

APPENDIX A: ABORIGINAL ARCHAEOLOGICAL ASSESSMENT

**Lot 1 DP 1199904
Newcastle Courthouse
9 Church Street
Newcastle NSW
Newcastle LGA**



Archaeological



**Benjamin Streat, Yolanda Pavincich &
Steven J. Vasilakis**

Archaeological Management & Consulting Group
& Streat Archaeological Services Pty Ltd

**For
Azusa Sekkei**

**on behalf of
Nihon University**

July 2019

Disclaimer

The veracity of this report is not guaranteed unless it is a complete and original copy.

This report may be inaccurate, incomplete, not original, or modified, if it appears in monochrome form and the signature below is a copy.



*Benjamin Streat
Director of Aboriginal Archaeology
(mobile 0405 455 869)*



Archaeological Management & Consulting Group

AEGIS HERITAGE Pty Ltd ACN 121 655 020

Ph (02) 9568 6093
Fax (02) 9568 6093
Mob 0411 727 395
E-mail amac@archaeological.com.au



Streat Archaeological Services Pty Ltd

ACN 126 731 637 ABN 17 126 731 637

Ph (02) 9564 2206
Mob 0405 455 869
E-mail Streatarchaeological@netspace.net.au
Benjaminstreat@archaeological.com.au

Cover Image

Site inspection of study site rear.
AMAC (2019) IMG_9029.

CONTENTS	PAGE
CONTENTS PAGE	2
TABLE OF FIGURES	4
EXECUTIVE SUMMARY	5
CONTACT DETAILS	8
1.0 INTRODUCTION	9
1.1 BACKGROUND	9
1.2 STUDY AREA	9
1.4 ABORIGINAL CONSULTATION & PARTICIPATION SUMMARY	9
1.5 AUTHOR IDENTIFICATION	10
1.6 ACKNOWLEDGEMENTS	10
2.0 LEGISLATIVE CONTEXT AND STATUTORY CONTROLS	11
2.1 COMMONWEALTH HERITAGE LEGISLATION AND LISTS	11
2.1.1 Environmental Protection and Biodiversity Conservation Act 1999	11
2.1.2 National Heritage List	11
2.1.3 Commonwealth Heritage List	11
2.2 NEW SOUTH WALES STATE HERITAGE LEGISLATION AND LISTS	11
2.2.1 National Parks and Wildlife Act 1974	11
2.2.2 Environmental Planning & Assessment Act 1979	13
2.2.3 The Aboriginal Land Rights Act 1983	13
2.2.4 The Native Title Act 1993	13
2.2.5 New South Wales Heritage Register and Inventory 1999	14
2.2.6 Register of Declared Aboriginal Places 1999	14
2.3 LOCAL PLANNING INSTRUMENTS	14
2.3.1 Newcastle Local Environmental Plan 2012	14
2.3.2 Newcastle Development Control Plan 2012	15
2.3.3 Newcastle Archaeological Management Plan	16
2.4 DUE DILIGENCE CODE OF PRACTICE FOR THE PROTECTION OF ABORIGINAL OBJECTS IN NEW SOUTH WALES	16
2.5 CODE OF PRACTICE FOR ARCHAEOLOGICAL INVESTIGATION OF ABORIGINAL OBJECTS IN NSW	16
2.6 GUIDELINES	16
3.0 DESCRIPTION OF STUDY AREA	18
3.1 REGISTERED ABORIGINAL SITES NEAR THE AREA	18
4.0 ENVIRONMENTAL CONTEXT	20
4.1 TOPOGRAPHY	20
4.2 GEOLOGY AND SOILS	20
4.3 WATERCOURSE	21
4.4 VEGETATION	21
5.0 BACKGROUND INFORMATION	24
5.1 ARCHAEOLOGICAL CONTEXT	24
5.2 THE AWABAKAL NATION	25
5.3 OEH AHIMS SEARCH RESULTS	27
5.4 OTHER SEARCH RESULTS	29
5.5 ABORIGINAL CULTURAL LANDSCAPE MAP 2005	29
5.6 SUMMARY OF ARCHAEOLOGICAL PREDICTIVE MODEL FOR THE REGION	31
5.7 ARCHAEOLOGICAL PREDICTIVE MODEL FOR THE STUDY AREA	35
5.8 PREVIOUS ARCHAEOLOGICAL STUDIES NEAR THE STUDY AREA	36

	6.0 LAND USE AND DISTURBANCE FACTORS	39
6.1	ABORIGINAL LAND USE AND RESOURCES	40
6.2	EUROPEAN LAND USE	41
6.3	DISTURBANCE AND ARCHAEOLOGICAL POTENTIAL	41
	7.0 SIGNIFICANCE ASSESSMENT	42
7.1	ARCHAEOLOGICAL SIGNIFICANCE	42
	7.1.1 Educational Significance	42
	7.1.2 Scientific Significance	42
	7.1.3 Representative Significance	42
7.2	SOCIAL AND CULTURAL SIGNIFICANCE	42
	7.2.1 Historic Significance	43
	7.2.2 Scientific Significance	43
	7.2.3 Aesthetic Significance	43
	8.0 PROPOSED ACTIVITY	44
8.1	DESCRIPTION OF PROPOSED ACTIVITY AND IMPACTS	44
8.2	PROPOSED DEVELOPMENT JUSTIFICATION	44
8.3	POTENTIAL HARM TO ABORIGINAL OBJECTS AND CULTURAL HERITAGE	45
8.4	ASSESSING HARM	45
8.5	AVOIDING AND MINIMISING HARM TO ABORIGINAL OBJECTS	45
8.6	JUSTIFICATION OF HARM TO ABORIGINAL OBJECTS	45
8.7	ECOLOGICALLY SUSTAINABLE DEVELOPMENT AND INTERGENERATIONAL EQUITY	45
	9.0 MANAGEMENT AND MITIGATION	56
9.1	CARE AND CONTROL	56
9.2	RECOMMENDATIONS	56
	GLOSSARY	59
	REFERENCES	62

TABLE OF FIGURES

Figure 3.1	Aerial of study area.	18
Figure 3.2	Topographic map with site location.	19
Figure 4.1	Newcastle Soil Landscape Sheet Map 1:100 000.	20
Figure 4.2	Cross Section of soil landscape illustrating relationships between landscape features and dominant soil materials.	22
Figure 4.3	Topographic map indicating watercourses in blue.	23
Figure 5.1	AHIMS Search Results.	28
Figure 5.2	The Newcastle Local Environmental Plan Heritage Items.	29
Figure 5.3	Aboriginal Cultural Landscapes within the Hunter and Central Coast Region.	30
Figure 5.4	Examples of forager settlement patterns.	31
Figure 5.5	Strahler's hierarchy of tributaries.	32
Figure 8.1	Demolition Plan.	46
Figure 8.2	Conservation Plan.	47
Figure 8.3	Proposed 1 st Floor Plan.	48
Figure 8.4	Proposed 2 nd Floor Plan.	49
Figure 8.5	Proposed 3 rd Floor Plan.	50
Figure 8.6	Proposed 4 th Floor Plan.	51
Figure 8.7	Sections – 1.	52
Figure 8.8	Sections – 2.	53
Figure 8.9	Option – 1 Elevations – 1.	54
Figure 8.10	Survey Plan.	55

EXECUTIVE SUMMARY

Background

Archaeological Management and Consulting Group (AMAC) in conjunction with Streat Archaeological Services Pty Ltd (SAS) was commissioned by Azusa Sekkei in January 2019, to prepare a full Aboriginal Cultural Heritage Assessment and Aboriginal Archaeological assessment including full consultation and a programme of test excavation for the proposed development of an educational facility at Lot 1 DP 1199904, at the following street address 9 Church Street, Newcastle, New South Wales.

A Due Diligence Aboriginal Archaeological Assessment of the study area was undertaken by AMAC (2019), of which it is recommended that further investigation including a programme of test excavation takes place prior to any works commencing.

Aboriginal Consultation

Consultation for this report has been undertaken in accordance with the Office of Environment and Heritage (OEH) and National Parks and Wildlife Act 1974: Part 6; National Parks and Wildlife Act *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (DECCW 2010).

There is a mandatory 28-day period for the Aboriginal stakeholders to comment on this document. A final Aboriginal stakeholder approved version of this report shall be issued at the close of this period (should any changes be required as a result of the exhibition process or Aboriginal stakeholder comment they will be included at this stage).

Recommendations

A background analysis of the environment and archaeological context revealed that the study area has moderate/major surface disturbances however due to the deep soil profile of the soil landscape it is still likely for *insitu* or non *insitu* Aboriginal objects and/or deposits of conservation value being present. Hunter region and Central Coast Aboriginal Cultural Landscape Map (Section 5.5) indicates the area to be of spiritual and ceremonial significance and as such further investigation into the Aboriginal cultural heritage of the study area should take place which involves full community consultation with Registered Aboriginal Stakeholders, which as previously indicated has already commenced. Although the area may have low archaeological significance it may however hold high cultural significance with intrinsic value to the Aboriginal community.

The surrounding landscape features present do indicate that sub-surface Aboriginal objects and/or deposits are likely in undisturbed areas and are likely to be considered of low to moderate Aboriginal archaeological significance.

The proposed activity is not:

- located within a sand dune system, or;
- located within 200m below or above a cliff face, or;
- within 20m of or in a cave, rock shelter, or a cave mouth.
- located on a ridge top, ridge line or headland, or;

The study area is:

- located within 200m of waters

Based on the locale of water and major water tributaries such as the Hunter River and Newcastle Beach, it is likely that Aboriginal movement and land use would be channelled to this location and therefore the site may hold information regarding cultural activities of the area.

In accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974* (DECCW, 2010), it is recommended that further archaeological and cultural assessment is required and in accordance with *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974* (DECCW, 2010).

The following recommendations have been formulated after consultation with the proponent and the Office of Environment and Heritage (OEH);

- Further assessment is required in the form of a full Aboriginal Cultural Heritage Assessment, including full Aboriginal community consultation in accordance with Part 6; National Parks and Wildlife Act, *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (DECCW, 2010) AMAC have been commissioned to proceed with this and is currently being undertaken;
- Subsequent to this report and in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974*, (DECCW 2010), a program of systematic, sub surface archaeological test excavation in accordance with the *Code Of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales, Part 4 National Parks and Wildlife Act 1974* (DECCW 2010), should be undertaken to establish the nature and extent of any archaeological objects and/or deposits including sand bodies that are/may be present. AMAC have been commissioned to proceed with this and is currently being undertaken;
- If archaeological test excavation in accordance with the *Code of Practice for Archaeological Investigations of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974*, (DECCW 2010) reveals no Aboriginal archaeological objects or deposits; The proposed development as outlined in Figure 8.1 – 8.10, should be allowed to 'proceed with caution'. The timing of any test excavation will be dependent on the appointment of building contractors and will occur prior to demolition and building excavation works being undertaken on within the study area.
- If archaeological test excavation in accordance with *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974* (DECCW 2010) reveals Aboriginal archaeological objects or deposits; once the nature and extent of the archaeological site has been established through test excavation. This data is to be analysed and synthesised into a test excavation report and is to accompany the application of an Aboriginal Heritage Impact Permit (AHIP);
- After this and before any ground disturbance takes place all development staff, contractors and workers should be briefed prior to works commencing on site, as to the status of the area and their responsibilities in ensuring preservation of the said area. They should also be informed of their responsibilities regarding any Indigenous archaeological deposits and/or objects that may be located during the following development;

Should any human remains be located during the following development;

- All excavation in the immediate vicinity of any objects of deposits shall cease immediately;
- The NSW police and OEH's Enviroline be informed as soon as possible:
- Once it has been established that the human remains are Aboriginal ancestral remains, OEH and the relevant Registered Aboriginal Parties will identify the appropriate course of action.

CONTACT DETAILS

The contact details for the following archaeologist, NSW Police, OEH and the Local Aboriginal Land Council are as follows:

Organisation	Contact	Contact Details
NSW Environment Line		131 555
NSW Newcastle City Local Area Command		LAC Office: 30 Harriet Street Waratah NSW 2298 Ph: (02) 4926 6515 Fax: (02) 4926 6511
Archaeological Management & Consulting Group	Mr. Benjamin Streat or Mr. Martin Carney	122c-d Percival Road Stanmore NSW 2048 Ph:(02) 9568 6093 Fax:(02) 9568 6093 Mob: 0405 455 869 Mob: 0411 727 395 benjaminstreat@archaeological.com.au
Office of Environment & Heritage NSW Department of Planning and Environment	Archaeologist – Newcastle regional office	PO Box 1002 Dangar NSW 2309 Ph: (02) 4927 3119 rog.hcc@environment.nsw.gov.au
Awabakal Local Aboriginal Land Council (ALALC)	Cultural Heritage Office; Pete Townsend	PO Box 101 Islington NSW 2296 Ph: (02) 4965 4532 culture@awabakallalc.com.au

1.0 INTRODUCTION

1.1 BACKGROUND

Archaeological Management and Consulting Group (AMAC) in conjunction with Streat Archaeological Services Pty Ltd (SAS) was commissioned by Azusa Sekkei in January 2019, to prepare a full Aboriginal Cultural Heritage Assessment and Aboriginal Archaeological assessment including full consultation and a programme of test excavation for the proposed development of an educational facility at Lot 1 DP 1199904, at the following street address 9 Church Street, Newcastle, New South Wales.

A Due Diligence Aboriginal Archaeological Assessment of the study area was undertaken by AMAC (2019), of which it is recommended that further investigation including a programme of test excavation takes place prior to any works commencing.

1.2 STUDY AREA

The study site is that piece of land described as Lot 1 of the Land and Property Information, Deposited Plan 1199904, forming the following street address 9 Church Street, Newcastle in the Parish of Newcastle, County of Northumberland (Figure 3.1 – Figure 3.2).

Lot	Deposited Plan
1	1199904

The aims of this assessment are to assess the Aboriginal archaeological potential of the study area and to measure the impact of the proposed development on any intact soil profiles with the potential to contain Aboriginal archaeological deposits and objects, to develop mitigative strategies under the appropriate legislation and to devise an appropriate strategy for the management of Aboriginal archaeological and cultural heritage values of the area. No information in this report has been identified as or is of a restricted nature.

This report will assess the impact of the proposed development on any identified items or places of Aboriginal cultural heritage value and to develop mitigative strategies under the appropriate legislation for the management of Aboriginal archaeological and cultural heritage values of the study area. The process has also allowed the proponent and/or the proponent's representative to outline the project details and the participating Aboriginal stakeholders to have input into formulating mitigative strategies at identified points in the impact assessment process.

This assessment is intended for submission as an appendix to the *AMAC (In Draft) Aboriginal Cultural Heritage Assessment, Lot 1 DP1199904, 9 Church Street, Newcastle, NSW; Newcastle LGA*.

1.4 ABORIGINAL CONSULTATION & PARTICIPATION SUMMARY

Consultation for this report has been undertaken in accordance with the Office of Environment and Heritage (OEH) and National Parks and Wildlife Act 1974: Part 6; National Parks and Wildlife Act *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (DECCW 2010).

There is a mandatory 28-day period for the Aboriginal stakeholders to comment on this document. A final Aboriginal stakeholder approved version of this report shall be issued at the close of this period (should any changes be required as a result of the exhibition process or Aboriginal stakeholder comment they will be included at this stage).

1.5 AUTHOR IDENTIFICATION

The analysis of the archaeological background and the reporting were undertaken by Mr. Benjamin Streat (BA, Grad Dip Arch Her, Grad Dip App Sc), archaeologist and Director of Streat Archaeological Services Pty Ltd in association with archaeologist Ms. Yolanda Pavincich (B. Arch., Grad Dip Cul Her.) and Steven J. Vasilakis (B. Arch. Hons.), under the guidance of Mr. Martin Carney archaeologist and Managing Director of AMAC Group.

1.6 ACKNOWLEDGEMENTS

The author would like to thank the following for advice and/or input into this assessment;

- Ms. K. .Daunt of DWP;
- Awabakal Local Aboriginal Land Council (ALALC);
- Lower Hunter Aboriginal Inc;
- Guringai Tribal Link Aboriginal Corp.;
- Awabakal Traditional Owners Aboriginal Corp.;
- Awabakal Descendants Traditional Owners;
- Worimi Traditional Owners Corp.;
- A1 Indigenous;
- Widescope Indigenous Group;
- Didge Ngunawal Clan;
- Gidawaa Walang Cultural Heritage Consultants;
- Steve Talbott;
- Lower Hunter Wonnarua Cultural Services;
- Merrigarn;
- Muragadi;
- Murra Bidgee Mullangari;
 - Worimi ACS

.2.0 LEGISLATIVE CONTEXT AND STATUTORY CONTROLS

This section of the report provides a brief outline of the relevant legislation and statutory instruments that protect Aboriginal archaeological and cultural heritage sites within the state of New South Wales. Some of the legislation and statutory instruments operate at a federal or local level and as such are applicable to Aboriginal archaeological and cultural heritage sites in New South Wales. This material is not legal advice and is based purely on the author's understanding of the legislation and statutory instruments. This document seeks to meet the requirements of the legislation and statutory instruments set out within this section of the report.

2.1 COMMONWEALTH HERITAGE LEGISLATION AND LISTS

One piece of legislation and two statutory lists and one non-statutory list are maintained and were consulted as part of this report: The National Heritage List; the Commonwealth Heritage List and the Register of the National Estate.

2.1.1 Environmental Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) offers provisions to protect matters of national environmental significance. This act establishes the National Heritage List and the Commonwealth Heritage List which can include natural, Indigenous and historic places of value to the nation. This Act helps ensure that the natural, Aboriginal and historic heritage values of places under Commonwealth ownership or control are identified, protected and managed (Australian Government 1999).

2.1.2 National Heritage List

The National Heritage List is a list which contains places, items and areas of outstanding heritage value to Australia; this can include places, items and areas overseas as well as items of Aboriginal significance and origin. These places are protected under the Australian Government's EPBC Act.

2.1.3 Commonwealth Heritage List

The Commonwealth Heritage List can include natural, Indigenous and historic places of value to the nation. Items on this list are under Commonwealth ownership or control and as such are identified, protected and managed by the Federal Government.

2.2 NEW SOUTH WALES STATE HERITAGE LEGISLATION AND LISTS

The state (NSW) based legislation that is of relevance to this assessment comes in the form of the acts which are outlined below.

2.2.1 National Parks and Wildlife Act 1974

The NSW National Parks and Wildlife Act 1974 (as amended) defines Aboriginal objects and provides protection to any and all material remains which may be evidence of the Aboriginal occupation of lands continued within the state of New South Wales. The relevant sections of the Act are sections 84, 86, 87 and 90.

An Aboriginal object, formerly known as a relic, is defined as:

any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains” (NSW Government, 1974).

It is an offence to harm or desecrate an Aboriginal object or places under Part 6, Section 86 of the NPW Act:

Part 6, Division 1, Section 86: Harming or desecrating Aboriginal objects and Aboriginal places:

- (1) *A person must not harm or desecrate an object that the person knows is an Aboriginal object.*

Maximum penalty:

- (a) *in the case of an individual—2,500 penalty units or imprisonment for 1 year, or both, or (in circumstances of aggravation) 5,000 penalty units or imprisonment for 2 years, or both, or*
- (b) *in the case of a corporation—10,000 penalty units.*

- (2) *A person must not harm an Aboriginal object.*

Maximum penalty:

- (a) *in the case of an individual—500 penalty units or (in circumstances of aggravation) 1,000 penalty units, or*
- (b) *in the case of a corporation—2,000 penalty units.*

- (3) *For the purposes of this section, **circumstances of aggravation** are:*

- (a) *that the offence was committed in the course of carrying out a commercial activity, or*
- (b) *that the offence was the second or subsequent occasion on which the offender was convicted of an offence under this section.*

This subsection does not apply unless the circumstances of aggravation were identified in the court attendance notice or summons for the offence.

- (4) *A person must not harm or desecrate an Aboriginal place.*

Maximum penalty:

- (a) *in the case of an individual—5,000 penalty units or imprisonment for 2 years, or both, or*
- (b) *in the case of a corporation—10,000 penalty units.*

- (5) *The offences under subsections (2) and (4) are offences of strict liability and the defence of honest and reasonable mistake of fact applies.*

- (6) *Subsections (1) and (2) do not apply with respect to an Aboriginal object that is dealt with in accordance with section 85A.*

- (7) *A single prosecution for an offence under subsection (1) or (2) may relate to a single Aboriginal object or a group of Aboriginal objects.*

- (8) *If, in proceedings for an offence under subsection (1), the court is satisfied that, at the time the accused harmed the Aboriginal object concerned, the accused*

did not know that the object was an Aboriginal object, the court may find an offence proved under subsection (2).

2.2.2 Environmental Planning & Assessment Act 1979

The *Environmental Planning and Assessment Act 1979 (EP&A Act)* states that environmental impacts of proposed developments must be considered in land use planning procedures. Four parts of this act relate to Aboriginal cultural heritage.

- Part 3, divisions 3, 4 and 4A refer to Regional Environmental Plans (REP) and Local Environmental Plans (LEP) which are environmental planning instruments and call for the assessment of Aboriginal heritage among other requirements.
- Part 4 determines what developments require consent and what developments do not require consent. Section 79C calls for the evaluation of

The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality (NSW Government 1979).

- Part 5 of this Act requires that impacts on a locality which may have an impact on the aesthetic, anthropological, architectural, cultural, historic, scientific, recreational or scenic value are considered as part of the development application process (NSW Government, 1979).

2.2.3 The Aboriginal Land Rights Act 1983

The NSW *Aboriginal Land Rights Act 1983 (ALR Act)*, administered by the NSW Department of Aboriginal Affairs, established the NSW Aboriginal Land Council (NSWALC) and Local Aboriginal Land Councils (LALCs). The ALR Act requires these bodies to:

- take action to protect the culture and heritage of Aboriginal persons in the council's area, subject to any other law;
- promote awareness in the community of the culture and heritage of Aboriginal persons in the council's area.

These requirements recognise and acknowledge the statutory role and responsibilities of New South Wales Aboriginal Land Council and Local Aboriginal Land Councils. The ALR Act also establishes the Office of the Registrar whose functions include but are not limited to, maintaining the Register of Aboriginal Land Claims and the Register of Aboriginal Owners.

Under the ALR Act the Office of the Registrar is to give priority to the entry in the Register of the names of Aboriginal persons who have a cultural association with:

- lands listed in Schedule 14 to the NPW Act;
- lands to which section 36A of the ALR Act applies (NSW Government, 1974 & DECCW 2010).

2.2.4 The Native Title Act 1993

The *Native Title Act 1993 (NTA)* provides the legislative framework to:

- recognise and protect native title;
- establish ways in which future dealings affecting native title may proceed, and to set standards for those dealings, including providing certain procedural rights for registered native title claimants and native title holders in relation to acts which affect native title;

- establish a mechanism for determining claims to native title;
- provide for, or permit, the validation of past acts invalidated because of the existence of native title.

The National Native Title Tribunal has a number of functions under the NTA including maintaining the Register of Native Title Claims, the National Native Title Register and the Register of Indigenous Land Use Agreements and mediating native title claims (NSW Government, 1974 & DECCW 2010).

2.2.5 New South Wales Heritage Register and Inventory 1999

The State Heritage Register is a list of places and objects of particular importance to the people of NSW. The register lists a diverse range of over 1,500 items, in both private and public ownership. Places can be nominated by any person to be considered to be listed on the Heritage register. To be placed an item must be significant for the whole of NSW. The State Heritage Inventory lists items that are listed in local council's local environmental plan (LEP) or in a regional environmental plan (REP) and are of local significance.

2.2.6 Register of Declared Aboriginal Places 1999

The NPW Act protects areas of land that have recognised values of significance to Aboriginal people. These areas may or may not contain Aboriginal objects (i.e. any physical evidence of Aboriginal occupation or use). Places can be nominated by any person to be considered for Aboriginal Place gazettal. Once nominated, a recommendation can be made to EPA/OEH for consideration by the Minister. The Minister declares an area to be an 'Aboriginal place' if the Minister believes that the place is or was of special significance to Aboriginal culture. An area can have spiritual, natural resource usage, historical, social, educational or other type of significance.

Under section 86 of the NPW Act it is an offence to harm or desecrate a declared Aboriginal place. Harm includes destroying, defacing or damaging an Aboriginal place. The potential impacts of the development on an Aboriginal place must be assessed if the development will be in the vicinity of an Aboriginal place (DECCW 2010).

2.3 LOCAL PLANNING INSTRUMENTS

2.3.1 Newcastle Local Environmental Plan 2012

The Newcastle Local Environmental Plan was prepared by Newcastle City Council in 2012. Section 5.10 deals with Heritage Conservation. The plan states in Clause 1:

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Newcastle,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites, and
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

It is subsections c and d of this clause which are of relevance to this development.

The plan states in Clause 2, that consent is required when:

- (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):
 - (i) a heritage item,
 - (ii) an Aboriginal object,
 - (iii) a building, work, relic or tree within a heritage conservation area.
- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item.
- (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (d) disturbing or excavating an Aboriginal place of heritage significance.
- (e) erecting a building on land:
 - (i) on which a heritage item is located or that is within a heritage conservation area, or;
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.
- (f) subdividing land:
 - (i) on which a heritage item is located or that is within a heritage conservation area, or;
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

In addition to this Clause 8 states:

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and
- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration.

This report is fulfilling section 8 (a) of this clause.

2.3.2 Newcastle Development Control Plan 2012

The Newcastle DCP states that:

Where a development will disturb the ground surface, provide documentation to satisfy the consent authority that the due diligence process has been followed. The documentation should include (but is not limited to) the following:

- A statement indicating the results of the AHIMS database search and any other sources of information considered.
- A statement indicating whether there are landscape features that indicate the presence of Aboriginal objects.

- A statement indicating whether the proposed development is likely to harm Aboriginal objects.
- A statement indicating whether an Aboriginal Heritage Impact Permit (AHIP) is required.
- Where required, prepare an Aboriginal cultural heritage assessment to assess the impact of the proposed development on Aboriginal cultural heritage consistent with the Office of Environment and Heritage *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW*.
- Where required, prepare an Aboriginal cultural heritage assessment report consistent with the Office of Environment and Heritage *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW* that includes strategies to avoid or minimise harm to Aboriginal objects and places of cultural significance.
- Where the investigation and assessment requires the preparation of an Aboriginal cultural heritage assessment report, provide documentation to satisfy the consent authority that the relevant Aboriginal community and stakeholders have been involved in the decision-making process.

2.3.3 Newcastle Archaeological Management Plan

Suters Architects and Planners, in association with Lavelle, C and M.J. Doring Pty Ltd and Turner, created an Archaeological Management Plan for Newcastle City Council in 1997, regarding potential archaeological sites in Newcastle. This plan does not refer to Aboriginal Archaeology.

2.4 DUE DILIGENCE CODE OF PRACTICE FOR THE PROTECTION OF ABORIGINAL OBJECTS IN NEW SOUTH WALES

This assessment conforms to the parameters set out in the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974*, (DECCW 2010).

The Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales states that if;

- a desktop assessment and visual inspection confirm that there are Aboriginal objects or that they are likely, then further archaeological investigation and impact assessment is necessary.

2.5 CODE OF PRACTICE FOR ARCHAEOLOGICAL INVESTIGATION OF ABORIGINAL OBJECTS IN NSW

Any further work resulting from recommendations should be carried out conforming to the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974*, (DECCW 2010).

2.6 GUIDELINES

This report has been carried out in consultation with the following documents which advocate best practice in New South Wales:

- Aboriginal Archaeological Survey, Guidelines for Archaeological Survey Reporting (NSW NPWS 1998);

- Aboriginal Cultural Heritage Standards and Guidelines Kit (NPWS 1998);
- Australia ICOMOS 'Burra' Charter for the conservation of culturally significant places (Australia ICOMOS 1999);
- Part 6; National Parks and Wildlife Act Aboriginal Cultural Heritage Consultation Requirements for Proponents (DECCW 2010);
- Protecting Local Heritage Places: A Guide for Communities (Australian Heritage Commission 1999).

3.0 DESCRIPTION OF STUDY AREA

The study site is that piece of land described as Lot 1 of the Land and Property Information, Deposited Plan 1199904, forming the following street address 9 Church Street, Newcastle in the Parish of Newcastle, County of Northumberland (Figure 3.1 – Figure 3.4).

Lot	Deposited Plan
1	1199904

3.1 REGISTERED ABORIGINAL SITES NEAR THE AREA

There are currently no registered Aboriginal archaeological and cultural sites located within the study area that the author of this report is aware of.



Figure 3.1 Aerial of study area.
Study area in red. Six Maps, LPI Online (accessed 13th February 2019)

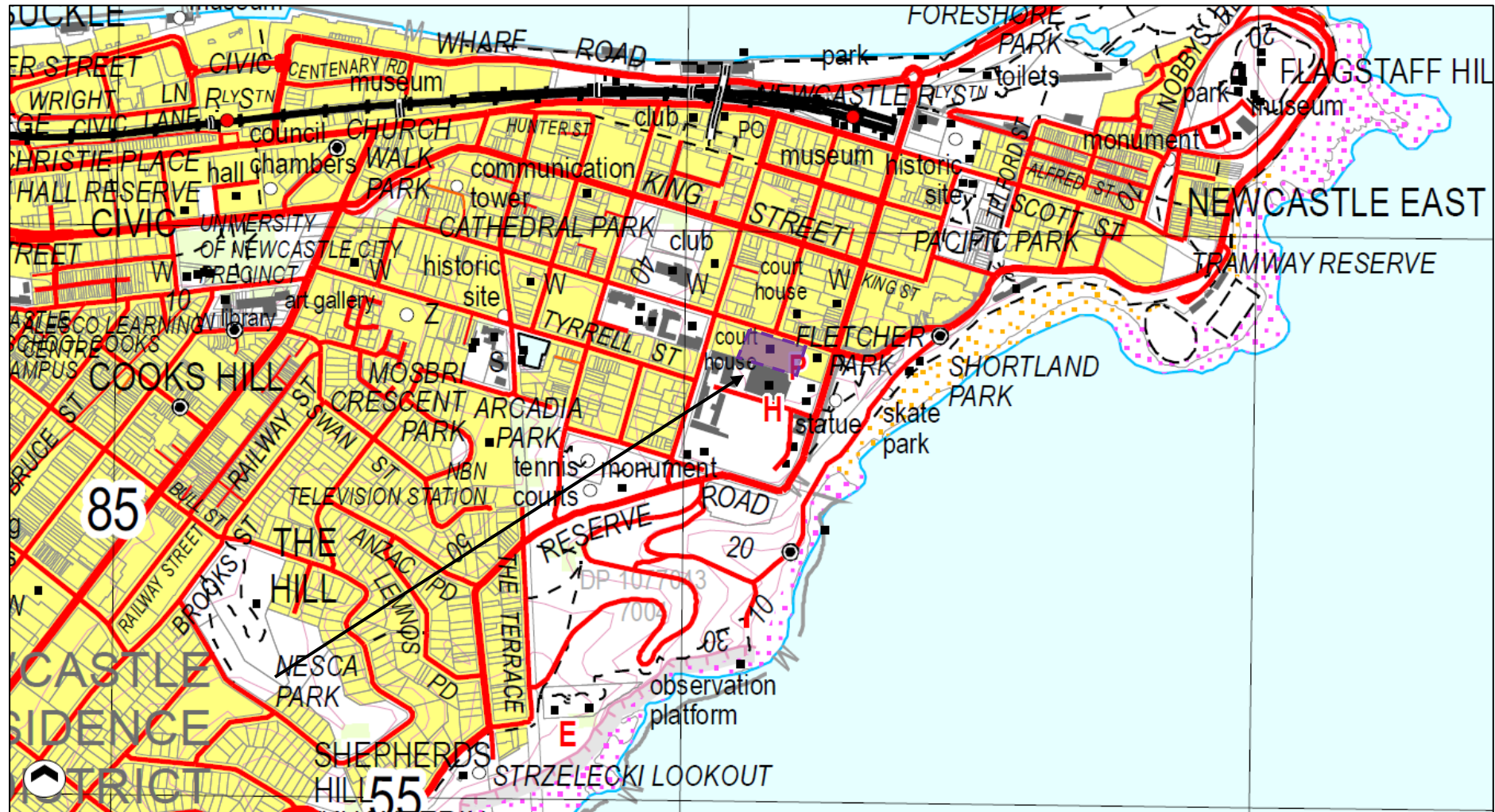


Figure 3.2 Topographic map with site location.

Study area indicated in purple fill and black arrow. Six Maps, LPI Online (accessed 13th February 2019).

4.0 ENVIRONMENTAL CONTEXT

To adequately understand and assess the potential Aboriginal archaeological resource that may be present within the study area it is vital to understand the environment in which the Aboriginal inhabitants of the study area carried out their activities. The environment that Aboriginal inhabitants lived in is a dominant factor in shaping their activity and therefore the archaeological evidence created by this activity. Not only will the resources available to the Aboriginal population have an influence on the evidence created but the survival of said evidence will also be influenced by the environment.

4.1 TOPOGRAPHY

The study area lies on a sloping landform towards the Hunter River. The study area extends over one topographic zone which consists of rolling low hills (slope 3-20%) on sediments of the Newcastle Coal Measures of the Awaba Hills region. The average elevation ranging between 50-160m. This topographic zone is located on the Killingworth (ki) soil landscape where drainage plains are long (>500m) and gently inclined (Matthei 1995).



Figure 4.1 Newcastle Soil Landscape Sheet Map 1:100 000.
Approximate location of study area indicated in red circle. Matthei (1995).

4.2 GEOLOGY AND SOILS

The soil landscape map for the Newcastle 1:100 000 map sheet shows the majority of the study area lies within the Killingworth (ki) soil landscape. The geology of the study area is on Permian Newcastle Coal Measures consisting of coal, tuff, conglomerate, sandstone and shale. Sediment depth is up to 38 m, comprising 1 – 3 m of sand which is underlain by stiff estuarine clay.

The Hamilton soil landscape is a residual soil landscape which occurs on Quaternary deposits of the undulating well drained Hunter Plain. Soils are typically greater than 15 centimetres in depth, well drained weak Podzols with some greater than 15 centimetres in depth well drained brown Podzolic soils on fans.

The Hamilton (hma) landscape variant is a recently incised channel cut into the Hamilton (hm) soil landscape, part of this channel has been excavated by human activity the form of the widening and deepening Hunter River channel, (Matthei, 1995 p. 38).

Table 4.1 Description of dominant soil material

Dominant Soil Material	Soil Horizon	Description
Ki1	A1 Horizon	Brownish black pedal loam with sandy loam or silt loam texture with a weak-moderate structure and a porous fabric. Slightly acidic, few charcoal fragments and ironstone occur. Roots are common near the surface and rare at depth
hm2	A2 Horizon	Dull yellow orange to greyish yellow brown sand with coarse sand texture with single grained structure and a sandy fabric. Slightly acidic, stones and charcoal are absent. Roots are common near the surface and rare at depth.
hm3	B Horizon	Dark brown to dull yellow orange clayey sand with fine sandy clay coarse sand texture with single grained structure and a sandy fabric. Slightly acidic, stones and roots are absent

4.3 WATERCOURSE

The study area lies in a resource zone in which reliable fresh water was present. Much of the study area is covered by very well drained soil profiles, however, reliable fresh water was available from Cottage Creek and Hunter River, which is on the immediate western edge of the study area. The study area is on the immediate coastal fringe where enormous food resources were available. As such this area has been identified as of being of high archaeological potential.

4.4 VEGETATION

All the natural vegetation has been cleared from the study area for urban development. Species that may have occupied the site include *Casuarina cunninghamiana* 'River Sheoak' along the banks of the Hunter River and Cottage Creek. *Casuarina glauca* 'Swamp Sheoak', *Eucalyptus robusta* 'Swamp Mahogany', *Melaleuca quinquenervia* 'Broad-Leaved Paperbark', *Eucalyptus grandis* 'Flooded Gum' and *Waterhousea floribunda* 'Weeping Lilly Pilly' (Matthei 1995, p. 38).

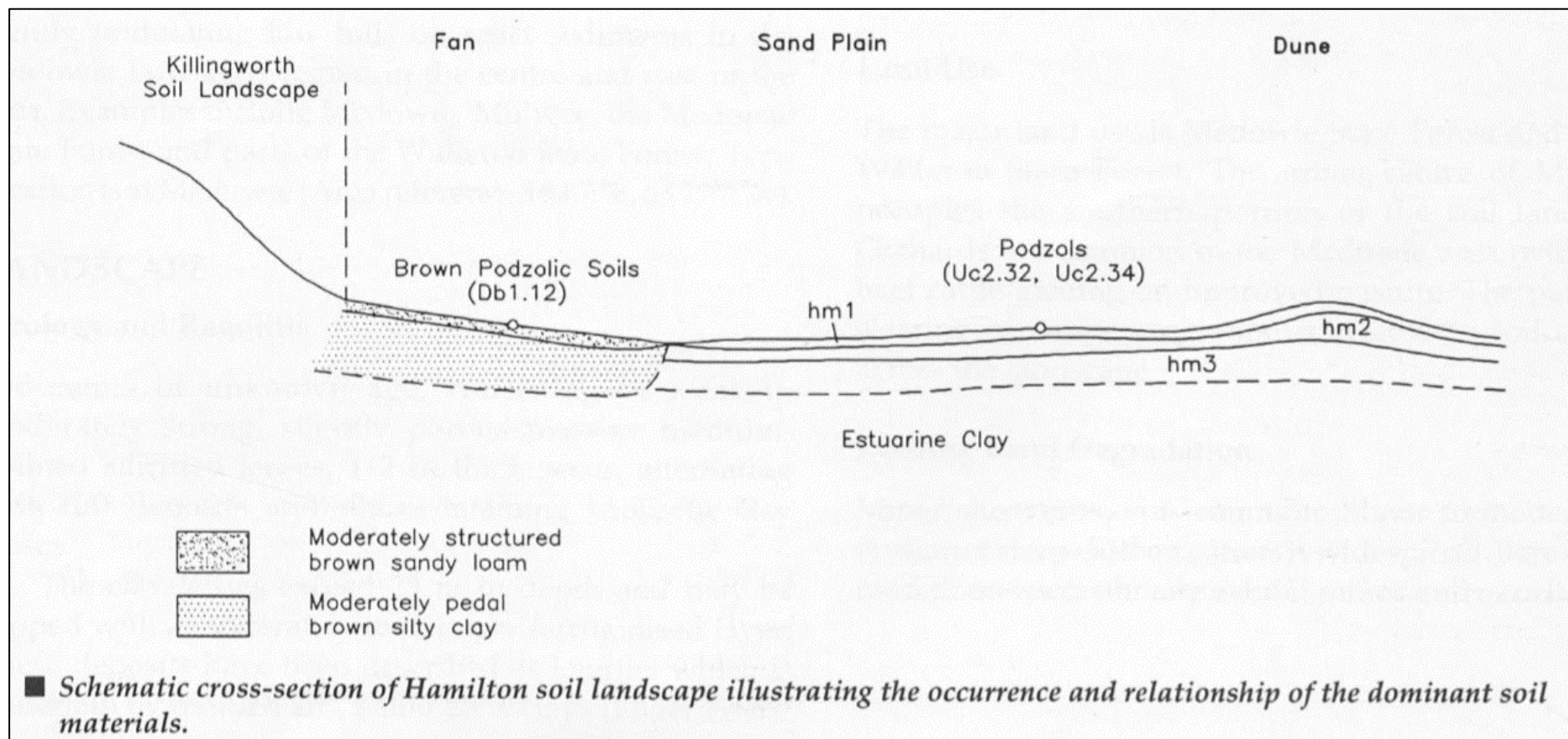


Figure 4.2 Cross Section of soil landscape illustrating relationships between landscape features and dominant soil materials.
Soil Landscapes of the Newcastle 1:100 000 sheet report. Matthei (1995).

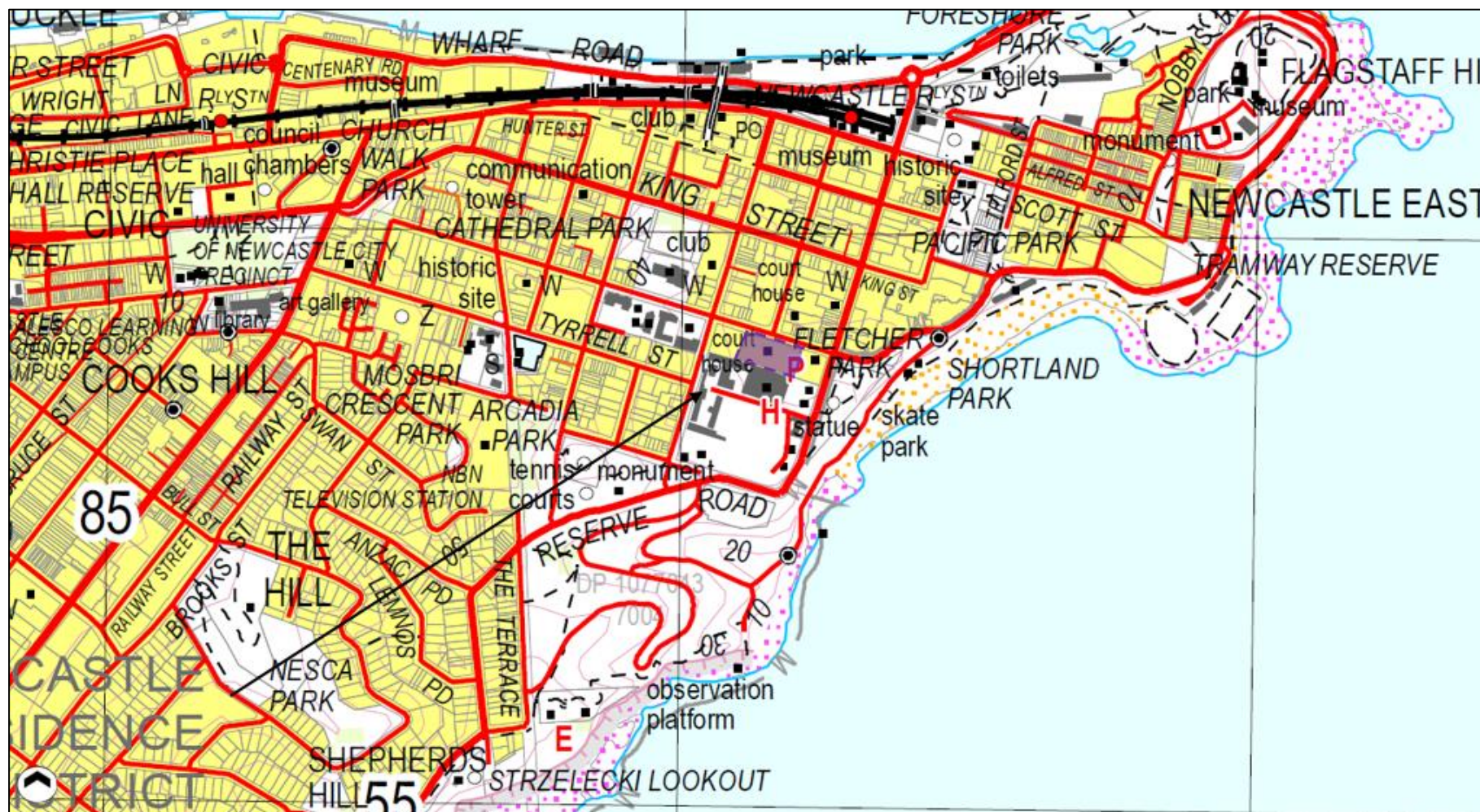


Figure 4.3 Topographic map indicating watercourses in blue.
Study area indicated in purple fill and black arrow. Six Maps, LPI Online (Accessed 13th February 2019).

5.0 BACKGROUND INFORMATION

Pre-field work research consisted of an analysis and synthesis of the background data to determine the nature of the potential archaeological and cultural heritage resource in the region.

Background research entailed a detailed review of sources of information on the history, oral history, ethno-history and archaeological background of the study area and surrounds and will include but not be limited to material from:

- OEH archaeological assessment and excavation reports and cultural heritage assessments;
- OEH Library;
- State Library of NSW including the Mitchell Library;
- Local libraries and historical associations;
- National Library of Australia.

A search of the OEH AHIMS was undertaken and the results examined. The site card for each site within 1000m in all directions from the centre of the study area was inspected (where available) and an assessment made of the likelihood of any of the sites being impacted by the proposed development.

The OEH library of archaeological reports (Hurstville) was searched and all relevant reports were examined. Searches were undertaken on the relevant databases outlined in Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974, (DECCW 2010);

Further to this the following sources were examined:

- The National Heritage List;
- The Commonwealth Heritage List;
- The NSW State Heritage Inventory;
- The National Native Title Register;
- The Register of Declared Aboriginal Places;
- Prevailing local and regional environmental plans;
- Environmental background material for the study area.

5.1 ARCHAEOLOGICAL CONTEXT

It is generally accepted that Aboriginal occupation of Australia dates back at least 40,000 years (Attenbrow 2002, p.20-21; Kohen et al. 1983). The result of this extensive and continued occupation has left a vast amount of accumulated depositional evidence, and the Port Stephens area is no exception. Archaeological evidence of occupation of the region by Aboriginal people dates from the Pleistocene period. Evidence for the earliest occupation includes C14 dates from Moffats Swamp of 14,750 BP, north of Newcastle (AMBS 1993) and 10 000–13000 BP, at Glennies Creek (Dallas 2003, p.17). The majority of reliably dated archaeological sites within the region are less than 5,000 years old which places them in the mid to late Holocene period. A combination of reasons has been suggested for this collection

of relatively recent dates. There is an argument that an increase in population or 'intensification' of resource use across much of the continent took place around this time leading to a great deal more evidence being deposited compared to the sparser pre-occupation period. It is also the case that many archaeological sites along the past coastline may have been submerged as the seas rose to approximately their current level around 6,000 years ago. This would have had the effect of covering evidence of previous coastal occupation.

Different landscape units not only influence the preservation of sites but can determine where certain site types will be located. On the coastal fringe of the most common Aboriginal archaeological site type are Open Artefact Scatters or Open Campsites which are locations where two or more pieces of stone show evidence of human modification. These sites can sometimes be very large, up to thousands of artefacts and include other habitation remains such as animal bone, shell or fireplaces known as *hearths*, (Attenbrow 2002, p.75-76). Evidence of open scatters can be located in areas where erosion has taken place or embedded in stratified sediments visible only if erosion or excavation has occurred. Open scatters are most likely to occur near water sources and are generally found on ridges, saddles, spurs and headlands (Brayshaw 1985; AMBS 1993, p.3).

5.2 THE AWABAKAL NATION

It is estimated that around 250 distinct languages were in use throughout the continent at the time of contact. The exact number cannot be known for certain, however, 250 is a conservative estimate. These languages fell within two language groups; the *Pama-Nyungan* and the *Non-Pama-Nyungan* languages. Knowledge of the different language groups in any given area is variable. Early European recordings noted the names of particular Aboriginal individuals and groups but were not always clear about which named groups represented a language rather than some other social grouping (Hardy and Streat 2008). There was one language group observed in the Newcastle area at the time of European contact, this was the Awabakal language group.

Austin (Austin et al. 1995) suggests, that speakers of the Awabakal language were spread around the greater Newcastle region and the estuary of the Hunter River. Their territory ranged from Fern Bay and Stockton in the north to Tuggerah Lakes area in the south. Their nearest neighbours were the Worimi to the north who were centred around Port Stephens, however, it is believed the Hunter River, as a major geographic feature, was the demarcation line between the territories of these two language groups. To the south of the Awabakal were the Kuringgai, whilst the Wonaruah, and the Darkinjung, occupied areas to the northeast and southeast of the Awabakal, and the Kamilaroi occupied land to the northwest. This view is concurred with by the Australian Institute of Aboriginal and Torres Strait Islander Studies, (Australian Institute of Aboriginal and Torres Strait Islander Studies 2000). There may have been a significant amount of interaction, both cultural and linguistic, between the Awabakal and the Worimi nations and it is probable that the territorial boundary altered from time to time.

Within these large language groups resource access and ownership was centred around extended family groups or 'clans' which appear to have had ownership of land, (Attenbrow 2002). As it was unlikely to be acceptable to find sexual partners within the family grouping, and for other reasons such as resource sharing, a number of clans would often travel together in a larger group. These groups are referred to as *bands*. Whether the clan or the band was the most important group politically to an individual is likely to have varied from place to place. Group borders were generally physical characteristics of the landscape inhabited, such as waterways or the limits of a particular resource. Groups also shared

spiritual affiliations, often a common dreaming ancestor, history, knowledge and dialect, (Attenbrow 2002).

The majority of reliably dated archaeological sites within the region are less than 5,000 years old which places them in the mid to late Holocene period. A combination of reasons has been suggested for this collection of relatively recent dates. There is an argument that an increase in population and 'intensification' of much of the continent took place around this time leading to a great deal more evidence being deposited than was deposited as a result of the sparser pre-occupation period (Hiscock 2008, p.106).

Different landscape units not only influence the preservation of sites but can determine where certain site types will be located. Across the whole of the Newcastle area the most common Aboriginal archaeological site type is occupation evidence in open artefact scatters (DECCW 2010). These are often found in elevated areas above swamps or creeks and often contain diagnostic tool types. Many hundreds of artefact sites have been recorded within the Hunter Valley, despite the fact, that much of the area has already been developed to such an extent that any archaeological evidence that may have once been present has been destroyed.

A wide variety of activities comprised the lifestyle of the Aboriginal groups across the region. Some behaviours leave traces which can be retrieved by archaeological study of material remains. Many of these can be reconstructed by oral history, observations of European explorers and ethnologists, and other forms of past recording such as photography or art. Some of the details of the complexity and sophistication of the past lifestyles of Aboriginal people in the area have been lost, but many can be reconstructed using the variety of sources available.

The influx of European settlers had a substantial impact on the land use patterns of the Worimi and severely altered the movement between the coast and the interior that is thought to have existed at the time. The coastal fringe was a particularly rich resource zone and was exploited for resources such as fish, shellfish, small mammals and on occasion whales. Seasonal movement was observed by European settlers and documented at the time; however, prevailing archaeological theory suggests that the traditional view of a nomadic Aboriginal band is somewhat inaccurate. While movement undoubtedly occurred, it appears to have been on a lower scale than previously thought, particularly in such resource rich zones as the coastal fringe (Dallas 2008).

It is generally accepted that Aboriginal occupation of Australia dates back at least 40,000 years (Attenbrow 2002 p.20-21; Kohen et al. 1983). The result of this extensive and continued occupation has left a vast amount of accumulated depositional evidence, and the Port Stephens area is no exception. Archaeological evidence of occupation of the region by Aboriginal people dates from the Pleistocene period. Evidence for the earliest occupation includes C14 dates from Moffats Swamp of 14,750 BP, north of Newcastle (Baker, 1993) and 10 000–13000 BP, at Glennies Creek (Dallas 2003, p.17). The majority of reliably dated archaeological sites within the region are less than 5,000 years old which places them in the mid to late Holocene period. A combination of reasons has been suggested for this collection of relatively recent dates. There is an argument that an increase in population and 'intensification' of much of the continent took place around this time leading to a great deal more evidence being deposited compared to the sparser, pre-occupation period. It is also the case that many archaeological sites along the past coastline may have been submerged as the seas rose to approximately their current level around 6,000 years ago. This would have had the effect of covering evidence of previous coastal occupation.

5.3 OEH AHIMS SEARCH RESULTS

The Archaeological Heritage and Information Management System Database (AHIMS) is located at the OEH Offices at Hurstville in New South Wales. This database comprises information about all the previously recorded Aboriginal archaeological sites registered with OEH. Further to the site card information that is present about each recorded site, the assessments and excavation reports that are associated with the location of many of these sites are present in the library of reports.

The location of these sites must be viewed as purely indicative as errors in the recording of the locations of sites often occurs due to the disparate nature of the recording process, the varying level of experience of those locating the sites and the errors that can occur when transferring data. If possible, sites that appear to be located near a study area should be relocated.

An AHIMS extensive 1km search was conducted on the 18th January 2019 (ID 392075). This search resulted in 24 registered sites within 1000 m of the study area. The following table is comprised of the results listed from the extensive search.

Table 5.1 AHIMS Search Results

Site ID	Site name	Site status	Site features
38-4-0525	Catholic Education Site	Valid	Artefact
38-4-0454	Yirannaii;	Valid	Aboriginal Ceremony and Dreaming
38-4-0796	200 Hunter Street PAD	Valid	Potential Archaeological Deposit (PAD)
38-4-0957	NCL 931	Valid	Artefact-
38-4-1020	Coutts Sailors Home PAD1	Valid	Potential Archaeological Deposit (PAD)
38-4-1084	Newcastle CBD PAD	Valid	Potential Archaeological Deposit (PAD)
38-4-1205	Restriction applied. Please contact ahims@environment.nsw.gov.au.	Valid	
38-4-1632	TA1 Newcastle	Destroyed	Artefact-
38-4-1695	11-15 Watt St IF 1	Valid	Artefact-
38-4-1960	Newcastle Signal Box IF	Destroyed	Artefact-



Figure 5.1 **AHIMS Search Results.**
OEH (2018) Memory Map (2012) Topographic Map 1:25000 South East.

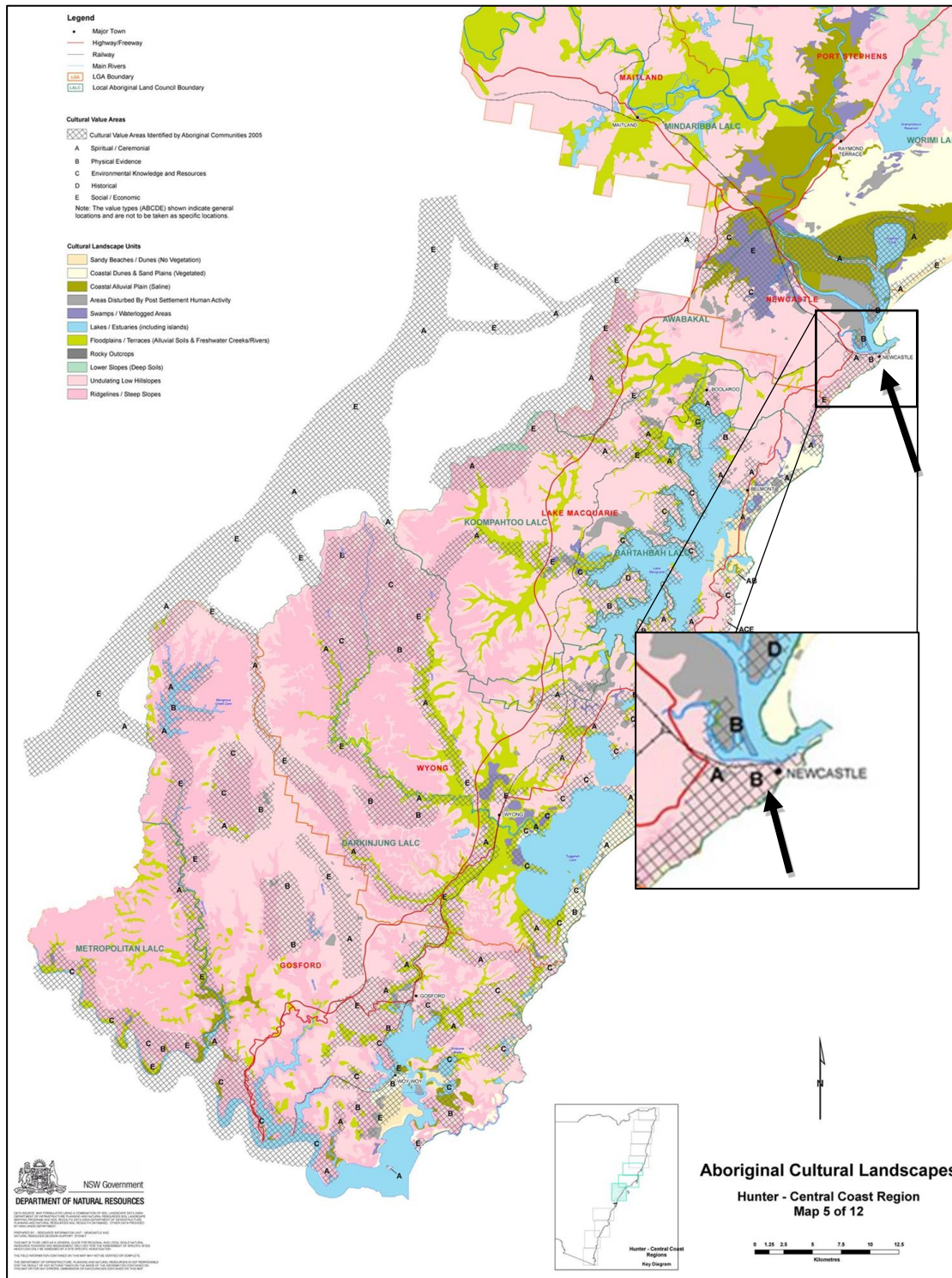


Figure 5.3 Aboriginal Cultural Landscapes within the Hunter and Central Coast Region. Study area indicated by Black arrow. Department of Planning (2005).

5.6 SUMMARY OF ARCHAEOLOGICAL PREDICTIVE MODEL FOR THE REGION

Predictive modelling is an adaptive process which relies on a framework formulated by a number of factors, including but not limited to the use of local land systems, the environmental context, archaeological work and any distinctive sets of constraints that would influence land use patterns. This is based on the concept that different landscape zones may offer different constraints, which is then reflected in the spatial distributions and forms of archaeological evidence within the region (Hall and Lomax 1996).

Early settlement models focused on seasonal mobility, with the exploitation of inland resources being sought once local ones become less abundant. These principles were adopted by Foley (1981) who developed a site distribution model for forager settlement patterns. This model identifies two distinctive types of hunter and gather settlements; 'residential base camps' and 'activities areas'. Residential base camps are predominately found located in close proximity to a reliable source of permanent water and shelter. From this point the surrounding landscape is explored and local resources gathered. This is reflected in the archaeological record, with high density artefact scatters being associated with camp bases, while low density and isolated artefacts are related to the travelling routes and activity areas (Foley 1981).

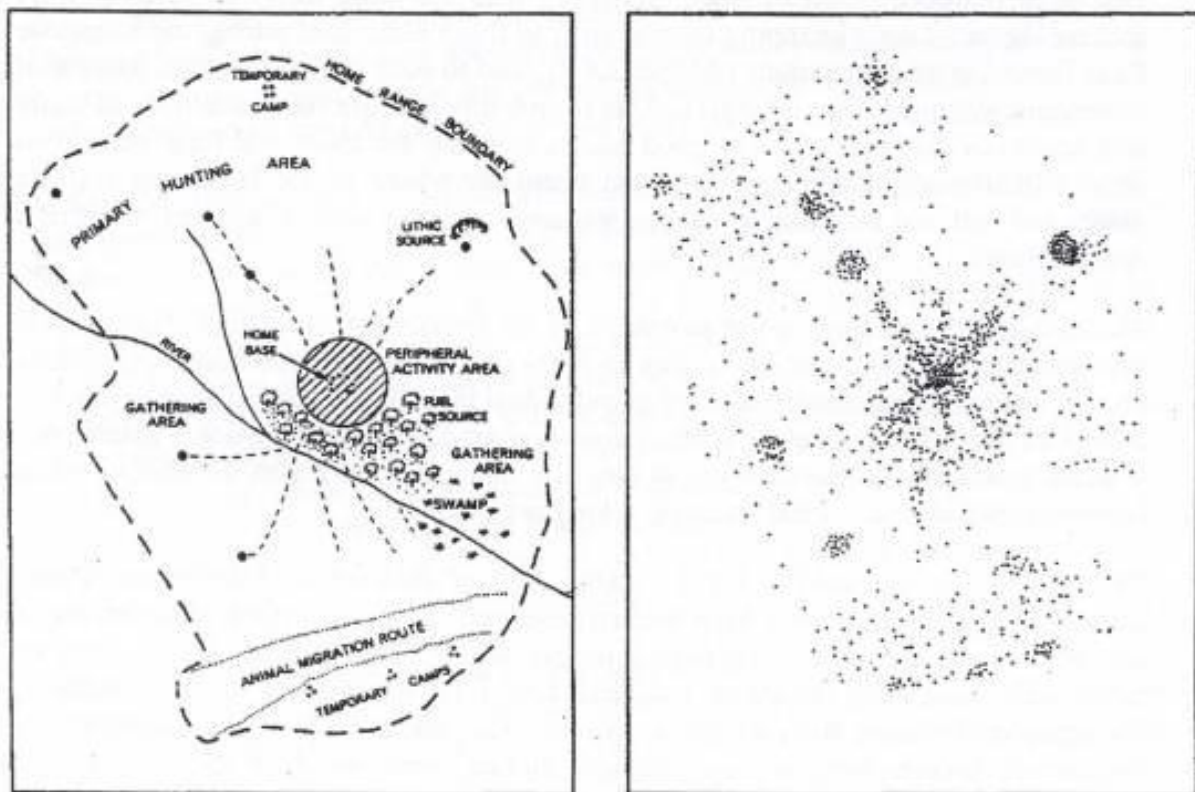


Figure 5.4 Examples of forager settlement patterns.
Foley (1981).

However, more recently, investigation into understanding the impacts of various episodes of occupation on the archaeological record has been explored, of which single or repeated events are being identified. This is often a complex process to establish, specifically within predictive models as land use and disturbance can often result in post depositional processes and the superimposition of archaeological materials by repeated episodes of occupation.

The principals behind this model have been incorporated into other predictive models such as that of McBryde (1976). McBryde's model is centred on the utilisation of food resources as a contributor to settlement patterns, specifically with reference to the predictability and reliability of food resources for Aboriginal people within the immediate coastal fringe and/or hinterland zone, with migratory behaviour being a possibility. Resources such as certain species of animals, particularly; small marsupials and reptiles, plant resources and nesting seabirds may have been exploited or only available on a seasonal or intermittent basis. As such, archaeological sites which represent these activities whilst not being representative of permanent occupation may be representative of brief, possibly repeated occupation.

Jo McDonald and Peter Mitchell have since contributed to this debate, with reference to Aboriginal archaeological sites and proximity to water using their Stream order model (1993). This model utilises Strahler's hierarchy of tributaries. This model correlates with the concept of proximity to permanent water and site locations and their relationship with topographical units. They identify that artefact densities are greatest on terraces and lower slopes within 100m of water.

Intermittent streams, however, also have an impact on the archaeological record. It was discovered that artefacts were most likely within 50 – 100m of higher (4th) order streams, within 50m (2nd) order streams and that artefact distributions around (1st) order streams was not significantly affected by distance from the watercourse. Landscapes associated with higher order streams (2nd) order streams were found to have higher artefact densities and more continuous distribution than lower order streams.

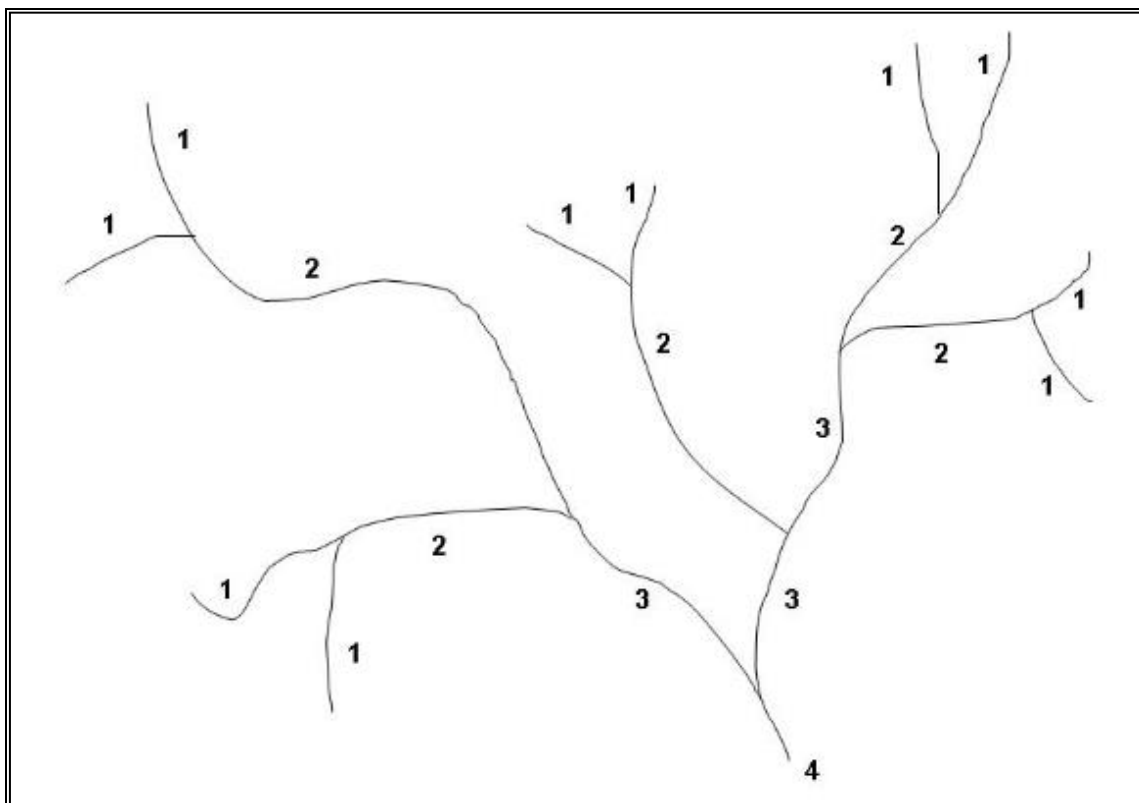


Figure 5.5 Strahler's hierarchy of tributaries
Strahler (1957)

This Hunter Region predictive model was developed by Kuskie and Kamminga (2000) through the use of data attained from previous archaeological work regarding site location and distribution. The following table is based on the archaeological expectations regarding the use of landscape units and resources and how this is likely to be reflected in the archaeological record.

Table 5.2 Occupation patterns as reflected in the archaeological record

Occupation Pattern	Activity Location	Proximity to water	Proximity to food	Archaeological Record
Transitory Movement	All landscape zones, often on ridge and spur crest, watercourses and valley flats	Not important	Not important	<ul style="list-style-type: none"> • Assemblages of low density and diversity • Evidence of tool maintenance & repair • Evidence for stone knapping
Hunting and/or gathering without camping	All landscape zones	Not Important	Near food resources	<ul style="list-style-type: none"> • Assemblages of low density and diversity • Evidence of tool maintenance & repair • Evidence for stone knapping • High frequency of used tools
Camping by small groups	Frequently associated with permanent & temporary water	Nearby	Near food resources	<ul style="list-style-type: none"> • Assemblages of low to moderate density and diversity • Evidence of tool maintenance & repair • Evidence for stone knapping • Hearths
Nuclear family base camp	Level or gently undulating ground	Nearby reliable source	Near food resources	<ul style="list-style-type: none"> • Assemblages of high density and diversity • Evidence of tool maintenance & repair and casual knapping • Heat treatment pits, stone lined ovens • Grindstones
Community base camp	Level or gently undulating ground	Nearby reliable source	Near food resources	<ul style="list-style-type: none"> • Assemblages of high density and diversity • Evidence of tool maintenance & repair and casual knapping • Heat treatment pits, stone lined ovens • Grindstones & ochre • Large area > 100sqm with isolated campsites

The Aboriginal Cultural Heritage Data Audit (DOP, 2005) produced the following table as part of the NSW Comprehensive Coastal Assessment Toolkit (DOP, 2005) which made the following statements outlined in table 4.3 about the predictive location of Aboriginal sites in Coastal NSW. These statements support the conclusions drawn in the following predictive model established for the study area. The study makes one very important claim which is that Aboriginal Ceremonial or Dreaming Sites can only be identified by Aboriginal community knowledge.

All models state that the primary requirement of all repeated, concentrated or permanent occupation is reliable access to fresh water. Brief and possibly repeated occupation may

be represented in areas that have unreliable access to ephemeral water sources, however these areas will not possess a high archaeological potential (Goodwin 1999).

Table 5.3 Aboriginal Cultural Heritage Data Audit, Predictive Modelling for Coastal Aboriginal Sites, NSW.

Site Type	Archaeological/ Predictive Modelling
Aboriginal Ceremony and Dreaming Sites	Can only be identified on the basis of Aboriginal community knowledge.
Aboriginal Resource and Gathering Sites	Can occur at any location where plant and animal target species are found at present or were available in the past.
Art Sites:	All rock paintings or drawings and some rock engravings will occur within rock shelters/overhangs, most commonly within sandstone cliff lines and in granite boulder fields. Rock engravings may occur wherever there are suitable rock-surface exposures.
Artefacts:	Will occur in all landscapes with varying densities. Artefacts of greatest scientific significance will occur in stratified open contexts (such as alluvial terraces, sand bodies) and rock shelter floors.
Burials:	Most likely (but not always) to be buried in, or eroding from, sandy soils. Can occur within rock shelters/overhangs, most commonly within sandstone cliff lines and in granite boulder fields.
Ceremonial Ring Sites:	Environmental factors may be of particular importance in site location including association with sources of water, ridges, unstructured soils and geological boundaries. Distance to adjacent ceremonial ring sites may influence site location.
Conflict Sites:	Can only be identified on the basis of historical records and community knowledge.
Grinding Grooves:	Most likely to occur on surface exposures of sandstone. Occasionally occur within sandstone rock shelters.
Modified Trees	Will only occur where target tree species survive and if these are of an age generally greater than 100 years old.
Non-Human Bone and Organic Material Sites:	Will occur in any surface or buried context where preservation conditions allow. Most commonly survive in open shell midden sites and in rock shelter floor deposits.
Ochre Quarry Sites:	Can occur at any location where suitable ochre sources are found, either as isolated nodules or as suitable sediments (clays).
Potential Archaeological Deposits:	Can occur in all landscape types. PADs of greatest scientific significance will occur in stratified open contexts (such as alluvial terraces, sand bodies) and rock shelter floors.
Shell Middens:	Will occur as extensive packed shell deposits to small shell scatters in all coastal zones along beaches, headlands and estuaries, both in open situations and in rock shelters. May occur along rivers and creeks where edible shellfish populations exist or existed in the past.
Stone Arrangements	Tend to be on high ground, often on the tops of ridges and peaks commanding views of the surrounding country. Often situated in relatively inaccessible places.
Stone Quarry Sites:	Can occur at any location where suitable raw materials outcrop, including pebble beds/beaches.
Waterholes	May occur within any river or creek. Rare examples may occur in open exposures of rock.

5.7 ARCHAEOLOGICAL PREDICTIVE MODEL FOR THE STUDY AREA

The following section gives an indication of the likelihood of certain site types being located within the study area. These indications are based on the research and results of assessments and excavations in the vicinity of the study area and also from the Northumberland region.

Site Type	Research	Likelihood
Open Artefact Scatters	The presence of a known reliable raw material source (outcrop of tuff at Nobbys Headland) within nearby landscape units, would suggest the artefacts may be of significant number and size and, a high percentage of cortex will be present in any assemblage located. Excavations at locations in the immediate vicinity of the study are also suggestive of the presence of open artefact scatters. It is likely open artefact scatters will be located within <u>undisturbed parts</u> of the study area. It is unlikely that undisturbed soil profiles are present within the study area and as such any archaeological or cultural material located will be disturbed.	Likely within undisturbed parts of the study area.
Isolated Artefacts	The presence of a known reliable raw material source (outcrop of tuff at Nobbys Headland) within nearby landscape units, would suggest the artefacts may be of significant number and size and, a high percentage of cortex will be present in any assemblage located. Excavations at locations in the immediate vicinity of the study are also suggestive of the presence of isolated artefacts. It is likely isolated artefacts will be located within <u>undisturbed parts</u> of the study area. It is unlikely that undisturbed soil profiles are present within the study area and as such any archaeological or cultural material located will be disturbed.	Likely within undisturbed parts of the study area.
Grinding Grooves	Boulders of sandstone or outcrops do not occur in the landscape units represented in the study area.	Unlikely/
Stone Resource Sites	Rock outcrops of suitable flaking material are almost absent from the soil landscapes represented within the study area.	Unlikely/
Scarred Trees	Trees of sufficient age are not present within the study area.	Unlikely/
Sandstone Shelters	The soil landscapes of the study area do not contain sandstone overhangs	Unlikely/
Burials	While it is possible that undisturbed sand bodies may lie within the study area. These sites tend to occur within deep, sandy and/or soft soil contexts within sand dune formations, often in association with midden materials. The soil landscape is highly acidic which leads to the poor preservation of organic material such as bone.	Unlikely/
Ceremonial Sites	Consultation with relevant Aboriginal parties and individuals is taking place, however it is possible that such information may become available in the future as a result of further consultation	Possible that Ceremonial/Social sites will be present within the study area

5.8 PREVIOUS ARCHAEOLOGICAL STUDIES NEAR THE STUDY AREA

As part of the research process of this report the library of archaeological assessments, test excavation and open area salvage excavation reports which is located at the offices of DECCW at Hurstville was consulted. Presented below are summaries of indigenous archaeological survey assessments, test excavations and salvage excavations in the vicinity of the study area, which have all been carried out. This list is by no means exhaustive and is merely a representative sample of archaeological activity within the vicinity of the study area.

Bairstow & Turner (1987) – Test Excavations – Bond & Scotts Sts, Newcastle.

Bairstow and Turner carried out an archaeological excavation at Bond & Scott Streets in Newcastle East in 1987, but the finds were neither retained nor analysed. During a subsequent test excavation in 1989, a number of additional flaked stone artefacts were located close to Bond Street and were located in what was thought to be buried intact original soil profiles.

Lavelle & Mider (1993) – Archaeological Monitoring – Bond St, Newcastle.

Lavelle & Mider undertook archaeological monitoring of excavation works in 1993, at Bond Street in Newcastle East and located 6 stone tools. These included a chert point and a sandstone grinding stone and were also located in what was thought to be buried intact original soil profiles.

Higginbotham & Assoc. (1998) – Test Excavations – Bond St, Newcastle.

Higginbotham and Associates carried out test excavations at the same site in 1998, which revealed a considerable quantity of 'stone rubble' that was initially considered to constitute railway ballast associated with the later historic period of site use. Australian Museum Business Services (AMBS), later identified this material as being largely Aboriginal in origin, as flaked stone tools were present amongst un-worked cobbles and boulders. It remains a point of conjecture, as to whether this material was located within buried intact original soil profiles or was representative of re-deposited material from the historical European period.

Godden McKay Logan (1997) – Test Excavations – 738 Hunter St, Newcastle.

Godden McKay Logan (GML) conducted archaeological excavations at 738 Hunter Street, Newcastle in 1997, which located 3 flaked stone artefacts. The 3 flaked stone artefacts were all relatively small and were reduced from silcrete and chert. These artefacts were located within buried intact original soil profiles.

Archaeological Heritage Management Solutions (2001) – Test Excavations – *Palais Royale* Hunter St, Newcastle.

Archaeological Heritage Management Solutions (AHMS) conducted an assessment in conjunction with a European archaeological survey on a portion of land located on the northern side of Hunter Street, between the existing 'Palais Royale' Cottage Creek and the Great North Railway, Newcastle in 2001. No Indigenous archaeological resources were located during the course of this survey. However, due to the possibility of intact topsoil deposits and the undertaking of a European test excavation programme members of the Awabakal Local Aboriginal Land Council requested to be present in case Indigenous artefacts were recovered during the test excavation process.

The subsequent program of test excavation as was the case with GML's excavation, yielded buried intact original soil profiles, which contained significant Aboriginal archaeological deposits comprising shell midden materials and large numbers of flaked stone artefacts. The assemblage consisted of approximately 5,734 pieces of stone. While the assemblage has not yet been completely catalogued it is expected that upwards of 4,000 flaked stone artefacts will be evident. The assemblage also contained a total of some 2,939 whole or fragmentary shells, and approximately 326 pieces of animal bone. The stone artefacts consisted of tuff, silcrete, quartz, rhyolite and flint.

Archaeological Heritage Management Solutions (2004) – Test Excavations – 710 Hunter St, Newcastle.

In 2004, AHMS conducted an archaeological excavation at 710 Hunter Street, Newcastle, which yielded 513 stone artefacts, predominately tuff pieces which exhibited attributes of abrasion. Only small areas of intact original soil profiles could be found as it was mainly disturbed, and re-deposited fills encountered.

Mary Dallas Consulting (2004) – Test Excavations – Boardwalk Site Honeysuckle Dr, Newcastle.

Mary Dallas Consulting conducted a test excavation programme in conjunction with a European archaeological excavation at the 'Boardwalk Site' on Honeysuckle Drive, east of the 'square about', within the bounds of the Civic Railway workshops, Newcastle in 2004. This excavation yielded the partial and disturbed remains of a coastal campsite with a thin scatter of shells some 113 stone artefacts as well animal bone from a buried former landscape. The stone artefacts consisted of tuff, silcrete, quartz, rhyolite and flint. No further archaeological work was recommended based on the highly disturbed nature of the area due to two centuries of European activity.

Umwelt (2005) – Test Excavations – 9 Watt St, Newcastle.

Umwelt conducted a subsurface historical test excavation programme at 9 Watt Street, Newcastle, which yielded disturbed soil profiles that contained five Aboriginal flaked stone artefacts. These were identified as coming from disturbed contexts and no evidence was located to suggest they had been manufactured on site. The artefacts, it was concluded, were imported onto the site as a result of the importation of levelling fill (Umwelt, 2005).

Archaeological Heritage Management Solutions (2005) – Test Excavations – 700 Hunter St, Newcastle.

In 2005, AHMS conducted a subsurface excavation programme at 700 Hunter Street, Newcastle which yielded buried intact and disturbed soil profiles which contained significant Aboriginal archaeological deposits comprising shell midden materials and large numbers of flaked stone artefacts. The assemblage consisted of more than 4000 stone artefacts and included human skeletal remains as a result of the study areas association with a former cemetery. Some of the skeletal remains were identified as Aboriginal, however, they were not in a pre-European burial context that were associated with the cemetery. The stone artefacts consisted of tuff, silcrete, quartz, rhyolite and flint, (AHMS 2005).

Insite Heritage (2005) – Test Excavations – 200-212 Hunter St, Newcastle.

Insite Heritage undertook historical archaeological excavations at 200–212 Hunter Street, Newcastle, in 2006. Aboriginal artefacts were identified during these excavations. However, they were all identified as coming from disturbed contexts and no evidence was

located to suggest they had been manufactured on site. These artefacts it was concluded, were imported onto the site as a result of the importation of levelling fill (Insite, 2005).

Archaeological Management & Consulting (2014) – Test Excavations – 409 Hunter St, Newcastle.

AMAC conducted a subsurface test excavation programme at 409 Hunter Street, Newcastle, in 2014, which yielded both buried intact and disturbed soil profiles and contained significant Aboriginal archaeological deposits comprising large numbers of flaked stone artefacts. The assemblage consisted of more than 500 stone artefacts. The stone artefacts consisted of tuff, silcrete and quartz (AMAC 2015).

Archaeological Management & Consulting (2014) – Test Excavations – 11-15 Watt St, Newcastle.

AMAC conducted a subsurface historical test excavation programme at 11–15 Watt Street, Newcastle, in 2014, which yielded disturbed soil profiles which contained one Aboriginal flaked stone artefact and was identified as coming from disturbed contexts. However, no evidence was located to suggest they had been manufactured on site. The artefact, it was concluded, was imported onto the site as a result of the importation of levelling fill (AMAC 2014).

Archaeological Management & Consulting (2014) – Salvage Excavations – 409 Hunter St, Newcastle.

AMAC conducted a subsurface salvage excavation as part of an Aboriginal Cultural Heritage Management Plan at 409 Hunter Street, Newcastle, in 2014, which yielded both buried intact and disturbed soil profiles and contained significant Aboriginal archaeological deposits comprising large numbers of flaked stone artefacts. The assemblage consisted of more than 6500 stone artefacts. The stone artefacts consisted of tuff, silcrete and quartz, (AMAC, in press).

The practical ramifications of the results of the aforementioned archaeological assessments and excavations are that there is a low/moderate potential for Aboriginal archaeological objects to be present within the study area, particularly if buried intact original soil profiles are present.

However, given the disturbance identified within the study area it is more likely that disturbed Aboriginal archaeological objects are present. These would still require an AHIP and/or Aboriginal Cultural Heritage Management Plan (ACHMP) to legally allow for the disturbance of the said objects. This potential is not reflected in the visibility of surface archaeological material and is more accurately reflected in the results of past assessments and excavations within the vicinity of the study area and from within similar landscape units in the Hunter Valley.

The practical ramifications of the results of the afore mentioned archaeological assessments and excavations, indicates that there is a potential for Aboriginal archaeological objects to be present within undisturbed parts of the study area, particularly if buried intact original soil profiles are present. However as the study area is significantly disturbed intact soil profiles are not thought to be present. There remains the potential for disturbed Aboriginal archaeological remains to be present in the study area which may be of interest to the Aboriginal stakeholder representatives.

6.0 LAND USE AND DISTURBANCE FACTORS

This section of the report provides an assessment of land use, the level of disturbance and the likely archaeological potential of the study area. The archaeological potential is based on the level of previous disturbance as well as the previously discussed predictive model for the region.

The Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974, (DECCW 2010); defines disturbed lands as given below.

“Land is disturbed if it has been the subject of a human activity that has changed the land’s surface, these being changes that remain clear and observable. Examples include ploughing, construction of rural infrastructure (such as dams and fences), construction of roads, trails and tracks (including fire trails and tracks and walking tracks), clearing vegetation, construction of buildings and the erection of other structures, construction or installation of utilities and other similar services (such as above or below ground electrical infrastructure, water or sewerage pipelines, stormwater drainage and other similar infrastructure and construction of earthworks)”

This definition is based on the types of disturbance as classified in The Australian Soil and Land Survey Field Handbook (CSIRO 2010). The following is a scale formulated by CSIRO (2010) of the levels of disturbances and their classification.

Minor Disturbance		Moderate Disturbance		Major Disturbance	
0	No effective disturbance; natural	3	Extensive clearing (e.g.: poisoning and ringbarking)	6	Cultivation; grain fed
1	No effective disturbance other than grazing by hoofed animals	4	Complete clearing; pasture native or improved, but never cultivated	7	Cultivation; irrigated, past or present
2	Limited clearing (e.g.: selected logging)	5	Complete clearing; pasture native or improved, cultivated at some stage	8	Highly disturbed (quarrying, road works, mining, landfill, urban)

N.B The above scale is used in determining the level of disturbance of the study area and its impact on the potential archaeology which may be present.

It is important to note that the following assessments describe the *archaeological* potential of the study area. It is acknowledged if the study area has little or no archaeological potential the study area may still have cultural significance to the Aboriginal community.

6.1 ABORIGINAL LAND USE AND RESOURCES

The study area lies in a resource zone in which reliable fresh water was available from Cottage Creek which is on the immediate western edge of the study area. The study area was on the immediate coastal fringe where enormous food resources were available.

Sites containing fresh water and sedentary food sources, coupled with the presence of other resources which may have been exploited or available on a seasonal basis, would suggest that Aboriginal land use of the study area was regular and repeated, with this reflected in the archaeological record.

Concentrated and repeated occupation may be represented in areas that have reliable access to water and foods sources. These areas will possess a high archaeological potential (Goodwin 1999). Newcastle's coastline and the Hunter River provided a rich dietary intake for the local inhabitants in which estuarine and marine resources could be exploited. Coastal populations depended heavily on marine resources such as fish and shellfish but were not limited to such diets as cabbage palms and bracken fern roots were also included (Dyall 1971). During some of the early explorations of the area there are accounts regarding the density of shell middens found along the Hunter River

"These are four feet deep, without either sand or earth." (cited, Dallas 2004).

Farming practices were also utilised in the form of land clearing. This was conducted through the burning of grasslands in order to encourage new growth which attracted local game. It is likely that these activities would result in repeated occupation as do ritualistic activities which take place within specific sacred places.

The procurement of specific resources for ritualistic or domestic purposes would rely on the accessibility and availability of these resources. There are readily mapped resources within the region that may have been exploited by Aboriginal occupants and more were present before the land was cleared and settled.

The Lower Hunter River was found to be the dividing boundary between the Worimi people who occupied the northern side of the river and the Awabakal who occupied the southern side (AHMS 2001). Repeated occupation by both groups indicates the area to have been a resource rich zone, one where natural landforms provide a common landmark.

The traditional life of the Aboriginal population of the Newcastle area was seen to remain despite European settlement and the impact of European culture. This is reflected in the historical documentation of the area and illustrations by Joseph Lycett in which the cultural activities of local Indigenous people are depicted. One of the key ethnohistoric sources was Reverend Lancelot Threlkeld. Threlkeld, took an interest in the language and culture of the Awabakal people. He established a missionary at Belmont and later at Toronto, where many local Indigenous stayed. He wrote about the various encounters he had with the local Indigenous including the stories which they spoke of, some of which referred to ceremonial events and sacred places (Umwelt 2014).

Through to the later 1830s, there are accounts of ongoing interactions between Aboriginal and non-Aboriginal people in the Newcastle settlement, as the employment

of Aboriginal people in Newcastle grew. Jobs such as fishing, carriers, and servants were undertaken by local Indigenous in return for European items such as, blankets and corn (Turner 1997). Influenza and diseases spread through the population, however, it was not seen to have affected the Hunter region as much as, the Sydney based Indigenous populations. However, inevitably the continued expansion of the settlement and the selling off of land when free settlement was introduced, led to the marginalization of Aboriginal people.

6.2 EUROPEAN LAND USE

Background research indicates that past European land use has led to the clearing of the land. Deep excavations have been undertaken on the site with the standing buildings being three storeys with underground carparking facilities as well as associated services. The courthouse was completed in 1892 of which the land has undergone repair works and modifications over time. The rear of the property has been paved with overgrown vegetation in the western corner. No native vegetation remains.

6.3 DISTURBANCE AND ARCHAEOLOGICAL POTENTIAL

It is important to note that the following assessments describe the archaeological potential of the study area. It is acknowledged that if the study area has little or no archaeological potential, the study area may still have cultural significance to the Aboriginal community.

Onsite inspections and research suggest the presence of some original soil profile being intact and parts of the study area have low - moderate potential to contain *in situ* Aboriginal objects and/or areas of archaeological potential.

In light of this and in the context of the information provided about the land use of the site, its proximity to major tributaries, the following has been predicted;

Moderate/ High disturbance to sections of the landscape: Sub-surface Aboriginal objects with potential conservation value have a low- moderate probability of being present within the study area –most likely towards the rear of the property.

The soil landscape of the area exhibits a deep profile indicating the potential for intact soils to be present. The foundations of carparking facilities of both the annex buildings to the courthouse are considered areas of high disturbance due to the extent of excavation and expected foundations. However, previous excavation within the Newcastle CBD and surrounds (AMAC 2014, Umwelt 2018 and AMAC 2019) have indicated that despite significant disturbance Aboriginal archaeological deposits (intact or disturbed) and objects may still be present. Test excavation has been recommended in order to ascertain the nature and extent of the soil profile including any potential significant sand bodies.

Aboriginal people of the region and throughout Australia do not differentiate between disturbed and undisturbed relics and all said material holds cultural significance, as such the presence or absence of Aboriginal archaeological and cultural material needs to be established as does the level of disturbance. This can only occur through consultation and test excavation.

7.0 SIGNIFICANCE ASSESSMENT

The processes of assessing significance for items of cultural heritage value are set out in *The Australian ICOMOS Charter for the Conservation of Places of Cultural Significance: the Burra Charter* (amended 1999) formulated in 1979 and based largely on the Venice Charter of International Heritage established in 1966. Archaeological sites may be significant according to four criteria, including scientific or archaeological significance, cultural significance to Aboriginal people, representative significance which is the degree to which a site is representative of archaeological and/or cultural type, and value as an educational resource. In New South Wales the nature of significance relates to the scientific, cultural, representative or educational criteria and sites are also assessed on whether they exhibit historic or cultural connections.

7.1 ARCHAEOLOGICAL SIGNIFICANCE

7.1.1 Educational Significance

The educational value of any given location will depend on the importance of any archaeological material located, on its rarity, quality and the contribution this material can have on any educational process (Australia ICOMOS, 1999 p. 11).

No educational significance can as yet be assigned to the study area. However, natural soils are present on site and further investigation has been recommended.

7.1.2 Scientific Significance

The scientific value of any given location will depend on the importance of the data that can be obtained from any archaeological material located, on its rarity, quality and on the degree to which this may contribute further substantial information to a scientific research process. (Australia ICOMOS, 1999 p.11).

No scientific significance can as yet be assigned to the study area. However, natural soils are present on site and further investigation has been recommended.

7.1.3 Representative Significance

The representative value of any given location will depend on rarity and quality of any archaeological material located and on the degree to which this representativeness may contribute further substantial information to an educational or scientific research process. (Australia ICOMOS, 1999 p.11).

No representative significance can as yet be assigned to the study area. However, natural soils are present on site and further investigation has been recommended.

7.2 SOCIAL AND CULTURAL SIGNIFICANCE

As defined in the 'Burra Charter' (ICOMOS, 1999) cultural significance is broken into three parts: aesthetic, historic and scientific value for past, present or future generations. Cultural significance is a concept which assists in estimating the value of any given place. Places that are likely to be of significance are those which can contain information which may assist with the understanding of the past or enrich the present, and which will be of value to future generations. The meaning of these terms in the context of cultural significance is outlined below. It should be noted that they are not mutually exclusive, (Australia ICOMOS, 1999 p.12).

7.2.1 Historic Significance

A place may have historic value because it has influenced, or has been influenced by, an historic figure, event, phase or activity. It may also have historic value as the site of an important event. For any given place the significance will be greater where evidence of the association or event survives in situ, or where the settings are substantially intact, than where it has been changed or evidence does not survive. However, some events or associations may be so important that the place retains significance regardless of subsequent treatment. (Australia ICOMOS, 1999 p.11).

No specific historic significance has been assigned by registered Aboriginal parties.

7.2.2 Scientific Significance

The scientific value of any given location will depend on the importance of the data that can be obtained from any archaeological material located, on its rarity, quality and on the degree to which this may contribute further substantial information to a scientific research process. (Australia ICOMOS, 1999 p.11).

No specific scientific significance has been assigned by registered Aboriginal parties.

7.2.3 Aesthetic Significance

Aesthetic value includes aspects of sensory perception for which criteria can and should be stated. Such criteria may include consideration of the form, scale, colour, texture and material of the fabric; the smells and sounds associated with the place and its use. (Australia ICOMOS, 1999 p.11).

No specific Aesthetic significance has been assigned by registered Aboriginal parties.

8.0 PROPOSED ACTIVITY

This section outlines the proposed activity including the staging and timeframes along with the potential harm of the proposed activity on Aboriginal objects and or declared Aboriginal places, assessing both the direct and indirect result of the activity on any cultural heritage values associated with the study area.

8.1 DESCRIPTION OF PROPOSED ACTIVITY AND IMPACTS

The proposed development aims to conserve the old courthouse building while demolishing both the annex buildings (Figure 8.1); the high court and administration building on either side, in order to construct a cohesive campus complex that incorporates the aesthetics and façade of the old courthouse while rebuilding the footprint in order to support student accommodation and education facilities, including outdoor spaces (Figure 8.1- 8.10).

The new buildings being constructed on either side of the old courthouse will consist of 4 floors including a rooftop terrace. The old courthouse will be converted to connect with the rooftop terrace. The ground level is approximately 22.30 RL with deep excavations exceeding an additional 2m for the lift shaft between the educational building and old courthouse building, as well as the foundations for the building and rain storage tank at the rear of the property which will be approximately 20.25 RL.

The proposed development will impact the entirety of the study area with deep excavations taking place including in the rear where intact soil profiles may exist.

There is a low-moderate potential for Aboriginal artefacts and/or deposits of archaeological and cultural significance to be present.

No formal areas of exclusion have been identified in the current plans.

8.2 PROPOSED DEVELOPMENT JUSTIFICATION

The development is proposing the adaptive reuse of the State heritage-listed former Newcastle Courthouse as an educational establishment with associated student accommodation, including:

- Demolition of the existing Administration Building and Supreme Court Building;
- Change of use of the former Courthouse building from a 'public administration building' to an 'educational establishment';
- Minor internal demolition works and alterations to the former Courthouse building ('Public Building');
- Construction of two new 4-storey buildings consisting of a 108 bed 'Residential Building' and an 'Education Building', both connected to the proposed 'Public Building' by atria;

As part of the Japanese Government's New Growth Strategy: Internationalisation of Japanese Universities, Nihon University has selected the former Newcastle Courthouse as the site on which to open its first international campus and purchased the property back in 2016.

8.3 POTENTIAL HARM TO ABORIGINAL OBJECTS AND CULTURAL HERITAGE

The proposed development activity will disturb the ground surface and may disturb Aboriginal objects and areas of cultural significance. The study area has the potential to contain low-moderate significant Aboriginal archaeological and cultural objects and/or deposits which would be subject to disturbance from the development.

8.4 ASSESSING HARM

The proposed development will harm objects and/or deposits of Aboriginal and archaeological significance. Test excavation has been proposed under *the Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*, Part 6 National Parks and Wildlife Act 1974, (DECCW 2010) to assess the level of disturbance of the site and the potential harm on any potential Aboriginal objects and/or deposits.

8.5 AVOIDING AND MINIMISING HARM TO ABORIGINAL OBJECTS

The proposed development will harm objects and/or deposits of Aboriginal and archaeological significance. Test excavation has been proposed under the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*, Part 6 National Parks and Wildlife Act 1974, (DECCW 2010) to assess the level of disturbance of the site and the potential harm that may be the result of the proposed activity on the current registered site as well as any potential Aboriginal objects and/or deposits. The results of said excavation will assist in minimising harm to Aboriginal objects and/or places, if present.

8.6 JUSTIFICATION OF HARM TO ABORIGINAL OBJECTS

This cannot be addressed at this point in time. Test excavation has been proposed to assess the level of disturbance and whether Aboriginal objects and/or places are present.

8.7 ECOLOGICALLY SUSTAINABLE DEVELOPMENT AND INTERGENERATIONAL EQUITY

The ability of any development to be completely ecologically sustainable will be limited by definition. However, the proponents of this subdivision appear to have made significant efforts to meet the needs of the current generation without compromising the ability of future generations to meet their own needs. This has been accomplished by proposing a plan on a manageable and affordable scale while still protecting and conserving the archaeological resources. This is being accomplished by a program of subsurface test excavation with the possibility of further salvage excavation if needed as well as extensive consultation with the relevant Aboriginal community.

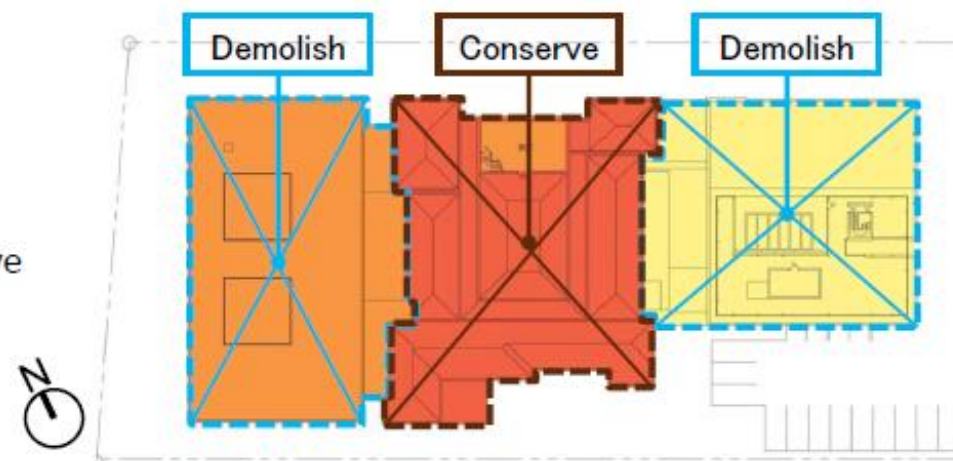
Inter-generational equity refers to the equitable sharing of resources between current and future generations. The planet's current generation should ensure that future generations have the same opportunities and resources available. This idea is being accomplished by designing a building with as little disturbance to the ground surface as possible and as such any archaeological or cultural material that may be present in these areas either identified or unidentified will be left intact and persevered for future generations.

Conservation Plan

Gradings of significance

- High : Must not demolish/remove
- Moderate : Need attention to demolish/remove
- Little : Able to demolish/remove
- Intrusive : No problem to demolish/remove

Conservation Area :



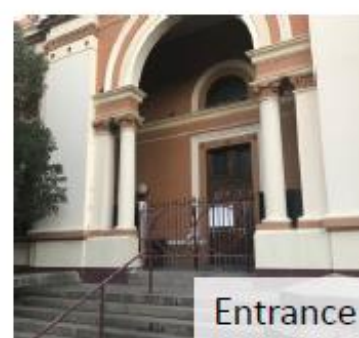
Cell



Interview



Court 3



Entrance



Lobby



Court 4



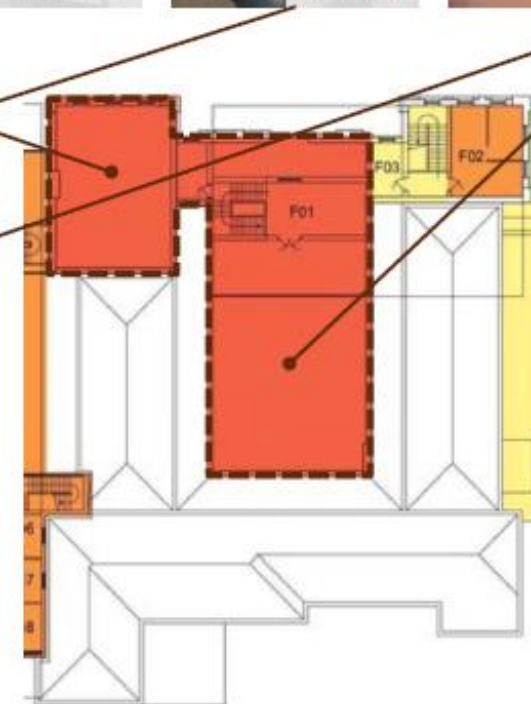
Roof



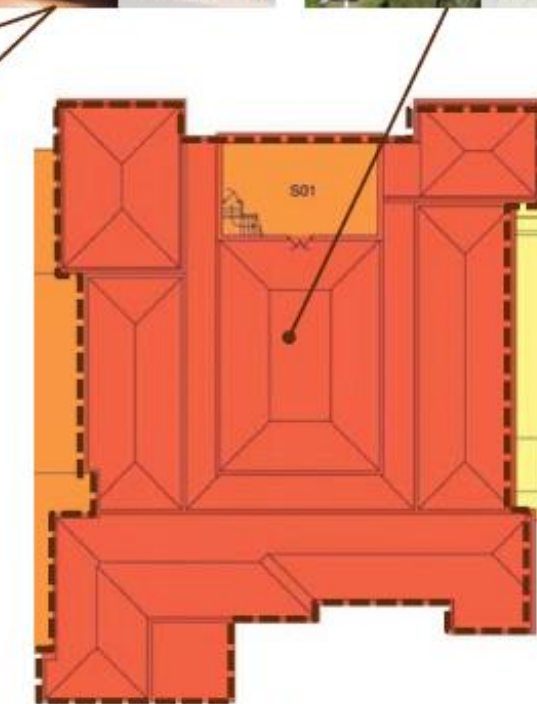
<B1F>



<1F>



<2F>



<RF>

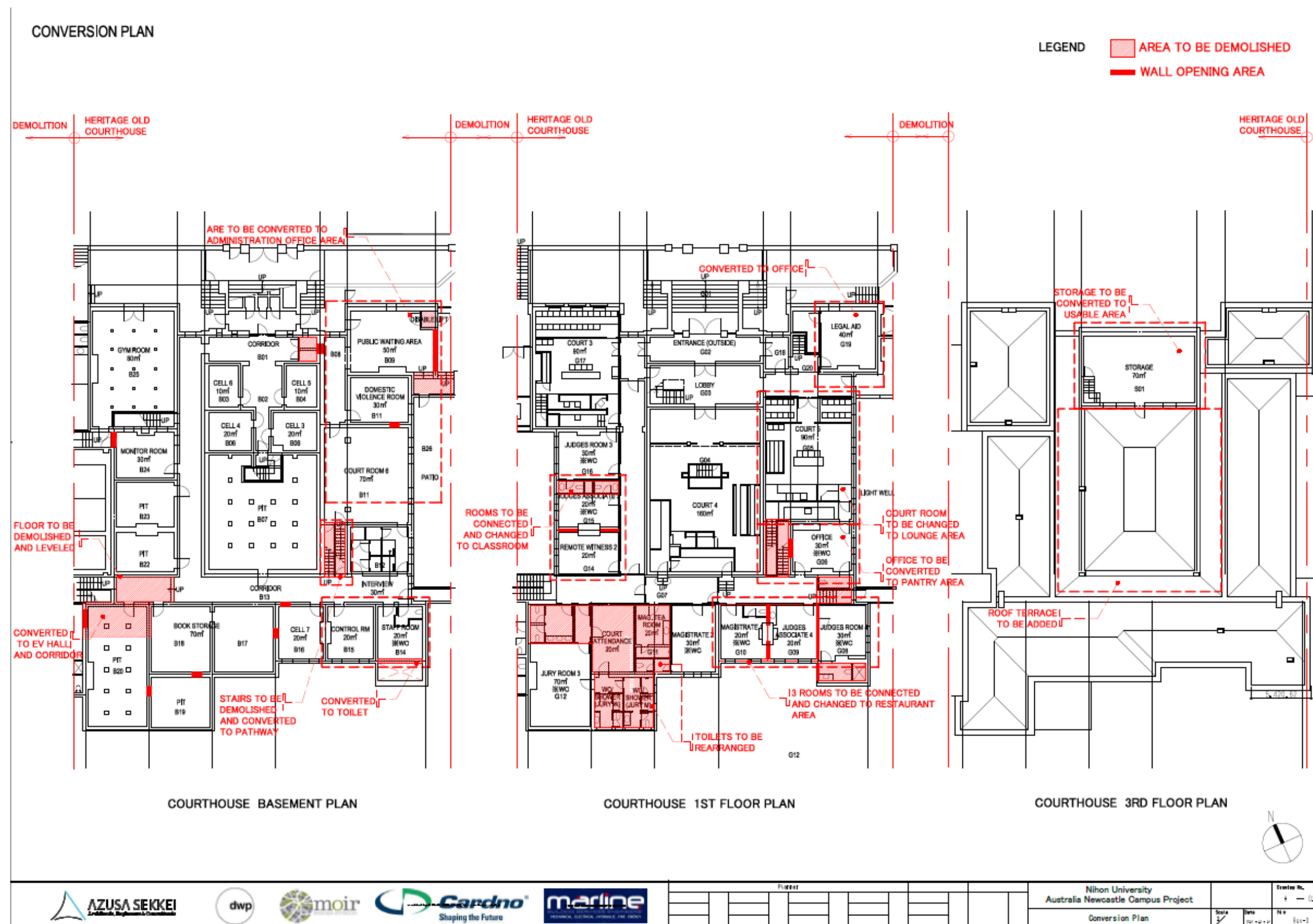


Floors									

Nihon University
Australia Newcastle Campus Project
Conservation Plan

Scale	1:100	1:200	1:500	1:1000
Rev	0	0	0	0

Figure 8.1 Demolition Plan
Azusa Sekkei (2019) Drawing No. A009





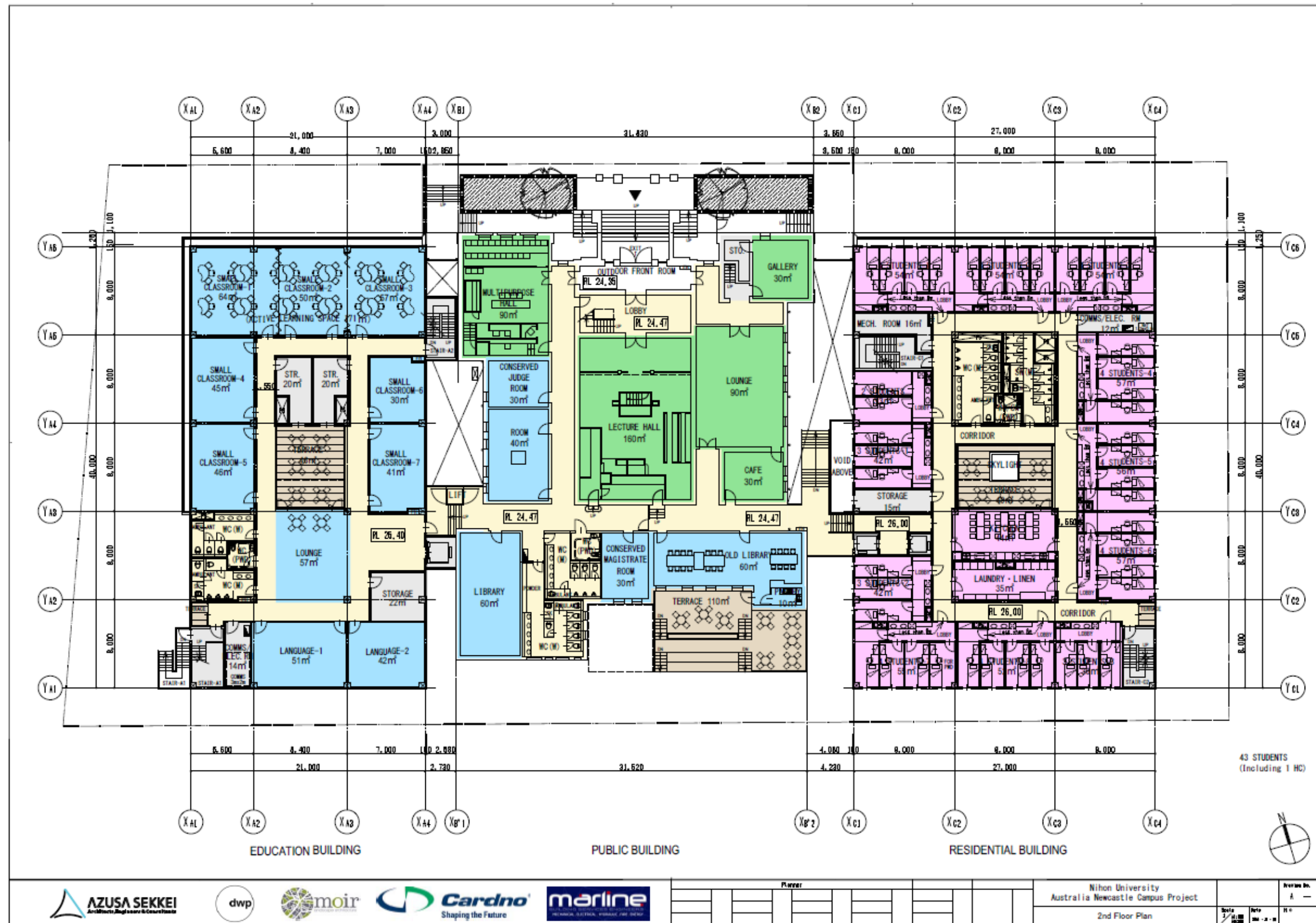


Figure 8.4 Proposed 2nd Floor Plan.
Azusa Sekkei A-110.

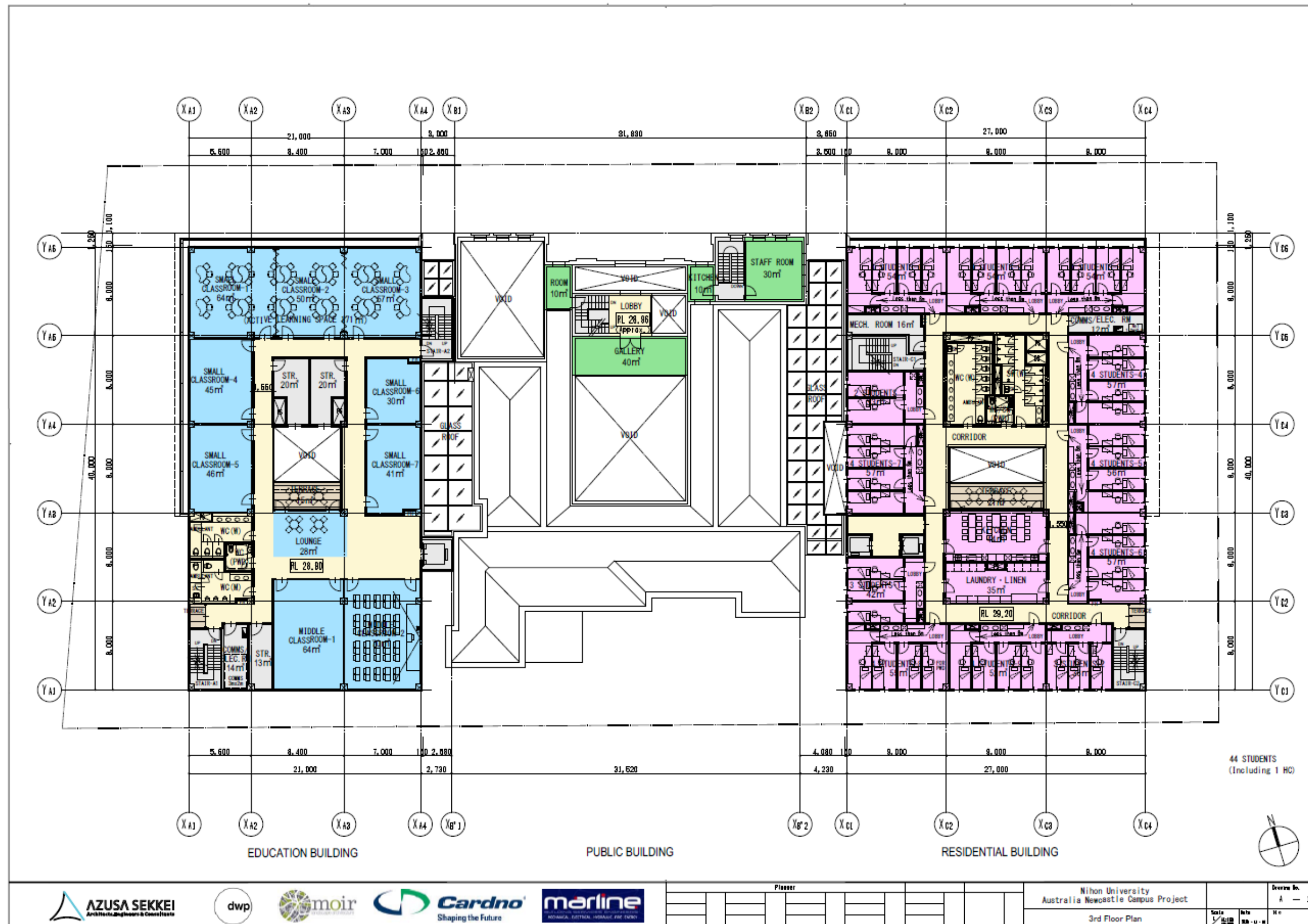


Figure 8.5 Proposed 3rd Floor Plan.
Azusa Sekkei A-111.

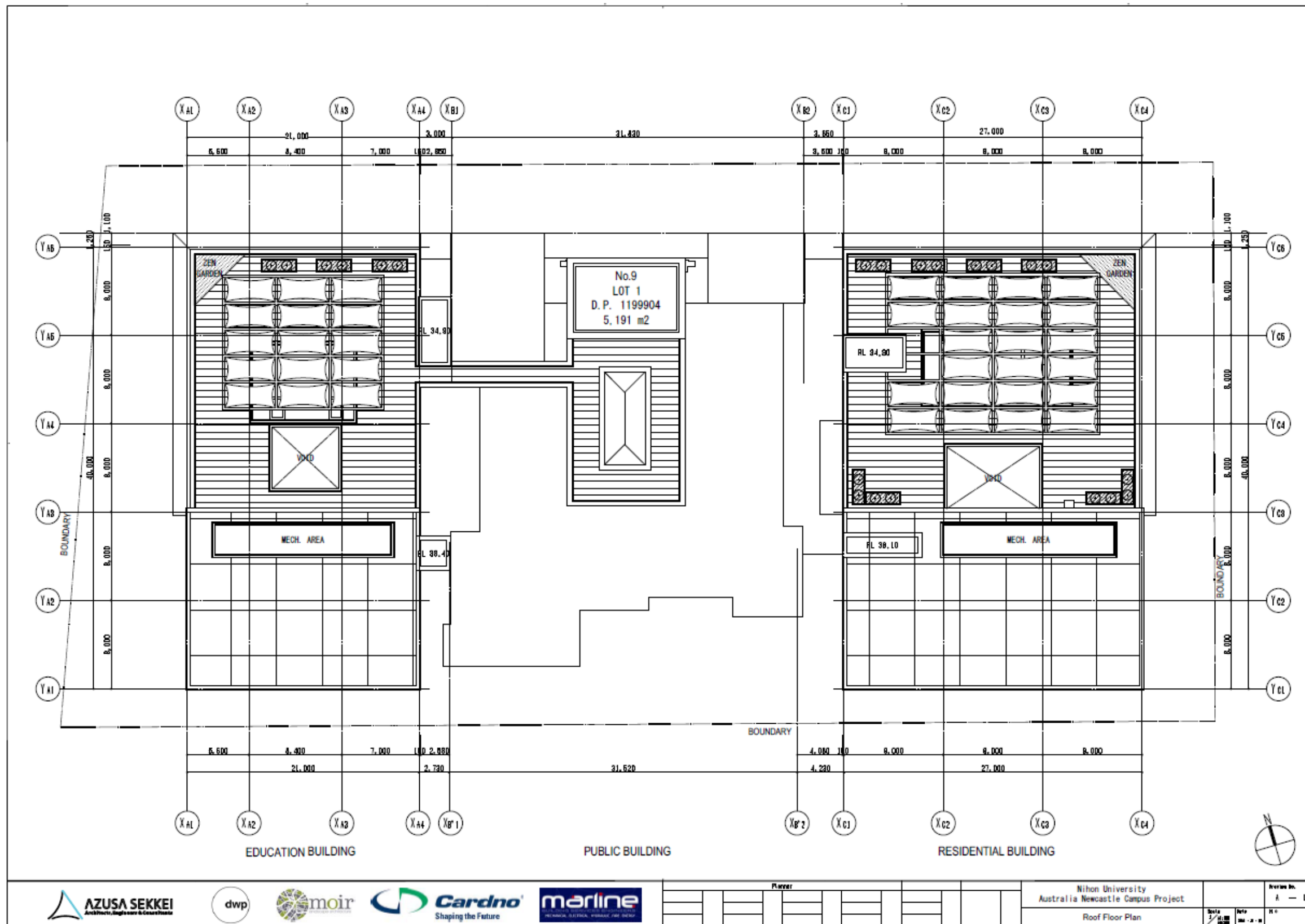




Figure 8.7 Sections – 1.
Azusa Sekkei A-123.



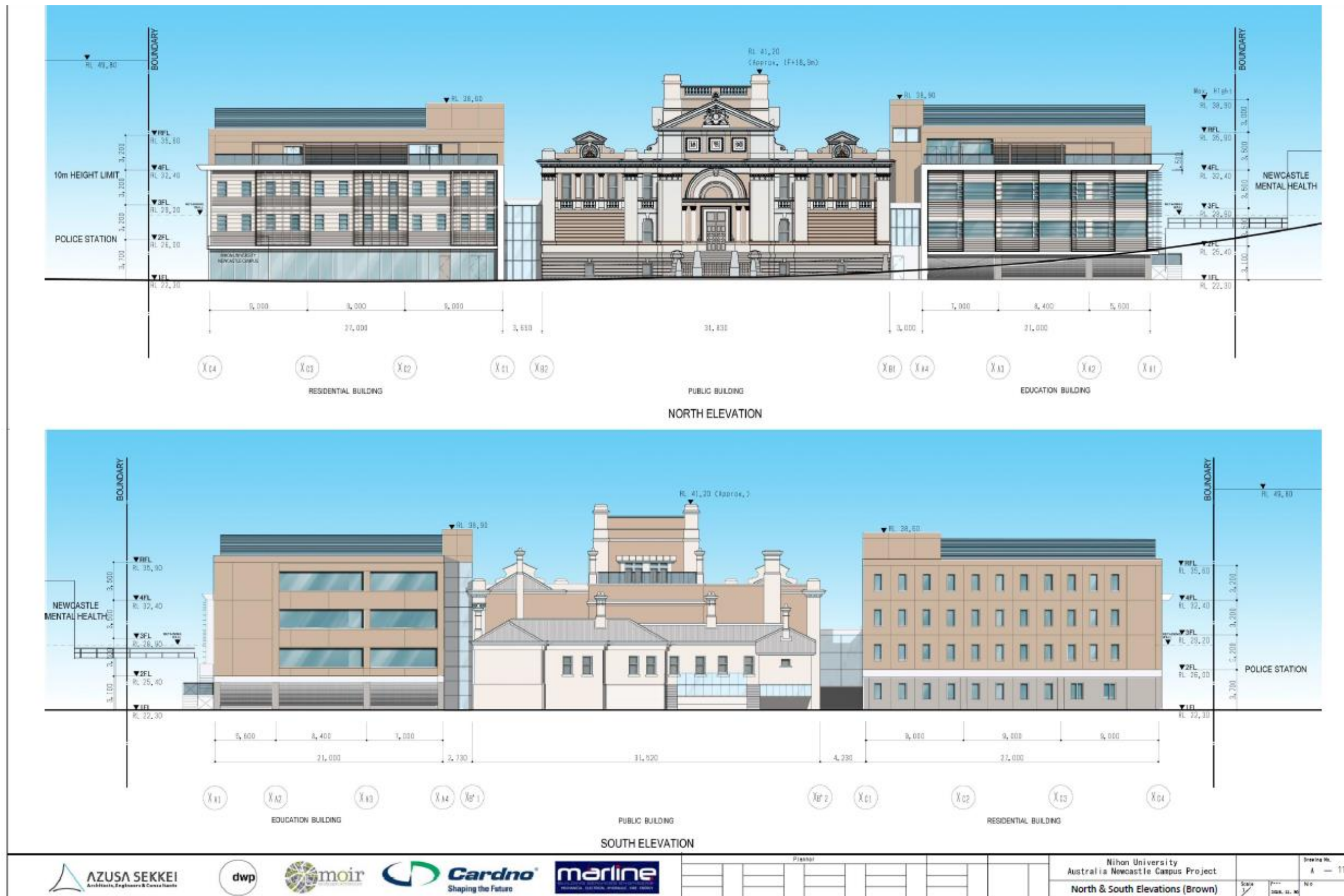
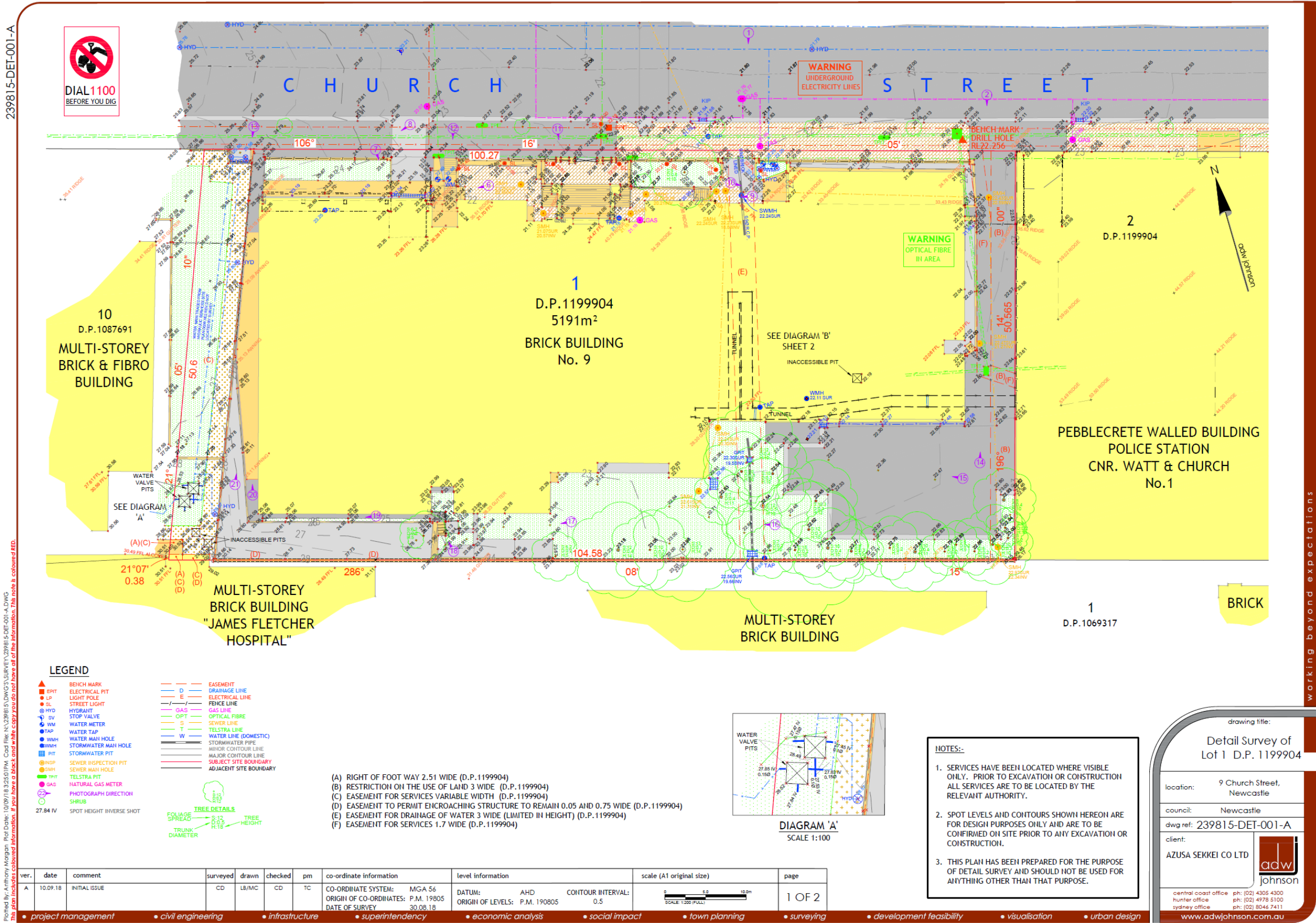


Figure 8.9 Option – 1 Elevations – 1.
Azusa Sekkei A-114.



9.0 MANAGEMENT AND MITIGATION

The management recommendations presented in the following section of the report take into account the following:

- Legislation outlined in this report which protects Aboriginal cultural and archaeological objects and places in New South Wales;
- Research and assessment carried out by the author/s of this report;
- Results of previous archaeological assessment and excavation in the vicinity of the study area;
- The impact of the proposed development on any Aboriginal archaeological material that may be present;
- The requirements of the consent authority (NSW Department of Planning & Environment).

9.1 CARE AND CONTROL

If any archaeological material is recovered it shall be subject to a care and control agreement established after the nature and significance of the archaeological or cultural material is understood as per requirement 26 of the *Code of Conduct for the investigation of Archaeological objects in NSW*.

9.2 RECOMMENDATIONS

A background analysis of the environment and archaeological context revealed that the study area has moderate/major surface disturbances however due to the deep soil profile of the soil landscape it is still likely for *insitu* or non *insitu* Aboriginal objects and/or deposits of conservation value being present. Hunter region and Central Coast Aboriginal Cultural Landscape Map (Section 5.5) indicates the area to be of spiritual and ceremonial significance and as such further investigation into the Aboriginal cultural heritage of the study area should take place which involves full community consultation with Registered Aboriginal Stakeholders, which as previously indicated has already commenced. Although the area may have low archaeological significance it may however hold high cultural significance with intrinsic value to the Aboriginal community.

The surrounding landscape features present do indicate that sub-surface Aboriginal objects and/or deposits are likely in undisturbed areas and are likely to be considered of low to moderate Aboriginal archaeological significance.

The proposed activity is not:

- located within a sand dune system, or;
- located within 200m below or above a cliff face, or;
- within 20m of or in a cave, rock shelter, or a cave mouth.
- located on a ridge top, ridge line or headland, or;

The study area is:

- located within 200m of waters

Based on the locale of water and major water tributaries such as the Hunter River and Newcastle Beach, it is likely that Aboriginal movement and land use would be channelled

to this location and therefore the site may hold information regarding cultural activities of the area.

In accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974 (DECCW, 2010)*, it is recommended that further archaeological and cultural assessment is required and in accordance with *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974 (DECCW, 2010)*.

The following recommendations have been formulated after consultation with the proponent and the Office of Environment and Heritage (OEH);

- Further assessment is required in the form of a full Aboriginal Cultural Heritage Assessment, including full Aboriginal community consultation in accordance with Part 6; National Parks and Wildlife Act, *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (DECCW, 2010) AMAC have been commissioned to proceed with this and is currently being undertaken;
- Subsequent to this report and in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974, (DECCW 2010)*, a program of systematic, sub surface archaeological test excavation in accordance with the *Code Of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales, Part 4 National Parks and Wildlife Act 1974 (DECCW 2010)*, should be undertaken to establish the nature and extent of any archaeological objects and/or deposits including sand bodies that are/may be present. AMAC have been commissioned to proceed with this and is currently being undertaken;
- If archaeological test excavation in accordance with the *Code of Practice for Archaeological Investigations of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974, (DECCW 2010)* reveals no Aboriginal archaeological objects or deposits; The proposed development as outlined in Figure 8.1 – 8.10, should be allowed to 'proceed with caution'. The timing of any test excavation will be dependent on the appointment of building contractors and will occur prior to demolition and building excavation works being undertaken on within the study area.
- If archaeological test excavation in accordance with *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974 (DECCW 2010)* reveals Aboriginal archaeological objects or deposits; once the nature and extent of the archaeological site has been established through test excavation. This data is to be analysed and synthesised into a test excavation report and is to accompany the application of an Aboriginal Heritage Impact Permit (AHIP);
- After this and before any ground disturbance takes place all development staff, contractors and workers should be briefed prior to works commencing on site, as to the status of the area and their responsibilities in ensuring preservation of the said area. They should also be informed of their responsibilities regarding any Indigenous archaeological deposits and/or objects that may be located during the following development;

Should any human remains be located during the following development;

- All excavation in the immediate vicinity of any objects of deposits shall cease immediately;

- The NSW police and OEH's Enviroline be informed as soon as possible:
- Once it has been established that the human remains are Aboriginal ancestral remains, OEH and the relevant Registered Aboriginal Parties will identify the appropriate course of action.

GLOSSARY

Term	Definition
Aboriginal/ Aborigine	These terms apply to indigenous Australians throughout time.
Aboriginal Object	A term now used (formerly 'relic') within the NSW <i>National Parks and Wildlife Act, 1974</i> to refer to "...any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains."
AHIP	Aboriginal Heritage Impact Permit, issued under Part 6 of the National Parks and Wildlife Act 1974, where harm to an Aboriginal object or Aboriginal place cannot be avoided.
Alluvial	Describes material deposited by, or in transit in flowing water.
AMAC	Archaeological Management and Consulting Group.
Artefact	Any object, usually portable, that has been made or shaped by human hand.
Assemblage	A collection of artefacts found in close proximity with one another often excavated together.
Axe grinding Grooves	Areas on a stone surface where other items such as stone tools, wood or bones have been sharpened.
Basalt	A dark coloured, basic volcanic rock.
Bioturbation	Reworking of sediments through the action of ground dwelling life forms. This can also include soil cracking and root activity.
Broken Flake	A flake fragment which displays only part of the diagnostic features of a complete flake.
BP	Before present (AD1950).
Burial	Sites containing the physical remains of deceased Aboriginal people.
Ceremonial Sites	Places or objects of ceremonial, religious or ritual significance to Aboriginal people.
DCP	Development Control Plan.
DoPE	Department of Planning and Environment
DP	Deposited Plan.
Erosion	Process where particles are detached from rock or soil and transported away principally via water, wind and ice.
Flake	A piece of stone, detached by striking a core with another stone.
Flaking/Knapping	The process of making stone tools by detaching flakes from a piece of stone.
Friable	Easily crumbled or cultivated.
Hard setting	Soil which is compact and hard. It appears to have a pedal structure when dried out.
Heritage Division	Formerly known as the Heritage Branch

Term	Definition
Holocene	The period of time since the last retreat of the polar icecaps, commencing approximately 10,000 – 110,000
Intensification	Increased social and economic complexity.
Landscape Unit	An area of land where topography and soils have distinct characteristics, are recognisable, describable by concise statements and capable of being represented on a map.
Laminite	A thinly bedded, fine grained sedimentary rock.
LEP	Local Environment Plan.
LGA	Local Government Area.
Lithics	A term used to describe stone and stone artefacts.
Loam	A medium textured soil of approximate composition of 10-25% clay, 25-50% silt and 2% sand.
Loose	A soil which is not cohesive.
Matrix	Finer grained fraction, typically a cementing agent within soil or rock in which larger particles are embedded.
Midden	Aboriginal occupation site consisting chiefly of shells, which can also include bone, stone artefacts and other debris.
NPW Act	National Parks and Wildlife Act 1974
OEH	NSW Office of Environment and Heritage (formerly known as the DECCW)
Open Campsite	A surface accumulation of stone artefacts and/ or other artefacts exposed on the ground surface.
Potential Archaeological Deposit (PAD)	An area where no surface archaeological remains are visible but where it has been assessed that there is some potential for sub-surface archaeological remains to be present.
Ped	An individual, natural soil aggregate.
Pedal	Describes a soil in which some or all of the soil material occurs in the form of peds in a moist state.
Plastic	Describes soil material which is in a condition which allows it to undergo permanent deformation without appreciable volume change or elastic rebound and without rupture.
Pleistocene	The epoch of geological time starting 1.8 million years ago.
RAP	Registered Aboriginal Parties
Rock Painting	Encompassing drawing, paintings or stencils that have been placed on a rock surface usually within a rock shelter.
Rock Engraving	Pictures which have been carved, pecked or abraded into a rock surface, usually sandstone and predominantly open, flat surfaces.
Sandstone	A detrital sedimentary rock with predominantly sand sized particles.
Scarred/ Carved Tree	A tree from which bark has been deliberately removed.
Sclerophyll	Denoting the presence of hard stiff leaves, typically used to classify forest and indicative of drier conditions.
Sedimentation	Deposition of sediment typically by water.
Silcrete	A sedimentary rock comprising of quartz grains in a matrix of fine grained – amorphous silica.
Silt	Fine soil particles in size ranges of 0.02 – 0.002mm.

Term	Definition
Slope	A landform element inclined from the horizontal at an angle measured in degrees or as a percentage.
SHI	State Heritage Inventory
SHR	State Heritage Register
Subsoil	Subsurface material comprising the B and C horizons of soils with distinct profiles.
Stone Resource Site	A geological feature in the landscape from which raw material for the manufacture of stone tools was obtained.
Texture	The coarseness or fineness of a soil as measured by the behaviour of a moist ball of soil when pressed between the thumb and forefinger.
Topsoil	A part of the soil profile, typically the A1 Horizon, containing material, which is usually darker, more fertile and better structured than the underlying layers.
Weathering	The physical and chemical disintegration, alteration and decomposition of rocks and minerals at or near the earth's surface by atmospheric and biological agents.

REFERENCES

ABORIGINAL HERITAGE AND INFORMATION MANAGEMENT SYSTEM.

2011 & 2012 www.environment.nsw.gov.au/awssapp

ARCHAEOLOGICAL HERITAGE MANAGEMENT SOLUTIONS.

2001 *Archaeological Assessment Report*. Unpublished Report for Accor Asia Pacific Pty Ltd, submitted to DECC.

ARCHAEOLOGICAL MANAGEMENT AND CONSULTING GROUP.

2014 *Proposed NeW Space Development, Corner Auckland and Hunter Streets, Newcastle, NSW; Aboriginal Cultural Heritage Management Plan*. Unpublished Report to OEH.

2008 *Archaeological Assessment, Pilot Station, Wharf Road, Newcastle, NSW*. Unpublished Report for Newcastle Ports Corporation submitted to NSW Heritage Branch.

2014 *Proposed Development 11-15 Watt Street, Newcastle, NSW; Aboriginal Cultural Heritage Assessment*. Unpublished Report to OEH.

2014 *Proposed NeW Space Development, Corner Auckland and Hunter Streets, Newcastle, NSW; Aboriginal Cultural Heritage Management Plan*. Unpublished Report to OEH.

2017 *NeW Space Development, Corner Auckland and Hunter Streets, Newcastle, NSW; Aboriginal Final Excavation Report*. In Press.

ATTENBROW, V.

2002 *Sydney's Aboriginal Past: Investigating the archaeological and historical records*. UNSW Press, Sydney.

AUSTRALIA ICOMOS.

1999 *The Australia ICOMOS Charter for Places of Cultural Significance (Burra Charter)*. Australia ICOMOS, Canberra.

AUSTRALIAN HERITAGE COMMISSION.

2002 *Ask First: A guide to respecting Indigenous heritage places and values*. Australian Heritage Commission, Canberra.

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES.

2000 *Aboriginal Australia*. Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.

BRANGAN, D. C. HERBERT AND T. LANGFORD-SMITH.

1979 *The Sydney Basin: An outline of the Geology and Geomorphology*. University of Sydney, Sydney.

BRAYSHAW, H.

1985 *Archaeological Survey at Lambton, Newcastle*. Unpublished Report for Resource Planning submitted to DECC.

BURKE, H. AND C. SMITH.

2004 *The Archaeologists Field Handbook*. Allen & Unwin, St Leonards, NSW.

COLEMAN, J.

1982 *A new look at the North Coast: Fish traps and villages*. In S. Bowdler (ed). Coastal Archaeology in Eastern Australia. Australian National University, Canberra.

COMMONWEALTH HERITAGE LIST.

2011

[www.environment.gov.au/cgi-bin/ahdb/search.pl?mode=search_results;state=N SW;list_code=CHL;legal_status=35](http://www.environment.gov.au/cgi-bin/ahdb/search.pl?mode=search_results;state=N%20SW;list_code=CHL;legal_status=35)

DALLAS, M.

2004 *Aboriginal Womens Heritage: Port Stephens*. Department of Environment and Conservation. Sydney.

DEC.

2004 *Aboriginal Womens Heritage: Port Stephens*. Department of Environment and Conservation. Sydney.

DECC.

2005 *Aboriginal Scarred Trees in New South Wales: A Field Manual*. Department of Environment and Climate Change, Sydney.

DECCW.

2010 *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974*. Department of Environment, Climate Change and Water, Sydney.

2010 *Code of Practice for the Archaeological Investigation of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974*. Department of Environment, Climate Change and Water, Sydney.

2010 *Part 6; National Parks and Wildlife Act Aboriginal Cultural Heritage Consultation Requirements for Proponents*. Department of Environment, Climate Change and Water, Sydney.

DEPARTMENT OF PLANNING.

2005 *The NSW Comprehensive Coastal Assessment Tool Kit*. NSW Government.

FOLEY, R. A.

1981 A model of Regional Archaeological Structure. *Proceedings of the Prehistoric Society* 47: 1-17.

GOODWIN, L

1999 Two steps forward, one back. Some thoughts on settlement models for the North Coast of New South Wales. In *Australian Coastal Archaeology* edited by Jay Hall and Ian J McNiven. ANH Publications, Canberra.

GUNTHER, B.

1998 *Aboriginal site survey for the proposed drainage flood channel at South Creek (Kemps Creek)*. Report prepared for Liverpool Council.

HALL, R. AND K. LOMAX.

1996 A Regional Landscape Approach to the Management of Stone Artefact Sites in Forested Uplands in Eastern Australia. *Australian Archaeology* 42: 35- 38.

HISCOCK, P.

2008 *Archaeology of Ancient Australia*. Routledge, London & New York.

HOLDAWAY, S AND N. STERN.

2004 *A Record in Stone: The Study of Australia's Flaked Stone Artefacts*.
Aboriginal Studies Press, Melbourne.

MATTHEI, L.

1990 *Soil Landscapes of Newcastle 1:100 000 Sheet*. Soil Conservation Service
of NSW, Sydney.

1995 *Newcastle Soil Landscape Series Sheet 9029-9129. 1:100 000 Sheet*. Soil
Conservation Service of NSW, Sydney.

MCBRYDE, I.

1976 *Subsistence patterns in New England Prehistory*. University of Queensland
Occasional Papers in Anthropology. 6:48 – 68.

MULVANEY, J. AND J. KAMMINGA.

1999 *Prehistory of Australia*. Allen & Unwin, St Leonards, NSW.

NATIONAL HERITAGE LIST.

2011 www.environment.gov.au/heritage/places/national/index.html

NATIONAL NATIVE TITLE TRIBUNAL.

2011 www.nntt.gov.au

NEW SOUTH WALES HERITAGE BRANCH.

2011 *New South Wales Heritage Register*.
www.heritage.nsw.gov.au/07_subnav_04.cfm

NEW SOUTH WALES GOVERNMENT.

1974 *National Parks and Wildlife Act*. New South Wales Government, Sydney.

1979 *Environmental Planning and Assessment Act*. New South Wales
Government, Sydney.

1983 *Land Rights Act*. New South Wales Government, Sydney.

1993 *Native Title Act*. New South Wales Government, Sydney.

1999 *Environmental Protection and Biodiversity Conservation Act*. New South
Wales Government, Sydney.

NEW SOUTH WALES NATIONAL PARKS AND WILDLIFE SERVICE.

1997 *Aboriginal Cultural Heritage: Standards and Guidelines Kit*. NSW National
Parks and Wildlife Service.

NEWCASTLE CITY COUNCIL.

2012 Development Control Plan.

2012 Local Environmental Plan.

SILCOX, R.

1995 *Archaeological Survey of Land Proposed for Rezoning, Garden Suburb,
Newcastle, New South Wales*. Unpublished Report for Michael Apitz & Associates,
submitted to DECC

STRAHLER, A. N.

1957 Quantitative analysis of watershed geomorphology. *American Geophysical Union Transaction*, 33: 913-92.