barker Road with only a 6m break and 70m along the Mount Royal Reserve) which together with the consistent height along the entire length of the facade to Barker Road and Mount Royal Reserve, is not compatible with the existing character of development, either on-site, or within the surrounding area.
- The Precinct 1 building envelope is located at the top of a natural rise in topography and when viewed from the public domain will be monolithic.
- The Precinct 1 building envelope is of an unsympathetic building envelope/design which does not ameliorate the bulk and scale of the streetscape presentation.

### **Evidence**

- 148 The planning experts disagreed on the appropriateness of the bulk and scale of the building envelope for Precinct 1.
- 149 According to Mr Dickson, the building envelope for Precinct 1 is inappropriate for the following reasons (exhibit 102):
- the envelope has a long street wall to Barker Road which is uncharacteristic of buildings in the Barker Road, Mount Royal Reserve and Albert Road locality;
  - the building will be prominent when viewed from Albert Road and the Albert Road gates;
  - the envelope is inconsistent with the main campus and the surrounding residential area;
  - the envelope is inconsistent with the orientation of the rest of the main campus which aligns with Albert Street, which creates a stepped setback to Barker Road;
  - the large and prominent built form is placed on the edge of the main campus where it will be inappropriately prominent in relation to the surrounding area; and
  - the depth of the building envelope is approximately 20-22m which is out of proportion and out of character with the built form of the main campus.
- 150 In Mr Dickson's opinion, the floor to floor height of the future Precinct 1 building is inadequate to accommodate the structure and servicing for a library use with open span research areas, open teaching areas and lecture areas and a three and four storey building would need to be a maximum height of RL50.8 (exhibit 102, p29).
- 151 According to Mr Dickson, the application does not contain sufficient information to be determinative for a staged application, including a lack of information regarding principal points of pedestrian and vehicular entry, loading and waste areas and locations of functions and plant (exhibit 102,

p 5). Mr Blythe agreed in oral evidence that the vehicular entry and exit should be indicated.

152 According to Mr Blythe, the building envelope for Precinct 1 is appropriate for the following reasons (exhibit C):

- the setback to Barker Road is 12m, which preserves the existing landscaping along Barker Road and this will assist in ameliorating the scale of the built form;
- there is a substantial separation between the proposed building envelope and the nearest dwelling to the east and the built form differentiation between the two uses is to be expected;
- the three storey form of Precinct 1 on the western side is consistent with the scale and character of the main campus;
- the building will have a strong horizontal form and massing which is consistent with other nearby educational uses.

### **Submissions**

153 The Council submits that the Court's planning principles in *Anglican Church Property Trust v Sydney City Council* (2003) 139 LGERA 231 regarding the assessment of the impact on the aesthetic and landmark significance of a heritage item, at [34] (heritage planning principle 'impact of adjacent development') and the information required for Stage 1 in a multi-staged application at [59] ('multi-staged application' planning principle) are both a relevant considerations.

### **Directions made by the Court and further evidence**

154 In accordance with s 38(2) of the Court Act, the Court made the following Directions on 11 June 2014:

The Concept Plan Proposal (Exhibit A2, tab 28) [is to be amended to include] the following:

- Each building footprint at a scale of 1:500 including dimensions

of the perimeter of the footprints for all precincts as well as the setbacks from boundaries

- Precinct 1, Section A-A is to indicate the basement levels (as shown in Section B-B)
- Precinct 1, Section A-A is to show the four levels proposed for the eastern building envelope (shown as 3 levels on Section A-A and Elevation C-C, yet noted as 4 levels on the footprint);
- Elevation C-C is to show the break between the eastern and western building envelopes

Could the Applicant provide a response to the following questions:

- How were the maximum gross floor areas (GFA) determined for each Precinct and what is the relationship is between the maximum GFA and the total volume of the building envelopes within each Precinct? In other words, in order to guarantee an articulated building mass, will the future building occupy a maximum percentage of the volume of the building envelope, based on the GFA for each precinct?

155 The Council opposed the provision of amended plans and the Applicant's response to the Court's question (the further documents). On 25 June, 2014, the following directions were made by the Court in response to the Council's request to file evidence and make submissions regarding the further documents:

1. Leave is granted to reopen the evidence on a strictly limited basis to allow the admission of material directly relevant to the request from the Court dated 05/06/14 [should be 11/06/14].
2. The second respondent is to file and serve any written submissions by COB 07/07/14.
3. The applicant is to file and serve any other documents of written submissions by COB 21/07/14.
4. Liberty to apply.

156 The matter was listed for a further hearing on 17 October 2014. In opening on 17 October 2014, the Council withdrew its opposition to the tender of the further documents. The amended plans and a letter from Mr Brett Pollard, Principal of Hassell, in response to the Court's questions, was tendered by the applicant (exhibit L) and Mr Dickson's Affidavit, in response to exhibit L, dated 11 July 2014 (exhibit 112) was tendered by the Council.

157 Mr Pollard's letter includes the following explanation in regard to the calculation of GFA:

The maximum Gross Floor Area (GFA) for the Precinct 1 to 3 buildings has been determined as being 85% of the Gross Building Area/Envelope. This % allows for common vertical circulation, voids, plant rooms and the like as well as a small degree of flexibility during design development for building articulation and the like. The GFA for the Precinct 4 building is 100% of the Gross Building Area/Envelope.

158 Mr Dickson has the following concerns regarding the amended plans and the Mr Pollard's explanation (exhibit 112):

- The amended plans contain exact dimensions for the building envelopes and the shaded 'indicative footprints' within the building envelope of Precinct 1, which elevates the expectation for the exact positions and forms of the buildings that are proposed;
- The eastern building on Section A-A is now shown as a 4 level building instead of a 3 level building;
- The terms 'hard built edge' and 'active edge' are not clarified. The use of symbols depicting both along the northern edge of Precinct 1 could mean that it is proposed to build a large glass wall with little or no setback with windows, which would be a continuous façade with no articulation.
- The plant and lift over-runs are not indicated.
- The legend for the building envelopes is ambiguous.

159 At the request of Mr Baird and with the leave of the Court, Mr Pollard gave (non-expert) evidence in relation to the meaning of the terms 'hard built edge' and 'active edge', indicated on the western and northern elevations of the Precinct 1 building envelope. According to Mr Pollard, a 'hard built edge' defines 'a space', which includes both the building and the plaza and may be achieved, for example with stairs to the plaza, or it could be glazed or a masonry wall with windows, if it is part of the building (but not part of the plaza).



## Precinct 1 Building Envelope – findings

### Height, bulk, scale and compatibility

- 160 The Council's contention regarding the 'unacceptable height, bulk and scale of buildings' (exhibit 100) refers to 'the height and scale of the multi-storey buildings' and 'the Precinct 1 building'.
- 161 Importantly, a building envelope is not a building. Building envelopes are a large scale, master-planning device to determine the overall block form and a three dimensional zone that limits the extent of a future building in any direction. The building envelope is not intended to be the actual form of the future building; instead it defines the generous three-dimensional space within which the desired built form outcome can occur.
- 162 The length, depth and height of a building envelope are defined in metres. For this reason, we do not accept Mr Dickson's evidence that the dimensions and set-outs for the building envelopes '*elevate the expectation for the exact positions and forms of the buildings that are proposed*'. Pursuant to the former s 75P(2)(a) of the EPA Act, the Precinct 1 future building must be 'generally consistent' with the approved Precinct 1 building envelope. It is therefore important, in our view, to exactly define the envelope numerically and for that purpose, the Court made a Direction requiring the Concept Plan Proposal (exhibit A2, tab 28) to be amended to be drawn to scale and to include dimensions (exhibit L). The amendments also removed an inconsistency between Section A-A and B-B, as B-B showed a basement, yet the perpendicular cross-section A-A did not (exhibit A2, tab 28).
- 163 The building envelope, along with other development controls, establishes the allowable bulk, height and location of the future building on the site. Precinct 1 includes the following development controls (referred to as 'primary precinct controls' - exhibit A2, tab 28, p 32):

Maximum GFA	5,900sqm
Maximum Height	RL 47.6 (excluding plant and lift overruns)

164 The future Precinct 1 building, to be used for a library, education, research space, shop and food and drink premises, must be generally consistent with the footprint and volume dictated by the building envelope (exhibit L), the maximum height of RL47.6 (three and four storeys) and the maximum floor area of 5,900sqm.

165 As the development application for the Precinct 1 future building will be subject to the development assessment process under the Part 4 provisions of the EPA Act, we consider it is appropriate to refer to the definition of GFA in the Dictionary of LEP 2012, which is as follows:

**gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
  - (b) habitable rooms in a basement or an attic, and
  - (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes:
- (d) any area for common vertical circulation, such as lifts and stairs, and
  - (e) any basement:
    - (i) storage, and
    - (ii) vehicular access, loading areas, garbage and services, and
  - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
  - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
  - (h) any space used for the loading or unloading of goods (including access to it), and
  - (i) terraces and balconies with outer walls less than 1.4 metres high, and
  - (j) voids above a floor at the level of a storey or storey above.

166 In order to provide a strong incentive to achieve an articulated building mass, it is essential that the development controls do not permit the volume of the building envelope to be completely filled. For this reason,

the Court Direction on 11 June 2014 asked, '*will the future building occupy a maximum percentage of the volume of the building envelope, based on the GFA for each precinct?*' According to Mr Pollard, the GFA for Precinct 1 has been determined as being 85% of the building envelope, which allows '*for common vertical circulation, voids, plant rooms and the like as well as a small degree of flexibility during design development for building articulation*'. This answers only part of the question asked by the Court in the Direction made on 11 June 2014. Mr Pollard's explanation does not stipulate a maximum percentage of the volume of the Precinct 1 building envelope to be filled by the building mass, rather it assumes the entire volume of the building envelope will be filled, of which 85% will contribute to GFA; given that GFA excludes the external wall thickness, all terraces and balconies, the common vertical circulation including lifts and stairs, voids, all vertical ducts and plant areas, which will be occupying the remaining 15% of the building envelope as they do not contribute to the GFA calculation.

- 167 On this basis, it is likely that the future Precinct 1 building could comply with the maximum GFA control of 5900m<sup>2</sup> and still fill the entire volume of the building envelope, particularly given that the temptation to fill the entire building envelope volume will be significant. Mr Pollard's explanation of a 'small degree of flexibility for building articulation' is not suggestive of a strong incentive to achieve an articulated building mass.
- 168 For this reason, we are not satisfied that the tenuous connection between the GFA development control and the volume of the building envelopes in Precinct 1 are sufficient to encourage an articulated building mass for Precinct 1. It is our view that the Precinct 1 building mass should occupy a maximum of 85% of the volume of the building envelope for Precinct 1, specifically the yellow shaded 'indicative footprints', above existing ground level.
- 169 Therefore, the Precinct 1 future building will need to be generally consistent with the following:

- the yellow shaded 'indicative footprints' shown in the Concept Plan (exhibit L), including setback to Barker Street boundary of 12m and setback to the Mount Royal Reserve boundary of 10m, enclosing a northern plaza;
- the building mass is to occupy a maximum 85% of the above existing ground level volume dictated by the Precinct 1 building envelope based on the yellow shaded 'indicative footprints', in the Concept Plan (exhibit L);
- maximum height of RL47.6 (three and four storeys); and
- maximum gross floor area of 5,900sqm.

170 We are satisfied that the Precinct 1 future buildings, if generally consistent with the building envelope in the Concept Plan (exhibit L), coupled with the above development controls at [160] to ensure the appropriate articulation of the future building, will be appropriately scaled for the main campus and compatible with the surrounding low density residential development.

171 We are satisfied that the orientation of Precinct 1 reinforces the built edge of the ACU main campus and, depending on the detailed design of the development proposal, has the potential to enhance the urban design of the main campus.

#### **Floor to ceiling heights**

172 In regard to Mr Dickson's evidence on the inadequacy of the proposed floor to ceiling heights of the Precinct 1 building envelopes, we note that the diverse uses proposed for the future building (library, education, research space, shop and food and drink premises) make it unlikely that there will be a consistent floor to floor height required throughout the building. The future building is likely to incorporate voids and mezzanines and so on, with a range of floor to ceiling heights. We are satisfied that the maximum height development control, excluding plant and lift overruns, of

RL47.6, provides certainty regarding the overall height of the future proposal.

### **Future assessment of the Precinct 1 development proposal**

173 Importantly, pursuant to the former section 75P(1)(b) of the EPA Act, all future stages of the Concept Plan approval will be subject to Part 4 of that Act. A number of Council's contentions will be more appropriately dealt with during the development assessment process.

174 Ideally, the vehicle access arrangements to and from the proposed basement of Precinct 1 should have been included on the amended plans (exhibit L). We accept that this omission is not determinative, given that access can be provided from Barker Road gates to the basement from an entry/exit at the north-western corner of Precinct 1. This aspect of the development proposal, in conjunction with the number of car spaces to be provided in the basement, will be dealt with during the development assessment process for the Precinct 1 proposal.

### **Precincts 2, 3 and 4 Building Envelopes**

#### **Contention particulars**

175 The Council contends the following in relation to Precincts 2 and 3:

- The bulk and scale of the 4-storey Precinct 2 building (Education Building) is unacceptable in the context of the neighbouring two buildings; the relationship of the buildings is poor and the building separations are insufficient.
- The bulk and scale of the Precinct 3 building (Arts and Sciences Building) is excessive when viewed from the public domain and is incompatible with the adjoining low density residential development, because the proposed western setback does not create the appropriate transition in built form.

- The location of the driveway to the underground car parking under Precinct 3 and under the playing fields is inappropriate given its proximity to adjoining properties.

176 No contentions were raised in relation to Precinct 4.

177 The building envelope, along with other development controls, establishes the allowable bulk, height and location of the future building on the site. Precincts 2, 3 and 4 include the following development controls (referred to as 'primary precinct controls' exhibit A2, tab 28 and exhibit L):

**Precinct 2**

Maximum GFA	3,450sqm
Maximum Height	RL 46.0 (excluding plant and lift overruns)

**Precinct 3**

Maximum GFA	3,200sqm
Maximum Height	RL 42.8 (excluding plant and lift overruns)

**Precinct 4**

Maximum GFA	1,040sqm
Maximum Height	RL 40.5 (excluding plant and lift overruns)

178 The planning experts agreed on the following in regard to Precinct 2 during joint conferencing (exhibit 103 p 22):

- the interface to the residential land to the east in terms of built form, height and siting is generally acceptable;
- matters such as light spill and privacy could be dealt with by condition;
- the siting of the proposed building has no impacts on the public realm.

179 According to Mr Dickson, the building line fronting the playing fields should be aligned with the similarly positioned buildings at the rear of the campus (exhibit 103 p 23).

180 Mr Dickson agrees with the plan for Precinct 3, on the proviso that the built form will occupy the indicative footprint shown in yellow and the courtyard location indicated on the Concept Plan (exhibit L) (exhibit 103, p 24).

### **Findings**

181 As stated above, building envelopes are a large scale, master-planning device to determine the overall block form and a three dimensional zone that limits the extent of a future building in any direction. The building envelope is not intended to be the actual form of the future building; instead it defines the generous three-dimensional space within which the desired built form outcome can occur. We accept the agreement of the planning experts in relation to Precincts 2 and 3 that the building envelopes are generally acceptable.

182 We are satisfied that the Precinct 2, 3 and 4 future buildings, if generally consistent with the building envelope in the Concept Plan (exhibit L), coupled with the above development controls at [168], will be appropriately scaled for the main campus and compatible with the surrounding low density residential development. Given the agreement of the planning experts in relation to Precincts 2 and 3, it is not necessary to prescribe a maximum percentage that the building mass should occupy of the building envelope to ensure the articulation of the future buildings.

183 Pursuant to the former section 75P(1)(b) of the EPA Act, all future stages of the Concept Plan approval will be subject to Part 4 of that Act. A number of Council's contentions and Mr Dickson's concerns relate to the design of the future buildings and will be more appropriately dealt with during the development assessment process.

### **Impact of the proposal on the heritage significance of the ACU main campus**

184 A Heritage Impact Statement (HIS) for the proposal was prepared by Weir Phillips Architects and Heritage Consultants in December 2011 (exhibit A1, tab 10). The HIS concluded the following in relation to Precinct 1 (p 207):

The location of new buildings of the massing and scale suggested by the Concept Plan on this part of the Campus will have an acceptable heritage impact for the following reasons:

This part of the site is sufficiently separated from the heritage significant buildings on the site, which are located predominately to the north of the original driveway from Albert Road to Mount Royal, now the Edmund Rice Building.

The existing use of this area as a car park is not significant. The known historically significant use of this space lies in historic (and potentially archaeological) record. There is an opportunity to provide interpretation of the villa 'Ardross' as part of any new development if appropriate.

The elements of this part of the Campus that contribute to the general setting of the site are the Canary Island Date Palms and the mature trees along the southern and eastern boundaries. Date Palms can be moved to accommodate new buildings if required; the existing linear arrangement of these Date Palms does not help explain the site's significance. Other significant plantings in this area such as the Bunya Pines are located on the edges of this area and should be retained in situ.

New buildings of the massing and scale suggested by the Concept Plan will have an acceptable impact on significant view corridors. View corridors towards the Edmund Rice Building, the only heritage building readily visible from the public domain as the site is approached from the east along Barker Road, are already limited by the angle of Barker Road, by the high front wall and by vegetation. Well designed and articulated buildings on this part of the site will not further reduce this view corridor.

Building on this site provides an opportunity for the design of a key building(s) to help identify the site on approach and anchor its new and developing significance as a university campus. When combined with new buildings in the south-western corner, the site will be 'book ended' within Barker Road on approach from either direction.

Extant and proposed planting, as indicated by the Concept Plan, will help integrate new built forms into the landscape.

A basement carpark will have a limited visual impact.

Buildings of the proposed massing and scale on this part of the site will have no impact on any heritage items or conservation areas outside of the Campus. Similarly, the proposed new



entrance will not impact upon any heritage items or conservation areas outside the Campus.

- 185 An Addendum to the HIS was prepared by Weir Phillips in June 2012 in response to comments received from the NSW Heritage Council (exhibit A2, tab 25) concluding that, following amendments made to the proposal, the Concept Plan application complied with all 22 recommendations made by the NSW Heritage Council.
- 186 GML Heritage Consultants were engaged by the Council in support of the Council's submission to the PAC. GML made a number of recommendations which the applicant complied with by amending the proposal, including modifying the footprint of Precinct 1 (exhibit A2, tab 19, p 25).
- 187 The proposal was then referred back to the NSW Heritage Council and the response from the Heritage Branch as delegate of the NSW Heritage Council, dated 4 September 2012, stated that the amendments to the proposal and additional conservation management measures (contained in the Statement of Commitments, Schedule 4) were generally supported. The NSW Heritage Council recommended revised conditions regarding the management of archaeology (exhibit A2, tab 32, p 2) and these 8 conditions have been incorporated into Schedule 3 of exhibit 6.
- 188 We accept the NSW Heritage Council's support of the proposal as evidence that the location of building envelopes proposed in the Concept Plan (exhibit L) broadly has an acceptable impact on the identified heritage significance of the main campus, subject to the detailed assessment to be made during the development assessment process for each development proposal.

**Heritage planning principle 'impact of adjacent development'**

- 189 The Commissioners of the Court have collectively concluded that the heritage planning principle, 'impact of adjacent development', published in

*Anglican Church Property Trust v Sydney City Council* (2003) 139 LGERA 231, should no longer be applied (*Comino v Council of the City of Sydney* [2014] NSWLEC 1211 at [27]). However, the decision in *Comino* post-dates the hearing of this matter, so we will briefly deal with the Council's submission regarding this planning principle.

- 190 The considerations raised by the heritage planning principle, 'impact of adjacent development', are that new development should not obstruct views of the heritage item, new development should not visually dominate the heritage item, new development should not overshadow the heritage item and new development should be compatible with the character and form of the heritage item. We are satisfied that the approach taken by the heritage planning principle 'impact of adjacent development' has been appropriately pre-empted by the research, analysis and assessment in the HIS, which identifies a heritage curtilage and opportunities and constraints for the future development of the campus, which in turn has informed the selection of the four precincts identified for future development. The compatibility of the future development proposals with the character and form of the ACU main campus will again be a relevant consideration in the development assessment process for each development proposal.

#### **The 'multi-staged application' planning principle**

- 191 The multi-staged application planning principle in *Anglican Church* at [59] states:

The principle we have adopted is that in multi-stage applications the information provided in Stage 1 should respond to all those matters that are critical to the assessment of the proposal.

- 192 The matter before the Court is not a multi-staged application, it is a Concept Plan application made pursuant to the former Part 3A provisions of the EPA Act. The 'multi-staged application' planning principle is not a relevant consideration in this matter because an application for approval of a Concept Plan under the former Part 3A provisions does not require a

detailed description of the proposal, at s 75M(2). A detailed description of the proposal would be required to be able to 'respond to all those matters that are critical to the assessment of the proposal'. The 'matters that are critical to the assessment of the proposal' will be dealt with by the consent authority during the development assessment process.

### **Hours of operation**

- 193 The applicant seeks approval for hours of operation of 7am to 10pm Monday to Friday and 8am to 5pm Saturday and Sunday (main campus and Edward Clancy Building). The existing hours of operation are from 8.00am to 9.00pm Monday to Friday, 8.00am to 5.00pm on Saturday (main campus only) and closed on Sunday.
- 194 The ACU Strathfield campus proposes to open at 7.00am on weekdays for operational purposes, and to allow time for security to open up the premises. Most teaching and support staff are expected to arrive by about 7.30am. All teaching activities will continue to be scheduled between 8.00am and 8.00pm. The 8.00am starting time is intended to minimise conflict with school starting times. Timetabling a 2.00pm changeover time is similarly aimed at reducing congestion arising from school finishing times. The new library is intended to operate until 9.30pm on weekdays. The 10.00pm closing time allows security time to lock the campus at night.
- 195 On weekends, the campus would operate between 8.00am and 5.00pm with most activity occurring in the Library Learning Commons. In addition, the applicant proposes to use the campus on weekends for postgraduate classes and other [unspecified] groups.
- 196 According to the PPR, these hours are generally consistent with Part M of Strathfield DCP, which nominates "standard hours of operation for educational establishments in residential areas be limited to 7.00am to 9.30pm, Monday to Saturday.

197 The Director-General's report notes the general compliance with Strathfield DCP. The Department considers the additional half hour from 9.30pm to 10.00pm would have a negligible impact on residential amenity and supports the proposed hours for weekdays.

198 In regards to weekends, the Department considers opening the library on both days is reasonable and may result in a reduction of the total number of students attending at other times, and thus spreading the impact. The number of postgraduate students is a relatively small percentage of the overall student population and operation of classes on weekends is expected to have negligible impacts on the surrounding area. The Director-General's report considers the proposed extension of hours is acceptable.

### **Submissions**

199 The Council opposes any extension of weekend hours on the basis of avoiding further erosion of the amenity of nearby residents.

200 The applicant would accept a condition limiting use of the campus on the weekend to only as many people as can be accommodated by on-site parking, with the exception of specified events which would be notified to Council.

### **Findings**

201 We have considered the proposal, the parties' submissions, the Director-General's report and the concerns of the residents and we agree with that the proposed extension of hours can be supported. However, in order to minimise disruptions to local residents on weekends, the number of people on the site must be limited to the number of on-site car parking spaces and anyone attending on weekends is to be advised to park on the campus. Given the limited number of parking spaces on the Edward Clancy Building

campus, people attending this area on weekends should be advised to park on the nearby main campus.

- 202 In regards to the weekend use of the ACU Strathfield campus by other unspecified groups, we accept that a university is a facility capable of use by the broader community. In order to reduce the disruption to the nearby residents that larger events may create, we recommend a limit be placed on the number of events, perhaps a maximum of six per year, where numbers are expected to be in excess of on-site parking availability. These events must be notified to Council and to local residents; perhaps by a letterbox drop or an advertisement in the local paper.

### **Arboriculture**

- 203 The Council initially raised Contention 9 in their Amended Statement of Facts and Contentions in Reply filed on 13 December 2013. This contention considers the impact of the proposed building footprints for Precincts 1 and 4 on the root zones of mature trees.
- 204 The contention recognises the importance of established mature trees along Barker Road and Mount Royal Reserve in screening the proposed library building from the public domain. The proposed building in Precinct 4 will impact on trees that provide amenity and screening for properties to the west. Council contends that the setbacks of these proposed footprints are inadequate and any construction would have a significant impact on trees that should be retained.
- 205 The site inspection confirmed the importance of the trees in screening any future development. The significant Bunya Pines near the original entry gates were noted as being retained. These trees have benefited from an additional setback arising from submissions made in response to the exhibition of the Concept Plan in March 2012.

- 206 Mr Guy Paroissien for the applicant, and Mr Russell Kingdom for the Council, prepared individual reports and participated in joint conferencing and reporting. The experts assessed the trees within these precincts and agreed on landscape values, retention values, extent of impact, and trees to be removed, transplanted or retained.
- 207 The arborists agree the trees will assist in the screening of the buildings. Of the 50 trees in the vicinity of the library building in Precinct 1, 29 trees can be retained with low to moderate impact and 11 palms can be transplanted elsewhere on site. To that extent, the proposed setbacks are adequate. Five trees of low retention value will require removal. Of the remaining five trees, retention is desirable however the feasibility and practicality of doing so is a matter best considered at the detail design stage. Although identified as a tree that could be retained, the arborists recommend the removal of an early mature specimen of *Ficus microcarpa* var. 'Hillii' (Hill's Weeping Fig). The arborists consider its growth potential is such that it may cause future problems for nearby trees and buildings.
- 208 The arborists also agree that the construction of the library and realigning of the main entry will require the removal of several trees of low to moderate landscape value. In their opinion, the loss of these trees can be addressed through the provision of adequate space for future landscaping.
- 209 In regards to Precinct 4, the arborists agree the setbacks are sufficient for 10 of the 11 trees to be within the acceptable level of impact that will allow for their retention. The remaining tree has significant structural defects and does not warrant retention through an increased setback. The arborists note that the existing vegetation along the western boundary is primarily comprised of weeds and there is therefore an opportunity to significantly improve the visual and landscape values of this vegetative buffer.
- 210 As a consequence of this joint report, the parties agree that any issues regarding trees have been resolved. The Minister proposed a term of approval indicating the removal of the Fig.

## Findings

- 211 We find no reason to defer from the arborist's agreed opinion and propose to include the removal of the Hill's Weeping Fig in the manner proposed by the Minister.

## Conclusion

- 212 There has been an educational establishment on this site in Strathfield for over 100 years; the last twenty under the management of the Australian Catholic University. As noted in [102], we concur with the statement in the Director-General's report regarding the wider public benefits associated with the best possible use of existing educational facilities. We also acknowledge the need to minimise any unreasonable impacts associated with an expansion of the campus on the amenity of surrounding residential areas.
- 213 In our view it is unreasonable to expect a university to provide parking for every student and staff member on site during the working week, to do so would divert significant assets that could be invested in teaching and learning facilities. Based on the evidence before us we consider that the proposed staged increase in student numbers, on-site parking and provision of new facilities can be achieved in a manner that reduces the current negative impacts on the surrounding neighbourhood. However, that said, while ever there is unrestricted on-street parking nearby, there is no disincentive to driving to the campus. There is also a risk that providing more on-site parking will encourage more people to drive, a "build it and they will come" scenario. This may provide more impetus for some type of parking restrictions in the local streets.
- 214 In order to achieve the increases in student numbers sought by the university, we consider that the Green Travel Plan will need to be amended to reflect a more realistic mode share for the various travel

options. The staged increase in numbers will require a staged reduction in the mode share of people driving to the campus so that overflow parking on surrounding streets, and the negative impacts on residential amenity that brings, are managed at a reasonable level and result in an improvement on the current level of on-street parking. Similarly, the Campus Travel and Monitoring Plan will also have to provide a robust methodology to monitor the success or otherwise of the Green Travel Plan in achieving the targets it sets.

- 215 The intensification sought by the applicant is contingent on the staged development of the precincts, and in particular, on the provision of additional on-site parking.
- 216 We are satisfied that the Precinct 1 building envelope and indicative footprint in the Concept Plan (exhibit L), coupled with the development (or primary precinct) controls listed at [169] to ensure the appropriate articulation of the future building, will provide an appropriately scaled future building for the main campus, which will be compatible with the surrounding low density residential development, subject to the detailed design of the future development proposal.
- 217 We are satisfied that the Precincts 2, 3 and 4 building envelopes, indicative footprints and development (or primary precinct) controls in the Concept Plan (exhibit L) are appropriately scaled for the main campus.
- 218 We accept the NSW Heritage Council's support of the proposal as evidence that the location of building envelopes proposed in the Concept Plan (exhibit L) broadly has an acceptable impact on the identified heritage significance of the main campus, subject to the detailed assessment to be made during the development assessment process for each development proposal.
- 219 A number of Council's contentions relate to the design of the future buildings and will be more appropriately dealt with during the development

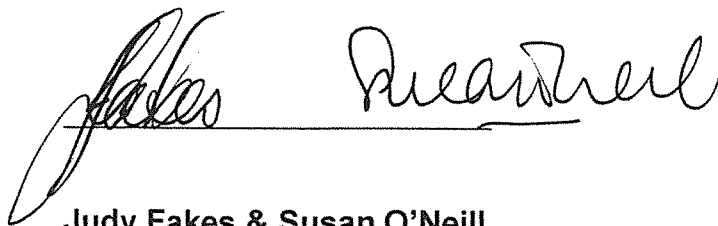


assessment process, as all future stages of the Concept Plan approval will be subject to Part 4 of that Act, pursuant to the former section 75P(1)(b) of the EPA Act.

## Orders

220 The orders of the Court are:

- (1) The appeal is allowed in respect of the Concept Plan Application for the proposed upgrading of the Australian Catholic University at 167-169 Albert Road and 179 Albert Road, Strathfield, in the manner and subject to the conditions and the Statement of Commitments set out in Schedules 1, 2 and 4 to Annexure A.
- (2) Each party pays its own costs of the proceedings.
- (3) It is noted that it is intended that when the Planning and Assessment Commission (as delegate for the Minister) approves the Concept Plan application, it will exercise the powers under the former section 75P of the *Environmental Planning and Assessment Act 1979* in the following manner:
  - (a) pursuant to section 75P(1)(a) and 75P(2)(c) of the *Environmental Planning and Assessment Act 1979*, that the further environmental assessment requirements for approval to carry out the development are as set out in Schedule 3 to Annexure A; and
  - (b) pursuant to section 75P(1)(b) of the *Environmental Planning and Assessment Act 1979*, that all future stages of the Concept Plan approval are subject to Part 4 of that Act.
- (4) Exhibits except B, L, 1 and 100 are returned.



**Judy Fakes & Susan O'Neill**  
**Commissioners of the Court**



# ANNEXURE A - WITHOUT PREJUDICE MANNER OF APPROVAL

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## SCHEDULE 1

### PART A: PARTICULARS

<b>Application No.:</b>	MP 10_0231
<b>Proponent:</b>	Australian Catholic University Limited
<b>Approval Authority:</b>	Minister for Planning
<b>Land:</b>	167-169 Albert Road and 179 Albert Road, Strathfield
<b>Project:</b>	Upgrading of the Australian Catholic University, Strathfield, including: <ul style="list-style-type: none"><li>• increase in Campus population</li><li>• increase in hours and days of operation</li><li>• indicative building envelopes for educational facilities;</li><li>• basement level car parking;</li><li>• road works to support the development;</li><li>• pedestrian linkages and landscaping; and;</li><li>• staging of development into four separate and sequential construction stages.</li></ul>

### PART B: NOTES RELATING TO THE DETERMINATION OF MP No. 10\_0231

#### **Responsibility for other approvals/ agreements**

The Proponent is responsible for ensuring that all additional approvals and agreements are obtained from other authorities, as relevant.

#### **Legal notices**

Any advice or notice to the approval authority shall be served on the Secretary.

### PART C: DEFINITIONS

**Act** means the *Environmental Planning and Assessment Act, 1979* (as amended).

<b>Campus</b>	means the sites consisting of the 'Main campus' (Mount Saint Mary) at 179 Albert Road and the 'Edward Clancy Building campus' at 167-169 Albert Road, and the Regulated Land.
<b>Campus population</b>	means the number of staff and students on Campus.
<b>Council</b>	means Strathfield Council.
<b>Department</b>	means the Department of Planning & Environment or its successors.
<b>Environmental Assessment (EA)</b>	means the Environmental Assessment prepared by Hassell dated December 2011.
<b>Minister</b>	means the Minister for Planning.
<b>MP No. 10_0231</b>	means the Major Project described in the Proponent's Environmental Assessment as amended by the Preferred Project Report.
<b>Preferred Project Report (PPR)</b>	means the Preferred Project Report and Response to Submissions prepared by Hassell dated July 2012.
<b>Regulated Land</b>	means St Patrick's College, being Lot 12 DP 109557 1 Francis Street, Strathfield; and the former Seventh Day Adventist School, being Lot 1 DP585098, 149-161 Albert Road, Strathfield; but only those parts of the land used by the Proponent for the purposes of any academic or administrative activities, consistent with its function as a tertiary educational establishment.  <i>Note: The Concept Plan approval does not of itself authorise the use of the Regulated Land for any activity undertaken by the Proponent for the purposes of a tertiary educational and research establishment. Any such use must be authorised under a separate approval and/or development consent.</i>
<b>Response to Preferred Project Report Submissions</b>	means the Response to Preferred Project Report Submissions prepared by Hassell dated 23 October 2012.
<b>Proponent</b>	means Australian Catholic University Limited or any party acting upon this approval.
<b>Secretary</b>	means the Secretary of the Department or that person's nominee.

**End of Schedule 1**

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## SCHEDULE 2

### PART A – TERMS OF APPROVAL

#### A1. DEVELOPMENT DESCRIPTION

Concept Plan approval is granted to the following development as described below:

- (a) a maximum of 2,200 people on the Campus at any one time;
- (b) increase in hours and days of operation;
- (c) 6 new building envelopes to a maximum height of 4 storeys;
- (d) total on-site car parking for 747 vehicles: 717 to be used by the Australian Catholic University; and 30 to be used by St Patrick's College, Strathfield;
- (e) road works to support the development;
- (f) pedestrian linkages and landscaping throughout the site; and
- (g) staging of the development in four stages.

subject to compliance with the terms and modifications of this approval.

#### A2. DEVELOPMENT IN ACCORDANCE WITH PLANS AND DOCUMENTATION

The approval shall be generally in accordance with MP 10\_0231 and the Environmental Assessment prepared by Hassell dated December 2011, except where amended by the Preferred Project Report prepared by Hassell dated July 2012 and Response to Preferred Project Report Submissions prepared by Hassell dated 23 October 2012 and the letter from Urbis to Clayton Utz dated 5 December 2013 and the following drawings:

<b>Concept Plan Drawings prepared by Hassell</b>	
<b>Name of Plan</b>	<b>Date</b>
Precinct 1 -South Eastern	July 2012
Precinct 1 -Elevation and Cross Section Diagrams	July 2012
Precinct 2 -Eastern	July 2012
Precinct 2 -Elevation and Cross Section Diagrams	July 2012
Precinct 3 -Western	July 2012
Precinct 3 -Elevation and Cross Section Diagrams	July 2012
Precinct 4 -General	July 2012
Precinct 4 -Elevation and Cross Section Diagrams	July 2012
Proposed Aerial View	July 2012
Illustrative Concept Plan	July 2012
Tree Removal Plan	July 2012

except for as modified by the updated drawings – Exhibit L matter 10350 of 2013 filed 20 June 2014 and the following pursuant to Section 75O(4) of the Act.

#### A3. CAR PARKING

- (a) The number of car parking spaces to be provided for the development shall comprise 747:
  - (i) 717 spaces for the use of staff and students of the Australian Catholic University; and
  - (ii) 30 spaces in the underground carpark in stage 1A to be used by St Patrick's College.

- (b) Car parking is to be allocated in accordance with the information provided in the Response to Preferred Project Report Submissions prepared by Hassell dated 23 October 2012.
- (c) The Proponent (or its successor, other legal entity, contractor or agent) must not introduce, operate, permit or implement any form of pay and/or timed parking restrictions to any on-site car parking spaces identified as part of this approval (being 717 car spaces identified in the Proponent's application).

**Reason:** Any form of pay and/or timed parking restrictions on-site, would encourage parking off-site in the nearby residential streets.

#### **A4. GREEN TRAVEL PLAN**

- (a) The submitted Green Travel Plan dated 17 October 2012 must be updated such that it is based upon the existing Campus population and existing mode share split.
- (b) The Green Travel Plan must set realistic mode share targets to provide for acceptable parking outcomes, particularly having regard to levels of on-street parking.
- (c) The Green Travel Plan must also provide details of future monitoring and what actions might be taken if the proposed mode share targets are not achieved.
- (d) The Green Travel Plan is to be prepared in consultation with Council, to the satisfaction of the Secretary.

Any future development application submitted in accordance with this Concept Plan approval must demonstrate where relevant that the mode share targets identified within the updated Green Travel Plan can be consistently complied with.

The Green Travel Plan is to be amended to provide sufficient changeover time between the morning and afternoon educational sessions to enable students attending the Campus in the morning to vacate the site prior to the arrival of students attending the Campus in the afternoon.

#### **A5. CAMPUS POPULATION**

##### **(a) Monday-Friday (excluding public holidays)**

Campus population may be increased to a maximum of 2,200 on the Campus at any one time, Monday to Friday, subject to the following matters being addressed:

- (i) No increase in Campus population allowed at any one time under the existing development consents until the underground car park comprising stage 1A has been completed and is available for use;
- (ii) An increase to 1,800 people on the Campus at any one time once an occupation certificate has been issued for the additional car parking area referred to in A5(i). A copy of the occupation certificate as issued must be provided to the satisfaction of the Secretary prior to any increase to 1,800 people;
- (iii) An increase to 2,200 people on the Campus at any one time once the Proponent has demonstrated to the satisfaction of the Secretary that the mode share targets and reduced on-street parking associated with the university are being consistently

achieved for no less than 48 consecutive months in accordance with the requirements of the CTMP as required in Term of Approval A6; and

- (iv) For the avoidance of doubt, for the purposes of controlling and limiting the campus population, the definition of 'Campus' under this condition includes those parts of the Regulated Land which the Proponent uses for the purposes of any academic or administrative activities, consistent with its function as a tertiary educational and research establishment.

**(b) Weekends**

On a Saturday or Sunday or Public Holiday

- (i) the Campus is to be used only by postgraduate classes;
  - (ii) the Campus is to be used only by students using the library and/or for events held by the Proponent or another group for educational or ecclesiastical purposes;
  - (iii) the relevant Campus population at any one time must not exceed the equivalent number of on-site car parking spaces provided on the Campus at the relevant time of use; and
  - (iv) if an event is proposed to be held on the Campus on an occasional basis by the Proponent or another group, for educational or ecclesiastical purposes, and the event will generate a greater Campus population than the number of available on-site car parking spaces, the Proponent must notify the Council no later than 14 days prior to the event.
- (v) The Proponent is to provide an annual record of events held on the Campus on weekends and public holidays (including time, date, purpose and number of population) to the Council.

**A6. CAMPUS TRAVEL AND MONITORING PLAN**

- (a) Prior to any development applications being submitted in accordance with this Concept Plan approval, the Proponent must prepare and submit a Campus Travel and Monitoring Plan (CTMP), in consultation with Council, to the satisfaction of the Secretary.
- (b) The CTMP, which must be prepared by suitably qualified person/s agreed to by the Secretary, must monitor the travel behaviour of students and staff consistent with the objectives and mode share targets of the Green Travel Plan (Term of Approval A4) and secondly, monitor Campus population at any one time consistent with the staged increase in Campus population in Term of Approval A5.
- (c) The CTMP must include but not be limited to the following:
  - (i) clear mode share targets consistent with those set out in the Green Travel Plan;
  - (ii) a robust methodology and monitoring/auditing program to identify the travel behaviour of students and staff to and from the Campus at appropriate times throughout the academic year, and to monitor Campus population at any one time;
  - (iii) monitoring regimes for: student and staff travel behaviour having regard to the mode share targets identified in the Green Travel Plan (A4), and on-site

Campus population at any one time having regard to the key milestones in Term of Approval A5(a);

- (iv) details regarding frequency of monitoring for: student and staff travel and Campus population at any one time with a particular emphasis on monitoring over the peak times of each semester within the academic year with the need for at least 7 consecutive days monitoring at any one time;
  - (v) measures for dealing with any exceedences of the Campus population specified in Term of Approval A5(a);
  - (vi) contingency measures to be adopted should the monitoring of student and staff travel or individual campus milestones identify inconsistencies with the mode share targets and onsite Campus population; and
  - (vii) communication strategies regarding the dissemination of monitoring results to the Secretary, Council, students and staff, and the wider community, including publication on the university website.
- (d) An annual report containing the results of monitoring undertaken pursuant to the CTMP should be provided to the Secretary for three years after any permitted increase in Campus population to 2,200. A copy of the monitoring report should be provided to Council for information and record.

#### **A7. HOURS OF OPERATION**

- (a) The hours of operation of the university are limited to:
  - (i) 7.00am to 10.00pm on Monday to Friday; and
  - (ii) 8.00am to 5.00pm on Saturday and Sunday.
- (b) Students and staff are not permitted on the site prior to 7.00am or after 10.00pm.
- (c) No classes are permitted to commence prior to 8.00am or finish later than 8.00pm.
- (d) Use of the library is permitted during the above hours.

#### **A8. STAGING OF DEVELOPMENT**

- (a) The Concept Plan is a proposal for the approval of new building envelopes, parking and other associated works for the Australian Catholic University Strathfield Campus within four designated Precincts implemented in the following four separate construction stages:
  - (i) **Stage 1A** involves the construction of an underground car park in the north-western corner of the campus containing 262 car spaces for the Proponent and 30 spaces for St Patrick's college which is immediately adjacent to the university campus.
  - (ii) **Stage 1B** provides for a Precinct 1 building envelope for a proposed library learning commons building with basement car park containing 174 car spaces. Further associated works proposed in Precinct 1 include widening the main gate exit from the campus.
  - (ii) **Stage 2** requires the demolition of existing handball courts, refurbishment and reuse of the existing library as well as a new Precinct 4 building envelope which will contain new buildings for services, storage and educational uses;



- (iii) **Stage 3** relates to works within a Precinct 2 building envelope, which will contain a new building for educational uses, lecture theatres and research space and ground level parking for 70 spaces;
  - (iv) **Stage 4** provides for the Precinct 3 building envelope containing a new arts and science building with basement car parking for 158 cars.
- (b) The construction of Precinct 1, under Stage 1B, must not commence until the Stage 1A underground car park has been constructed and a final occupation certificate issued.
- Reason:** To prevent a short to medium term loss of on-site parking.]
- (c) The stages outlined above are contingent on each other and are required to be carried out in the order listed in Term of Approval A8(a).]

#### **A9. COMPLAINTS HANDLING REGISTER**

- (a) The Proponent is to create a complaints handling system, together with an associated register of complaints (Register of Complaints).
- (b) The Register of Complaints must be made available to Council upon a written request being made.
- (c) Details of the complaints handling system must be made available to members of the public and be easily located on the campus website.
- (d) Upon receipt of any complaint, the Proponent must inform the complainant in writing, within a reasonable time frame, of the measures the ACU proposes and/or has taken to address the subject matter of the complaint.
- (e) A copy of the written response to the issues raised by a complaint and details of any action taken must be recorded in the Register of Complaints.

**Note:** The Proponent is responsible to ensure that personal information is kept confidential, in accordance with the relevant statutory requirements, and take all reasonable measures to advise members of the public of that requirement.

#### **A10. LAPSING OF APPROVAL**

Approval of the Concept Plan shall lapse 5 years after the determination date shown above in this Instrument of Approval, unless an application is submitted to carry out a project or development which concept approval has been given.

#### **A11. INCONSISTENCY BETWEEN DOCUMENTATION**

In the event of any inconsistency between Terms of Approval or modifications of the Concept Plan approval identified in this approval and the drawings / documents including Statement of Commitments referred to above, the Terms of Approval and modifications of the Concept Plan shall prevail.

### **PART B – MODIFICATIONS**

## **B1. STUDENT NUMBERS**

Deletion of the student enrolments cap of 4,800 students and reference to Equivalent Full Time Student Loads.

## **B2. TREE REMOVAL**

Approval is given for the removal of the following trees (as identified in the attached plan prepared by Denny Linker & Co and dated 15 May 2010): **2, 4, 5, 6, A11, 26, 54, 55, 56, 57 and A7.**

**Note:** Some further trees are also proposed to be transplanted.

**End of Schedule 2**

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## Schedule 3

### STATEMENT OF COMMITMENTS

[Source: Preferred Project Report, with additional changes made by ACU to items 1.1, 1.2, 6.1, 10.1, 11.1, 11.2 and 11.3]

#### 5.0 Final Statement of Commitments

In accordance with the former Part 3A of the *EP&A Act 1979*, the following are the commitments made by the ACU to manage and minimise potential impacts arising from the proposal. These commitments replace those in the EA.

Key changes from the draft Statement of Commitments are provided in **bold and underline** and ~~strikethrough~~ below.

**The commitments made below are subject to the Terms of Approval and modifications of any Concept Plan approval.**

Commitment		Timing
<b>General</b>		
1.1	The Concept Plan will, <b><u>subject to the Terms of Approval and modifications of any Concept Plan approval</u></b> , be implemented generally in accordance with the Environment Assessment prepared by HASSELL dated December 2011 <b><u>and the amendments as outlined in the Preferred Project Report dated June 2012.</u></b>	All subsequent details design stage and future development applications submitted.
1.2	<b><u>The proponent will, subject to the Terms of Approval and modifications of any Concept Plan approval, undertake biannual audits to confirm the daily campus population.</u></b>	<b><u>Biannual upon completion of the basement car park.</u></b>
<b><u>1.3</u></b>	All future development within the development precincts will be consistent with the 'Character Statement' for each precinct included at Section 3 of the Environmental Assessment.	All subsequent detailed design state and future development application submitted.
<b>Ecologically Sustainable Development</b>		
2.1	The proponent's Ecologically Sustainable Development Officer will identify an appropriate future green star design target for future development.	All subsequent detailed design stage and future development application submitted.
<b>Transport and Accessibility</b>		
3.1	The proponent will continue to provide a shuttle bus service between the campus and Strathfield Railway Station to improve connection of the campus to high frequency and high capacity public transport services.	Subsequent detailed design stage and future development applications. <b><u>Annual travel surveys to accompany future</u></b>

Commitment		Timing
	<b><u>The proponent will undertake annual travel surveys to demonstrate the ongoing use of the shuttle bus service.</u></b>	<b><u>development applications.</u></b>
3.2	A committee will be appointed to implement programs and initiatives within the campus to promote increased use of public transport services and car pooling opportunities.	To be implemented by the proponent following approval of the Concept Plan and as part of each subsequent detailed development applications.
3.3	The proponent, in partnership with the State Transit Authority, will continue to investigate opportunities to increase the frequency and provision of bus services to the ACU Strathfield campus.	To be undertaken by the proponent during detailed design and future operation of the campus.
3.4	The proponent will investigate providing interest free loans to employees to purchase annual travel passes.	To be investigated by the proponent.
Amenity		
4.1	The proponent will ensure potential impacts on residential amenity caused by operations of the University are identified and minimised.	To be continued by the proponent.
Community		
5.1	The proponent will implement an ACU Neighbourhood Policy provide opportunities for external hire of halls, rooms and outdoor spaces for conferences and the like.	The <b><u>revised</u></b> Neighbourhood Policy will be implemented by the proponent following approval of the Concept Plan Application.
5.2	Opportunities for community education activities and shared used of learning spaces and library facilities with the surrounding community will be investigated.	To be implemented by the proponent as necessary following completion of each Stage.
Staging		
6.1	The new development precincts will, <b><u>subject to the Terms of Approval and modifications of any Concept Plan approval,</u></b> generally be developed in accordance with the Staging plan at Section 3.7 of the Environmental Assessment prepared by HASSELL dated December 2011 <b><u>as amended by the Preferred Project Report dated June 2012.</u></b>	All future development applications to demonstrate compliance.
Contamination		
7.1	A detailed site contamination assessment will be undertaken for future detailed development applications to assess the contamination status of the Underground Storage Tanks and Areas of Environmental	To be prepared and submitted with the development application for Stage 1 works.

Commitment		Timing
	Concern.	
7.2	During future demolition works, care will be taken and should suspected Asbestos Containing Material be identified works will immediately cease and an asbestos specialist will be consulted for identification, removal and disposal of material prior to works recommencing.	During demolition and excavation works for all future developments.
7.3	Prior to future detailed development applications, soil sampling of the stockpile at the western end of the site will be undertaken and samples analysed for identified PCOCs and waste classification to determine chemical composition and the potential risk posed to human health by the material. Once composition is determined the waste classification of the stockpile will be determined and the material removed to an appropriately licensed disposal facility.	As part of a Development Application for Stage 1.
7.4	During construction works, should contamination be detected that presents an unacceptable risk to human health or the environment, then management and/or remediation will be instigated.	During construction works for all future development.
Heritage		
8.1	<p>The Conservation Management Plan (CMP) prepared for the campus will be implemented for ongoing future operation and development.</p> <p><b><u>A Conservation Management Plan (CMP) shall be lodged with the Heritage Council for review prior to the determination of applications after Concept Plan approval.</u></b></p> <p><b><u>The CMP shall include a schedule of prioritised conservation works on the site with set timeframes for completion of these works to the satisfaction of the Heritage Council.</u></b></p> <p><b><u>An interpretation Plan for works to interpret the heritage significance of the site shall be submitted to the satisfaction of the Heritage Council prior to the determination of applications after the Concept Plan approval.</u></b></p>	<p>To be implemented by the proponent.</p> <p><b><u>A CMP is nearing completion in draft form which will address all these requirements.</u></b></p>
8.2	<b><u>An archival photographic recording of the site shall be prepared prior to the commencement of works for each relevant</u></b>	<b><u>An archival recording will be commissioned. A scope of recording will be submitted to the Heritage Council prior</u></b>

Commitment		Timing
	<u>stage to the satisfaction of the Heritage Council. The recording shall be prepared in accordance with the Heritage Council guidelines 'Photographic Recording of Heritage items using Film or Digital Capture'. The original copy of the archival record shall be lodged with the Heritage Council. An additional copy shall be provided to Strathfield Council.</u>	<u>to commencement but will include the handball courts.</u>
8.2	Prior to any demolition of existing handball courts, an interpretation strategy will be developed to communicate the heritage significance of the existing courts.	An interpretation strategy is to be submitted for approval with any Development Application seeking demolition of the handball courts.
<b>Aboriginal Heritage</b>		
9.1	During future detailed development applications, the proponent is to consult with the relevant Metropolitan Local Aboriginal Land Council at a minimum to identify if Aboriginal cultural values are present within the study area, and to assess what impact the proposed development would have on such values	During construction, demolition and excavation works for all future development.
9.2	If Aboriginal objects are identified during development of the subject land, works will stop and a suitably qualified archaeologist notified immediately to assess the finds. The finds will be reported to the Office of Environment and Heritage and further approvals may be necessary prior to the recommencement of works.	During construction, demolition and excavation works for all future development.
<b>Drainage and Infrastructure</b>		
10.1	Staging of infrastructure will, <u>subject to the Terms of Approval and modifications of any Concept Plan approval</u> , be undertaken in accordance with the infrastructure staging plan within the <i>Australian Catholic University - Infrastructure Assessment</i> prepared by Mott MacDonald Hughes Trueman dated December 2011.	All future development applications for Stages 1 to 4 to demonstrate compliance with infrastructure staging plan.
10.2	The proponent will comply with the requirements of the relevant public authorities with regard to connection, relocation or adjustment of services affected by the construction of the proposed development.	During construction works for all future development.
<b>Flora and Fauna</b>		
11.1	The proponent will, <u>subject to the Terms of</u>	All future development applications

Commitment	Timing
	involving tree removal is to demonstrate compliance with the tree removal plan, <b><u>as amended.</u></b>
11.2	The proponent will, <b><u>subject to the Terms of Approval and modifications of any Concept Plan approval,</u></b> transplant those existing trees where indicated on the tree removal plan shown at Section 3.4 of the Environmental Assessment, <b><u>as amended by the Preferred Project Report dated June 2012.</u></b>
11.3	All future development applications involving tree relocation is to demonstrate compliance with the tree removal plan, <b><u>as amended.</u></b>
11.4	The proponent will, <b><u>subject to the Terms of Approval and modifications of any Concept Plan approval,</u></b> ensure that all mature trees that are to be removed as part of the proposal be replaced. Where possible native trees which naturally occur within the locality will be used as a replacement planting.
11.4	All future development applications involving tree removal.
11.5	During construction works, mature planted trees will have adequate tree protection measures implemented to ensure retained trees are not impacted.
11.5	All future development applications. Trees to be maintained during construction, demolition and excavation works for all future development.
11.6	Naturally occurring, remnant trees including the Fine Leaved Ironbark and Turpentines will be retained where possible ( <b><u>except where specifically identified for removal</u></b> ) and adequate tree protection measures will be implemented to ensure retained trees are not impacted by the proposal during the construction phase.
11.6	The identified noxious weed Broad Leafed Privet ( <i>Ligustrum lucidum</i> ) will be managed by the proponent in accordance with the legal requirements for the control of a Class 4 weed. The growth and spread of the plant will be controlled according to the measures specified in a management plan published by the local control authority.
	To be managed by the proponent during future operation of the campus.

Commitment		Timing
<b>Waste</b>		
12.1	As part of future detailed design and subsequent development applications for each new building, a fully detailed Construction Waste Management Plan will be submitted for approval. These plans will document waste management practices that comply with all relevant legislation relating to waste and resource recovery, environmental protection, and occupational health and safety.	To be submitted for approval with all future development applications.
12.2	General waste collection will continue to be collected on a daily basis from the dedicated waste storage area.	To be implemented by the proponent during future operation of the campus in consultation with the relevant waste contractor.
12.3	Recycled waste collection will occur on a twice weekly cycle from the dedicated waste storage area. Collection days will be agreed with the nominated waste contractor.	To be implemented by the proponent during future operation of the campus in consultation with the relevant waste contractor.
12.4	Prior to the commencement of works at the site all asbestos based and other hazardous materials that will be disturbed during refurbishment works will be removed. Removal of asbestos based materials will be undertaken in accordance with the regulations and requirements of the NSW Government and the Worksafe.	Prior to any construction works commencing.
<b>Construction Management Plan</b>		
13.1	<p>Prior to commencing construction, a Construction Environmental Management Plan will be prepared.</p> <p>This plan will include:</p> <ol style="list-style-type: none"> <li>1. Hours of work,</li> <li>2. Contact details of the site manager,</li> <li>3. Air quality/dust control procedures,</li> <li>4. Noise management procedures,</li> <li>5. Waste management procedures,</li> <li>6. Flora and Fauna Protection,</li> <li>7. Community Safety,</li> <li>8. Site specific soil erosion and sediment</li> </ol>	To be prepared and submitted to prior to construction.



Commitment		Timing
	<p>control plan,</p> <p>9. Arrangements for temporary pedestrian and vehicular access,</p> <p>10. Storage and Handling of Materials Procedures,</p> <p>11. Environmental Training and Awareness,</p> <p>12. Contact and complaints handling procedures,</p> <p>13. Emergency Preparedness and Response.</p>	
13.2	Measures to control soil erosion during construction will be introduced in accordance with currently accepted principles, as described in Managing Urban Stormwater (EPA NSW) and Soil Erosion and Sediment Control (The Institution of Engineers, Australia).	To be prepared and submitted to prior to construction.
<b>Arborist Report</b>		
14.1	A detailed arborist report will be prepared in relation to all trees to be removed or relocated. This report will detail all measures to be taken to ensure that proposed works do not threaten the ongoing viability of these trees.	Reports to be submitted for assessment as part of any future development applications involving tree removal or relocation.
<b>Demolition</b>		
15.1	Demolition will be undertaken in accordance with the requirements of Australian Standard AS2601-2001: The Demolition of Structures which is incorporated into the <i>Occupational Health and Safety Act 2000</i> administered by WorkCover NSW.	During any future demolition works.
15.2	A licensed asbestos contractor will be engaged to monitor demolition of buildings containing asbestos or other contaminants. Following removal of all asbestos from the site final clearance certificates will be obtained. Further analysis will be undertaken where significant amounts of soil are to become exposed or disturbed as part of the redevelopment works. Further investigations of groundwater conditions and quality will be undertaken if soil contamination is encountered.	A licensed asbestos contractor is to be engaged by the proponent prior to any future demolition works commencing.

Commitment	Timing
<b>Archaeological Relics</b>	
<b><u>16.1</u></b>	<p data-bbox="339 286 834 806"><b><u>Before excavation commences on site, the proponent must engage a suitably qualified historical archaeologist to undertake an archaeological assessment to determine the likelihood and significance of any archaeological relics in areas proposed for excavation. This assessment must contain an appropriate methodology for any archaeological work required and an appropriate research design to guide the archaeological works. This archaeological assessment must be submitted to the Heritage Branch, Office of Environment and Heritage, for comment prior to any archaeological works commencing on the site.</u></b></p> <p data-bbox="858 286 1278 347"><b><u>To be submitted for approval with all future development applications.</u></b></p>