



Ms Erin White  
DA Coordinator  
Social and other Infrastructure Assessments  
Department of Planning and Environment  
GOP Box 39  
SYDNEY NSW 2001

ATTN: Megan Fu- [Megan.Fu@planning.nsw.gov.au](mailto:Megan.Fu@planning.nsw.gov.au)

Dear Ms White

**RE: Response to Environmental Impact Statement for proposed Nihon University at No. 9 Church Street, Newcastle – ‘Newcastle Courthouse’, SHR No. 00796.**

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I refer to your email dated 20 May 2019 inviting comment from the Heritage Council on the Environmental Impact Statement currently on exhibition for the proposed Nihon University Newcastle Campus at 9 Church Newcastle. Part of this site (the 1892 Courthouse building) is currently listed on the State Heritage Register as ‘Newcastle Court House’, State Heritage Register No. 00796. The remainder of the site (the 1949 and 1966 buildings) is listed within ‘Newcastle Government House and Domain’, State Heritage Register No. 01841.

The owner of the site - Nihon University Group, is proposing to adaptively reuse the three former court buildings as an educational establishment with associated student accommodation. Based on the information contained in the Environmental Impact Statement (EIS) by City Plan, and its supplementary heritage and archaeology reports it is understood that major elements of the proposal include:

- Demolition of the 1949 *Administration Building* (east wing) and 1966 *Supreme Court Building* (west wing);
- Minor internal demolition of elements of the 1982 former court house to improve functionality and meet BCA & DDA requirements;
- Construction of two new 4-storey buildings consisting of a 109 bed 'Residential Building' (east wing) and 'Education Building' (west wing). The 'Residential Building' is to contain a food and drink premise (cafeteria);
- Change of use and minor internal alterations to the former court house to a 'Public Building' to be utilised by both students and the public for educational purposes;
- Ground level car parking accommodating 20 spaces, 1 motorbike space and 22 bicycle spaces; and

Due to the state heritage listed status of the site the proponents presented their proposal to the Heritage Council on 6 March 2019. After the presentation the Heritage Council acknowledged the attention to the heritage values of the site in the proposal by Nihon University Group and noted that the early engagement with public authorities has led to an informed response to these significant values.

The Heritage Council supported the decision to provide public access to key spaces in the historic building and noted that the adaptive reuse of the significant spaces is to be commended.

The Heritage Council also acknowledged the significance of the moveable collection associated with the Court House spaces and requested appropriate study and inventory be undertaken. They requested that a movable heritage plan should be developed to ensure that these elements are incorporated in a meaningful way into a comprehensive interpretation strategy.

The Heritage Council also noted that a sympathetic streetscape treatment must be employed which does not impede the understanding of the court and its relationship to its environment and setting. This advice is reiterated below.

### **Built Heritage**

The proposed works have been well thought out, designed and respect the sites heritage significance, particularly that of the 1892 Court House. The adaptive reuse of the site as a purpose-built law school which uses the court building as part of its teaching curriculum for students is perhaps the best possible match.

However, the demolition of the existing two wing buildings and construction of purpose-built residential and educational wing buildings is a major intervention to the state heritage listed site. The endorsed 2015 CMP lists the 1949 building as being of 'little significance' with its architectural significance greatly diminished by successive programs of alteration and additions. The 1966 building is listed as having 'moderate' significance' with its exterior and interiors being intact and with a substantial amount of original building fabric.

The CMP states that both buildings can be retained and adapted but also notes that if the 1949 and 1966 buildings are replaced that '*any new building must be designed in a way that acknowledges the significance of the 1892 Courthouse and is deferential to it in terms of siting, scale, detailed resolution and materials*'. The proposed design of the new residential and educational buildings accomplishes this.

Accordingly, this proposal is supported, so long as the works are in accordance with the EIS documentation and the following recommended built heritage conditions of consent are included in any future approval.

1. Based on the plans within the EIS documentation, some of the works within the 1892 Court house will involve physical impacts to areas and fabric graded as High Significance in the endorsed 2015 Tanner, Kibble & Denton CMP (such as in room G.06).  
The approved conditions of approval should require that all impacts to areas and fabric of high significance be limited to those works required to make the building functional.
2. A movable heritage plan should be developed to ensure that these elements are incorporated in a meaningful way into a comprehensive interpretation plan and the overall development.
3. A sympathetic streetscape treatment must be employed which does not impede the understanding of the court and its relationship to its environment and setting.
4. An Interpretation Plan must be developed within 3 months of any SSD approval and submitted to the Heritage Council (or its delegate) for endorsement. The endorsed Interpretation Plan must be fully implemented within 1 month of the occupation certificate being issued for the development.

### **Historical Archaeology**

The archaeological assessment within the EIS has indicated that archaeological evidence of local heritage significance may be present within the project area. This evidence may include a post-1861 brick lined culvert and agricultural evidence from the mid nineteenth century. The archaeological assessment recommends the provision of a research design and excavation method once the detailed design of the project is understood.

The following advice is recommended to be included in the conditions of consent for the project to guide the disturbance of historical archaeological relics:

1. All affected historical archaeological deposits of local significance are to be subject to professional archaeological excavation and recording before construction works commence which will impact that archaeology. An Archaeological Research Design and Excavation Methodology must be prepared to guide the archaeological program. This must be prepared in accordance with Heritage Council of NSW Guidelines. This document should be prepared in consultation with the Heritage Division, Office of Environment & Heritage.
2. The Archaeological program must be directed by a suitably qualified and experienced Archaeologist (Excavation Director). The nominated Excavation Director must be able to demonstrate their ability to undertake this work through a response to the Heritage Council's Excavation Director Criteria (July 2011) for salvage excavation for a site of local heritage significance.
3. At the completion of the archaeological program, the Proponent shall ensure a final excavation report is prepared which documents the findings of this program and is lodged within 12 months of the end date of the archaeological works. This document must be lodged with the Heritage Council of NSW, the City of Newcastle and the Department of Planning & Environment. The proponent shall also be required to nominate a repository for the relics salvaged from any historical archaeological excavations and ensure their ongoing management in perpetuity.

### **Aboriginal Archaeology**

The State Heritage Register (SHR) listing does not include Aboriginal heritage or Aboriginal archaeological values in the supporting statement of significance, although they are protected under the auspices of the SHR listing.

An Aboriginal 'Due Diligence' assessment has been prepared to support this application prepared by AMAC Group. This Assessment is a 'Due Diligence', which is a defence from harm to Aboriginal objects under the *National Parks and Wildlife Act 1974* and is not recognised as a formal assessment document. It is noted that the document has identified there are likely to be Aboriginal occupation deposits within the subject site which is SHR listed. It is appropriate to recognise and manage evidence of significant Aboriginal occupation where identified in the curtilage of this item as part of the broader cultural landscape of the Newcastle area.

Accordingly, the following advice with respect to activities in the SHR curtilage to manage Aboriginal archaeology is recommended to be included in the conditions of consent for the project:

1. Prior to ground disturbance works and ahead of detailed design being finalised, the study area (including the State Heritage Register listed item relevant to this SSD application) should be the subject of a program of Aboriginal archaeological test investigation to understand what Aboriginal archaeological evidence survives and requires further management. This program should be directed by a suitably qualified and experienced archaeologist and guided by an appropriate Archaeological research

design and excavation methodology consistent with Guidelines published to support the *National Parks and Wildlife Act 1974*.

2. The results of this testing program should be used to identify areas where significant Aboriginal archaeological evidence survives and where present, the Proponent shall prepare a separate statement of heritage impact which considers the impact of the development to this evidence and how best to manage it, including options for redesign to avoid and retain it.
3. If the works cannot avoid the Aboriginal archaeological evidence identified in testing, it should be subject to an appropriate level of archaeological excavation according to standards and guidelines consistent with the *National Parks and Wildlife Act 1974*.
4. At the completion of the archaeological program, the Proponent shall ensure a final excavation report is prepared which documents the findings of this program and is lodged within 12 months of the end date of the archaeological works. This document must be lodged as required under s89a of the National Parks and Wildlife Act 1974, with the Heritage Council of NSW, the City of Newcastle and the Department of Planning & Environment. The proponent shall also be required to ensure the appropriate management of any Aboriginal objects recovered according to proper process.

Separate to the requirements under the Heritage Act 1977, the requirements of the *National Parks and Wildlife Act 1974* also apply to manage harm to Aboriginal objects in NSW and referral should be made to the Office of Environment and Heritage Conservation Regional Delivery Division regarding this SSD application for their comments.

If you have any questions regarding the above matter please contact Katrina Stankowski, Senior Team Leader, Regional Heritage Assessments, at the Heritage Division, Office of Environment and Heritage on 9873 8569 or at [Katrina.Stankowski@environment.nsw.gov.au](mailto:Katrina.Stankowski@environment.nsw.gov.au).

Yours sincerely



**Pauline McKenzie 28/06/2019**  
Executive Director  
Heritage Division  
Office of Environment & Heritage  
**As Delegate of the NSW Heritage Council**