



Nihon University Newcastle Campus

State Significant
Development Assessment
(SSD 9787)
December 2019



December 2019

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Cover photo

Nihon University Australia Newcastle Campus Project Perspective – 1 (Source: EIS)

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Glossary

Abbreviation	Definition
AAA	Aboriginal Archaeological Assessment
ACHA	Aboriginal Cultural Heritage Assessment
AHD	Australian Height Datum
ARD	Archaeological Research Design
BAA	Baseline Archaeological Assessment
BC Act	<i>Biodiversity Conservation Act 2016</i>
BCA	Building Code of Australia
BDAR	Biodiversity Development Assessment Report
CIV	Capital Investment Value
CIP	Community Involvement Plan
Consent	Development Consent
Council	City of Newcastle
Department	Department of Planning, Industry and Environment
EESD	Environment, Energy and Science Division of the Department
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
EPL	Environment Protection Licence
ESD	Ecologically Sustainable Development
FRNSW	Fire and Rescue NSW
GANSW	Government Architect NSW
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
RMS	Roads and Maritime Services
RtS	Response to Submissions
SEARs	Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy

SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
TfNSW	Transport for NSW
TfNSW (RMS)	Transport for NSW (Roads and Maritime Services)



Executive Summary

This report provides an assessment of a State significant development (SSD) application for the adaptive reuse of the State heritage-listed former Newcastle Courthouse as an educational establishment for the Nihon University Newcastle Campus (SSD 9787). The site is located at Lot 1 DP 1199904, No. 9 Church Street, Newcastle. The Applicant is Nihon University Group (the Applicant) and the site is located within the City of Newcastle local government area (LGA).

The Department has considered the merits of the proposal in accordance with the relevant matters under section 4.15(1) and objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the principles of Ecologically Sustainable Development (ESD) and the issues raised in submissions.

The impacts of the proposal have been addressed in the Environmental Impact Statement (EIS), the Response to Submissions (RtS) and RtS Addendum. Conditions of consent are recommended to ensure that the identified impacts are managed appropriately.

The proposal, as amended by the RtS and RtS Addendum, will not have any significant amenity impacts on surrounding land uses and will provide for sympathetic additions to, the adaptive reuse and conservation of, the State heritage significant former Courthouse building. Therefore, the Department recommends the proposed development be approved.

Project Summary

The proposal seeks approval for the Nihon University Newcastle Campus, and comprises the following:

- site preparation works including the removal of 29 trees, hardstand areas and existing drainage infrastructure.
- demolition of non-original Administration Building and Supreme Court Building additions to the former Courthouse Building.
- site remediation works and bulk excavation below existing ground level.
- construction of two new part-three/part-four storey buildings (i.e. Residential Building and Education Building), minor internal alterations and additions to the existing former Courthouse Building and atrium connections between new and existing built forms.
- construction of building identification sign.
- establishment of an ancillary café on the ground level of the proposed Residential Building.
- construction of a new Church Street crossover and establishment of a new service vehicle zone in the Residential Building front setback.
- construction of a new ground level car park beneath the Education Building.
- ancillary public domain works, site landscaping and rooftop communal open space.

The proposal has a Capital Investment Value (CIV) of \$41.2 million and would generate up to 24 operational jobs and 100 construction jobs.

The proposal is SSD under clause 15(3) of Schedule 1 of the State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP), as it is development for the purpose of an 'tertiary institution' that has a CIV of more than \$30 million. Therefore, the Minister for Planning and Public Spaces is the consent authority.

Engagement

The EIS was publicly exhibited between 23 May 2019 and 19 June 2019. The Department received a total of eight submissions, including seven from public authorities and one from the public providing comments. An additional six submissions from the City of Newcastle (Council) and public authorities were received in response to the Applicant's RtS.

The key issues raised in the submissions include built form and design excellence, transport impacts and vehicle access, Aboriginal cultural heritage, infrastructure impacts, operational noise impacts and waste management.

The Applicant's RtS included further information to address key issues raised in the submissions. The Applicant's response was further refined in its RtS Addendum. As part of its RtS, the Applicant amended the design of the waste storage rooms and services delivery arrangements to address the concerns raised by Council. It also provided a Preliminary Green Star Sustainability Report to address ESD matters raised by the Department, an Aboriginal Cultural Heritage Assessment to assess Aboriginal cultural heritage and further information concerning the proposed remediation of the site.

Assessment

The Department considered the key issues for assessment to include built form, heritage, transport, noise and operational servicing and waste management. The assessment of key issues found:

- the proposed demolition of the existing Administration and Supreme Court Buildings from the eastern and western side of the former Courthouse Building will not adversely impact on the State heritage significance of the existing item.
- the proposed design and form of the new part-three/part-four storey Residential and Education Buildings provide a complementary architectural design that is in keeping with the built form of the locality whilst not detracting from the heritage significance of the former Courthouse Building.
- conditions are recommended to require the proposed project to achieve a minimum 4 Star Green Star rating, as targeted by the Applicant.
- the proposed educational establishment will not generate significant car parking demands, and the proposed transport access arrangements are adequate, subject to a recommended condition requiring the provision of 22 bicycle parking spaces and preparation of a Green Travel Plan.

- a condition is recommended requiring the implementation of noise attenuation measures as set out in the Applicant's Noise and Vibration Assessment and RtS Addendum Noise and response.
- conditions are recommended to mitigate and manage construction traffic, noise and vibration.
- conditions are recommended to ensure that site remediation works and validation occurs in accordance with the contaminated land planning guidelines.



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1. Introduction

This report provides an assessment of a State significant development (SSD) application lodged by Nihon University Group (the Applicant) for the adaptive reuse of the State heritage listed former Newcastle Courthouse (Courthouse Building) as an educational establishment for the Nihon University Newcastle Campus (SSD 9787).

The site is legally described as Lot 1 DP 1199904 and located at 9 Church Street, Newcastle. The site is located in the City of Newcastle local government area (LGA), south of the Newcastle East city centre and approximately 370m south of the new Newcastle Light Rail (see **Figure 1**), which provides regular services between the Newcastle CBD, Civic, Honeysuckle and the Newcastle Interchange to the west.

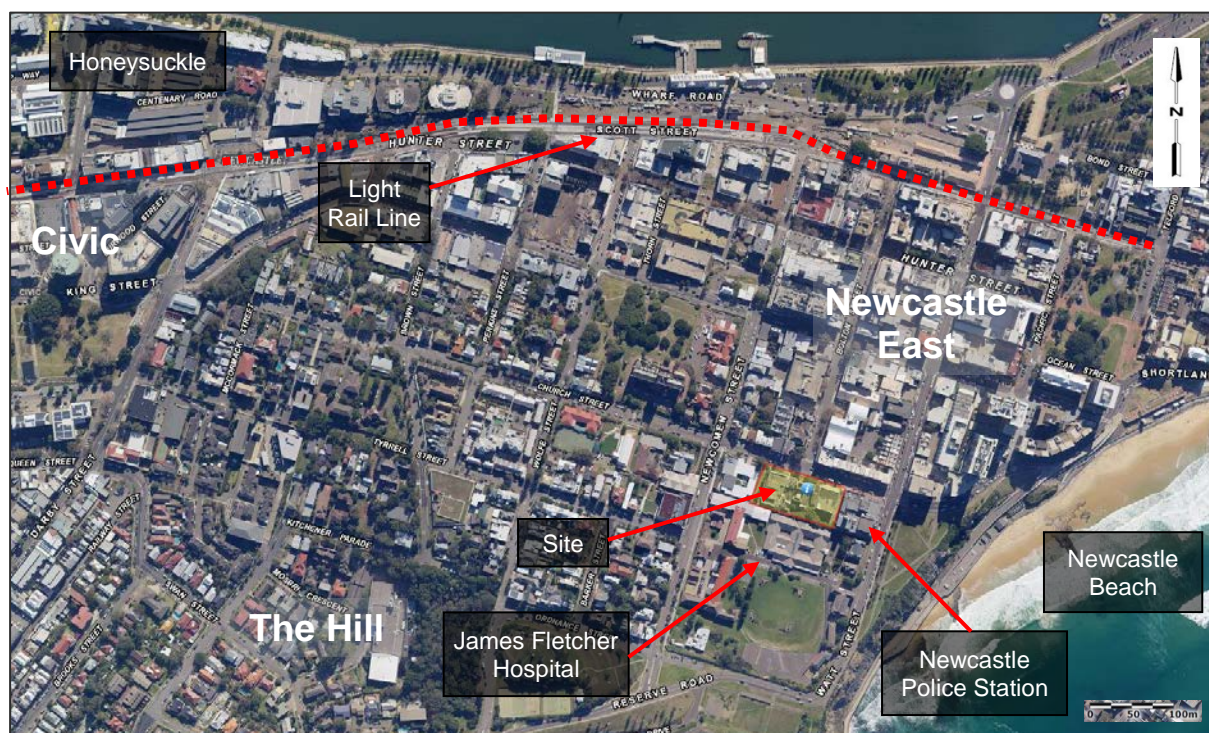


Figure 1 | Regional/Local Context Map

The proposal seeks approval for the Nihon University Newcastle Campus, comprising:

- site preparation works including the removal of 29 trees, hardstand areas and existing drainage infrastructure.
- demolition of the Administration Building and Supreme Court Building additions to the former Courthouse Building.
- site remediation works and bulk excavation below existing ground level.

- construction of two new part-three/part-four storey buildings (i.e. Residential Building and Education Building), minor internal alterations and additions to the existing former Courthouse Building and atrium connections between new and existing built forms.
- construction of building identification sign.
- establishment of an ancillary café and associated café terrace seating on the ground level of the proposed Residential Building.
- construction of a new Church Street crossover and establishment of a new service vehicle zone in the Residential Building front setback.
- construction of a new ground level car park beneath the Education Building.
- ancillary public domain works, site landscaping and rooftop communal open space.

The proposal will complement the expanding tertiary education sector, anchored by the University of Newcastle, and contribute to Newcastle's transition to a service, creative and knowledge city, as identified in the *Greater Newcastle Metropolitan Plan 2036* (GNMP).

By way of context, in 2016, construction of the new Newcastle Courthouse at 353 Hunter Street, Newcastle was finalised. This project rendered the former Newcastle Courthouse surplus to the NSW Government's requirements. The site was subsequently disposed of by an open market competitive process and is now under the ownership of Nihon University Group.

The site is zoned B4 Mixed Use under the Newcastle Local Environmental Plan 2012 (NLEP 2012), located within The Hill Heritage Conservation Area and contains the following State heritage listed items:

- Courthouse (Stage Heritage Register Item 00796) (see **Figure 2**).
- Newcastle Government House and Domain (State Heritage Register Item 01841) (see **Figure 3**).



Figure 2 | Courthouse Listing Curtilage (Source: EESD)



2. Project

The key components and features of the proposal (as refined in the RtS and RtS Addendum) are provided in **Table 1** and are shown in **Figure 7** to **Figure 13**.

Table 1 | Main components of the project

Aspect	Description
Project Summary	Establishment of the Nihon University Newcastle Campus, consisting of partial demolition of existing built forms, minor internal demolition and alterations to the State heritage listed former Courthouse Building, site remediation works, tree removal, associated earthworks and civil works, and construction of two new, part three and four storey buildings.
Demolition	<ul style="list-style-type: none">• Demolition of existing non-original Administration and Supreme Court Building.• Demolition and removal of existing hardstand areas, existing drainage. infrastructure and removal of 29 trees.• Site excavation works to facilitate the building footprint levels in the range of 0.8 to 10m below existing ground level. Deeper excavations will be localised for drainage pits and strip footings.
Remediation	<ul style="list-style-type: none">• Category 1 remediation of the site following demolition of existing buildings in accordance with the submitted Remediation Action Plan.
Infrastructure and services	<ul style="list-style-type: none">• Installation of a sub-surface rainwater tank at the rear of the site.• Reconstruction of an existing stormwater drainage pipe and connection to the stormwater system in Church Street.• Installation of 600 KVA padmount substation and associated main switchboard.
Built form	<ul style="list-style-type: none">• Internal alterations to the State heritage listed former Newcastle Courthouse Building comprising minor demolition to improve functionality and meet Building Code of Australia (BCA) and accessibility requirements.• Construction of a new part three and four storey Education Building on the western side of the former Courthouse Building with a maximum height of 16.6m.

	<ul style="list-style-type: none"> • Construction of a new part three and four storey Residential Building on the eastern side of the former Courthouse Building with a maximum height of 16.6m. • Construction of double height void glass atriums on the eastern and western elevations of the former Courthouse Building to provide for a connection between new and old built forms.
Site area	<ul style="list-style-type: none"> • 5,194sqm.
Gross floor area (GFA)	<ul style="list-style-type: none"> • Total GFA of 6,605sqm, comprising: <ul style="list-style-type: none"> ○ 1,664sqm (existing building former Courthouse Building) ○ 1,754sqm (proposed Education Building) ○ 3,187sqm (proposed Accommodation Building).
Uses	<ul style="list-style-type: none"> • Educational establishment, including ancillary student accommodation (i.e. Residential Building) and food and drink premises (i.e. university café).
Access	<ul style="list-style-type: none"> • Pedestrian access proposed from existing Church Street. • Construction of new Church Street crossover for a new proposed services zone within the front setback of the Residential Building. • Retention of the existing crossover to facilitate car park vehicle access from Church Street (beneath the proposed Education building).
Parking	<ul style="list-style-type: none"> • Construction of 20 car parking spaces, including 2 accessible spaces and 1 motorcycle space. • Construction of 22 bicycle spaces.
Public domain and landscaping	<ul style="list-style-type: none"> • Provision of 1,191sqm of communal open space at a ratio of a minimum 20sqm of private open space per student, comprising rooftop terraces on both the proposed Education and Residential Buildings. • Provision of 735sqm of landscaping, including of 75sqm of deep soil planting zones.
Hours of operation	<ul style="list-style-type: none"> • Year-round operation, with 24 hour service provided to students. • Teaching days to be 8am to 8pm, with various programs all year round. • Café – 6:30am to 10pm, 7 days per week. • Service Vehicle Zone: <ul style="list-style-type: none"> ○ Monday to Friday: 7am to 8am and 7pm to 8pm ○ Saturdays: 7am to 8am ○ No access on Sundays or Public Holidays.

Student capacity	<ul style="list-style-type: none"> Maximum 100 students at any one time.
Accommodation	<ul style="list-style-type: none"> 100 rooms for students. 8 rooms for staff.
Signage	<ul style="list-style-type: none"> Building identification wall signage - 4.2m high and 5.6m wide.
Jobs	<ul style="list-style-type: none"> 100 construction jobs. Up to 24 staff and administrative support staff jobs.
CIV	<ul style="list-style-type: none"> \$41,237,000.

2.1 Project Area / Site Description

The site comprises the grounds of the former Newcastle Courthouse and is legally described as Lot 1 DP 1199904. The site is generally rectangular in shape and has an area of 5,194sqm and a frontage to Church Street of approximately 100m (see **Figure 4**, with the site outlined in red). The site has a gradual slope along the Church Street frontage from west to east, falling approximately 4.5m.

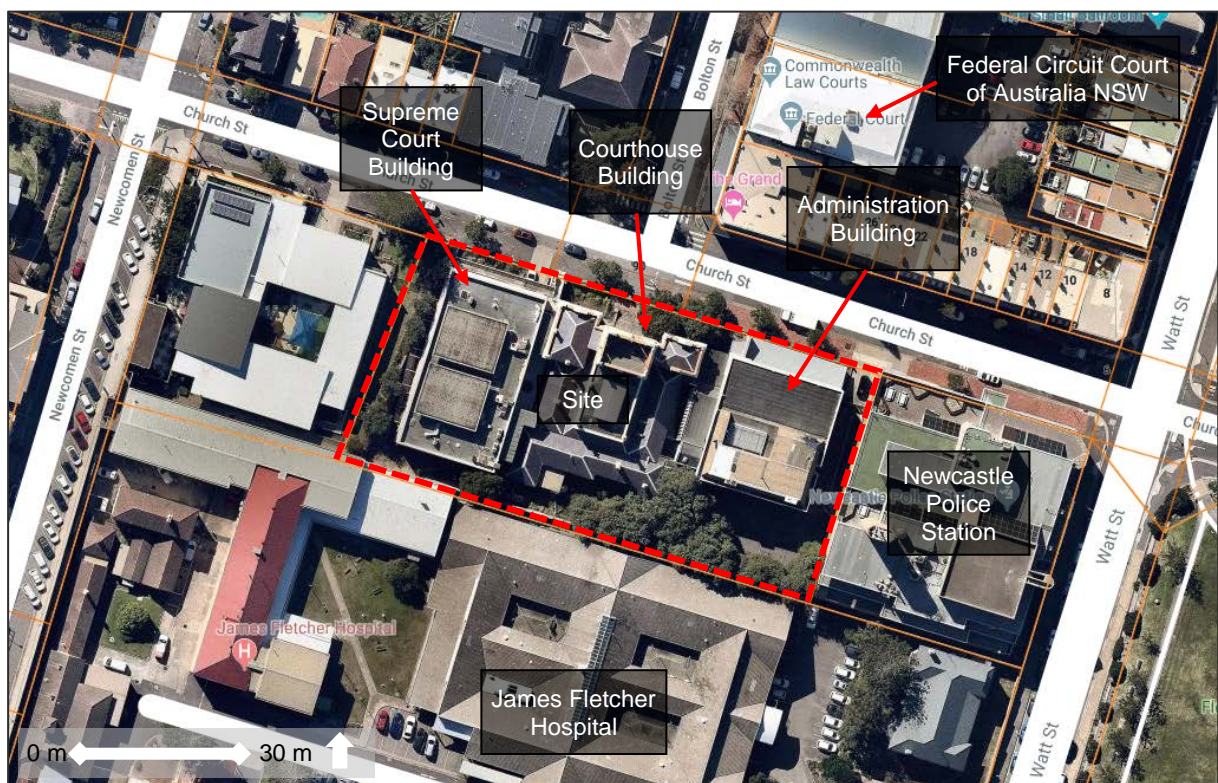


Figure 4 | SSD site area local context (Source: Nearmap, August 2019)

The site is currently occupied by the former Courthouse building, which is comprised of three distinct building elements, being:

- the main State heritage significant 1892 Courthouse Building, a Victorian Italianate architectural style building at the southern termination of Bolton Street on Church Street, with heritage significance (listed State heritage item).
- a three storey 1949 eastern wing addition (Administration Building), a post-war architectural style addition which has since been significantly modified, with little heritage significance.
- two storey 1966 western courts wing (Supreme Court Building), designed by the Government Architect's office and constructed with a precast concrete façade, with moderate heritage significance.

The existing streetscape built form is illustrated below in **Figure 5**.

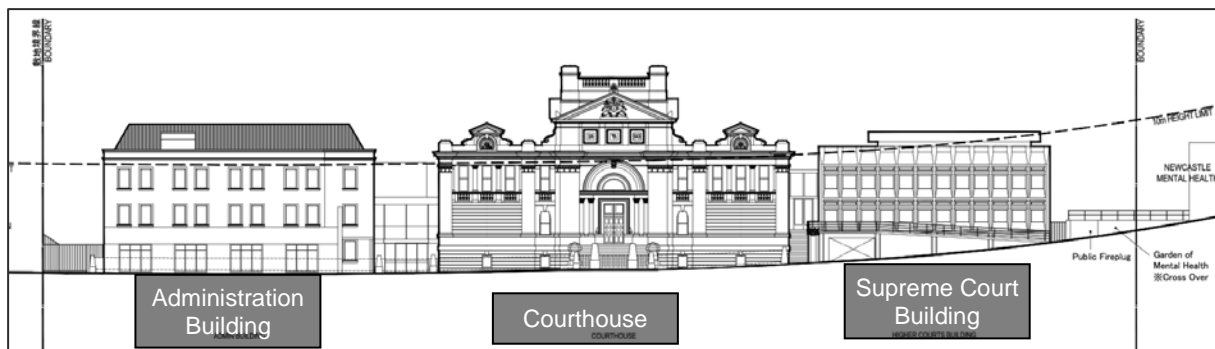


Figure 5 | Existing Northern Elevation (Source: EIS)

The majority of the site is covered by the existing built form and associated hardstand areas. A stand of mature, non-native trees are clustered along the rear boundary of the site, while the site's Church Street frontage comprises scattered trees, shrubs and small grassed areas and a small cast iron palisade fence.

An existing at-grade car park is located at the rear of the Administration Building and an undercover car park beneath the Supreme Court building, with vehicle access to both provided from Church Street. A retaining wall, upwards of approximately 6m in height, extends the length of the site's rear southern boundary. A smaller retaining wall, approximately 5.5m in height, extends from the rear of the site to the front along the western side boundary.

The site also comprises several easements for services, including structures for the drainage of water, one of which accommodates a large brick culvert and concrete stormwater pipe that conveys runoff from upstream catchments and the site. The site also contains a 30m reinforced concrete prisoner tunnel beneath the existing Administration Building, which is proposed to be secured during construction works and retained where possible (see **Figure 6**).

The site is located within an established urban area and surrounded by a mixture of civic, medical, commercial and residential land uses, all of similar built form scales. These include the Newcastle Police Station to the east, NSW Health's James Fletcher Hospital to the south, and the Grand Hotel opposite to the north. The site is also located nearby to Fletcher and King Edward Parks and Newcastle Beach.

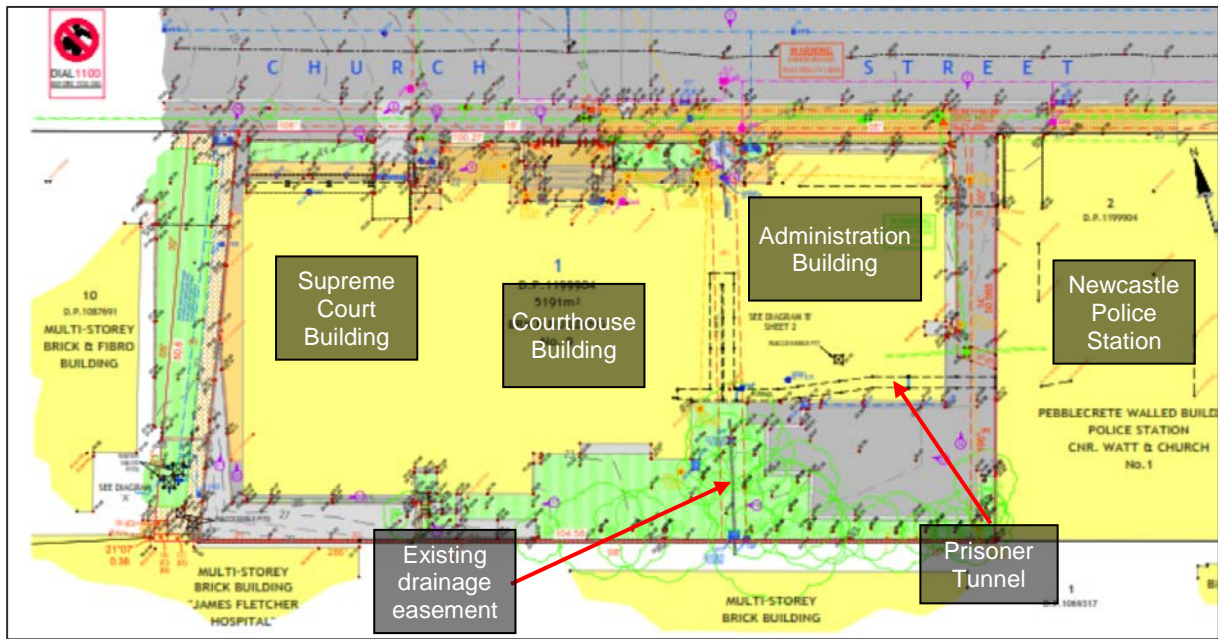


Figure 6 | Site survey (Source: EIS)

2.2 Site preparation works

Site preparation works are proposed and will involve the removal of 29 existing trees from the site. The existing trees are predominantly located at the rear of the site behind the existing Courthouse and Administration buildings (see **Figure 7**). Trees identified for removal would be impacted by works associated with the proposed demolition of existing structures and the subsequent construction of new built form.

The existing and less historically significant Administration and Supreme Court buildings on the eastern and western sides of the State heritage significant Courthouse Building are proposed to be demolished (see **Figure 7**). In addition, associated hardstand areas, such as the existing at-grade car park at the rear of the Administration building, are also proposed to be removed. The existing Courthouse Building and underground tunnel will be retained, with the proposed new student accommodation building designed to bridge the existing tunnel to avoid any adverse impacts.

Following the completion of tree removal and demolition works, further investigations will be undertaken on-site and a site contamination data gap analysis prepared to better inform the site's contamination status. Where any exceedances of criteria are detected, the site will be remediated in accordance with the submitted conceptual Remediation Action Plan (RAP).

Following the completion of demolition and site clearance, and any required remediation works, bulk excavation works will be undertaken, lowering the finished ground level up to 1.2m below existing ground level. Further minor excavation will be undertaken to accommodate services and drainage infrastructure installation and the construction of new lift pits and future structural piles.

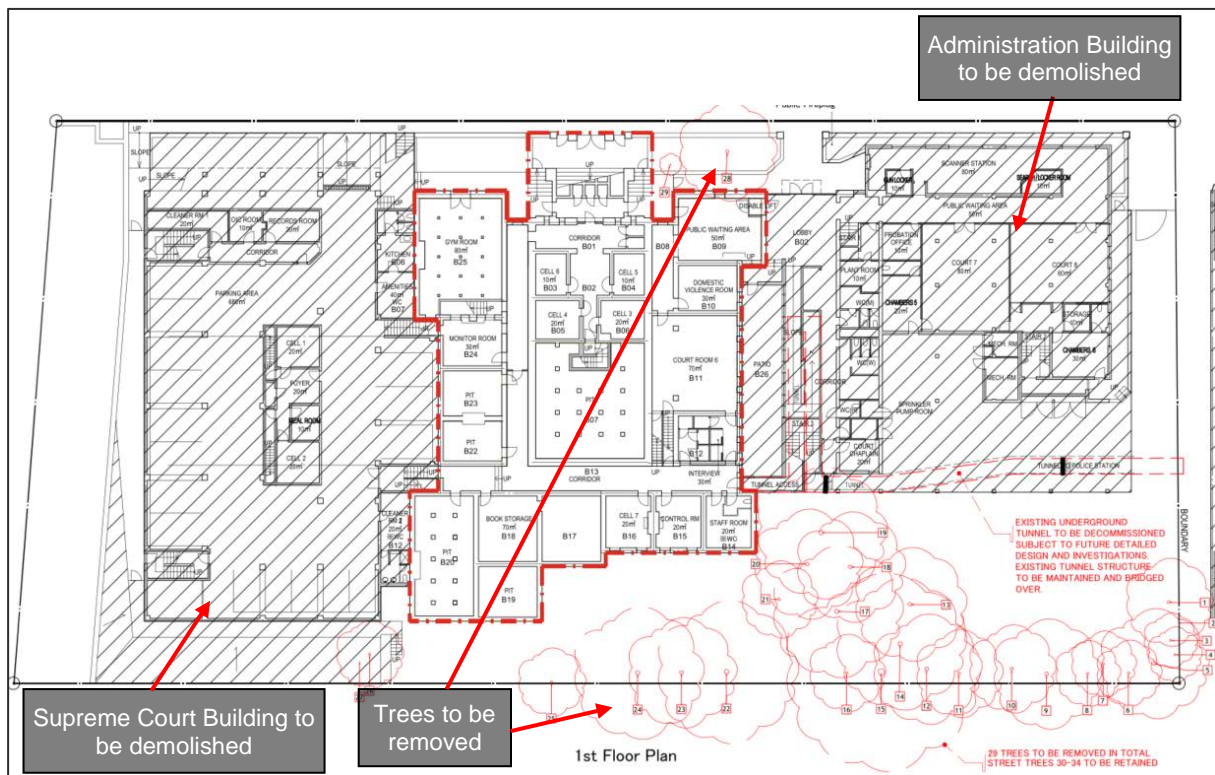


Figure 7 | Demolition plan (areas shown hashed proposed to be demolished) (Source: EIS)

2.3 Physical layout and design

Two new buildings, the Residential Building and Education Building, will be constructed on either side of the former Courthouse Building and house the proposed student and staff accommodation and primary education functions of the university.

The new buildings will be connected at the ground level to the existing Courthouse Building via new glass atriums. The proposed glass atriums have been designed to allow the existing side walls of the Courthouse Building to be retained.

The new part three and four storey built forms will have a maximum height of 10.1m at the street level, stepping up to 16.6m at the rear of the site. The new built form will be setback as follows:

- 6m from Church Street in alignment with the existing Courthouse building.
- 3m from the rear southern boundary.
- 5m from the eastern side boundary.
- between 1m and 4.5m from the western side boundary.

The new built forms have been designed as separate architectural elements to clearly define the old and new and to ensure that the façade of the former Courthouse Building is emphasised within the streetscape (see **Figure 8** and **Figure 10**).

New built form fronting Church Street will contain double height timber louvre screen panels above the ground level to make it appear as though the upper two storeys are floating above the ground level. The

proposed façade designs and louvre arrangement help express the vertical forms of the State heritage listed residential terraces opposite while controlling solar heat gain and privacy.

A new car park will be constructed below the new Education Building, utilising the existing Church Street crossover at the western end of the site, servicing 20 car parking spaces, one motorcycle space and 22 bicycle spaces.

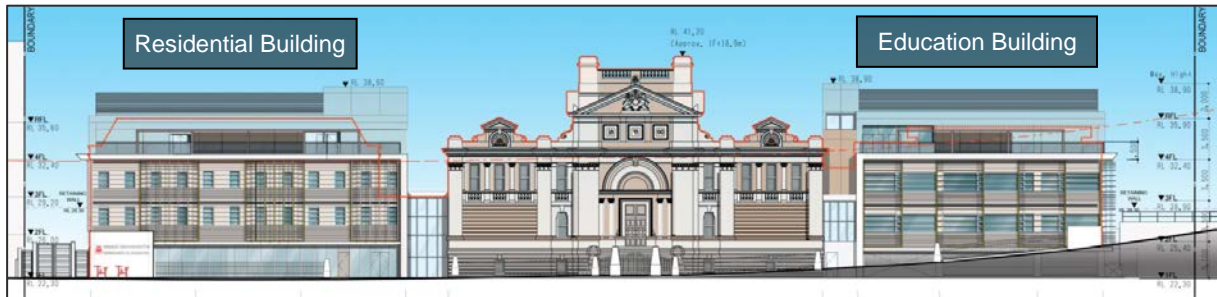


Figure 8 | Northern Elevation (Source: EIS)

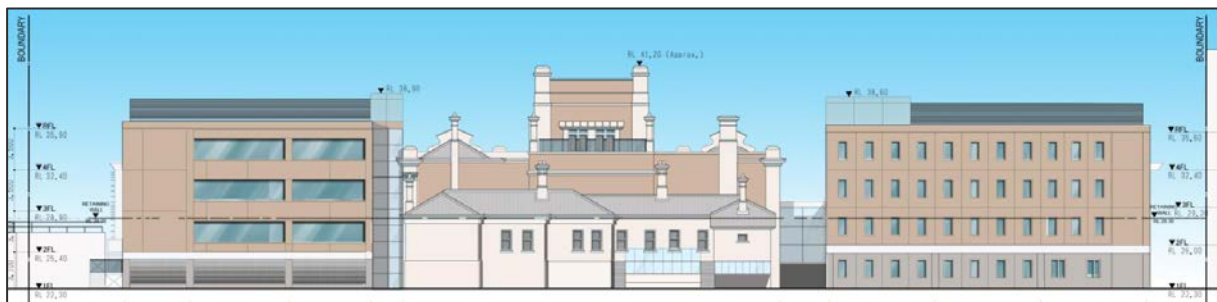


Figure 9 | Southern Elevation (Source: EIS)



Figure 10 | Church Street Elevation Photomontage (Source: EIS)

Former Courthouse Building

The former Courthouse Building will be retained for adaptive reuse and conservation and will provide for mostly administrative uses with a lecture hall, libraries, management facilities, multipurpose hall and amenities. Minor internal demolition works and alterations and additions are proposed to the existing building (see **Figure 11**).

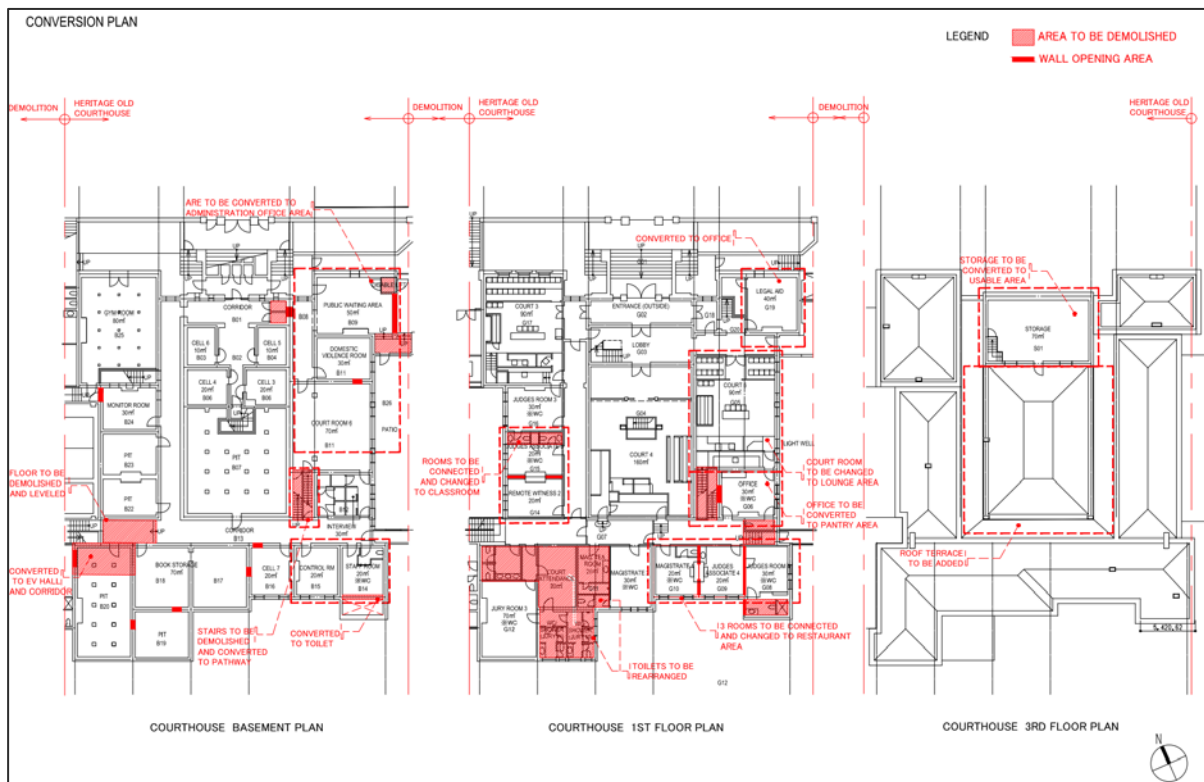


Figure 11 | Extent of internal works within the former Courthouse Building (Source: EIS)

Internal works are predominantly located on the Ground Level and Level 1 to create new openings, remove stairways and introduce new lifts to meet accessibility requirements. Former courtrooms will be converted for use as classrooms and lounge areas, while two existing courtrooms on Level 1 are proposed to be retained and conserved to reuse for mock trials.

Primary pedestrian access to the campus will be provided between the Courthouse Building and Residential Building and into the main administration area within the refurbished Courthouse building.

Education Building

A new proposed Education Building will be constructed in place of the existing Supreme Court Building on the western side of the site. The building will be part three and four storeys in height, with a new rooftop terrace at the front of the building on Level 3.

A new at-grade car park will be constructed beneath the building, with three levels of classrooms above. A total of 18 classrooms of varying size are proposed, along with two language rooms, six storage rooms, open lounge areas, and female and male amenities. New stairs and a new lift will be constructed, with separate stairs on the exterior of the building in the western corner of the building.

Residential Building

A new Residential Building will be constructed on the eastern side of the Courthouse Building in place of the demolished Administration building. The building will be part three and four storeys tall, with a new roof terrace at the front of the building on Level 3.

The new Residential Building will provide accommodation and shared facilities and comprise 100 student rooms, seven teacher accommodation rooms and a small residential unit for the University Exchange Coordinator. The ground floor will comprise a 224sqm café and associated outdoor terrace seating and 112sqm lounge area.

The student rooms are proposed on all levels and will be arranged into 'units' comprising two to four rooms each connected by a shared lobby space accessed from the internal corridors. Student accommodation room sizes will be typically 9.6sqm, or approximately 13.75sqm when including the shared lobby space areas.

The University Exchange Coordinator room will be located on the Ground Level and will include a separate kitchen, living and dining room, bedroom and bathroom. The teacher accommodation rooms will include beds, storage and study desk, kitchenettes and private bathrooms. Shared laundry facilities, kitchens and amenities will be provided on each of the levels.

Landscaping, Open Space and Public Domain Works

The proposed landscaping scheme is to reflect the proposal's commitment to conservation and adaptive reuse of the Courthouse Building but also to provide for outdoor areas for student use. Various elements of the existing site, including large portions of the existing cast iron fencing, street trees, bollards and sandstone plinths will be retained and integrated into a new landscaping design for the site.

Rooftop terraces are also proposed and will comprise informal open space areas sheltered by proposed pergolas, with connections provided to the new Education Building rooftop terrace.

Vegetation to be planted include two feature trees at the front of the Courthouse Building and hedge planting in terraced concrete planters (see **Figure 12**). The rooftop terrace will consist of timber decking and shade structures and a Japanese Zen stone garden.

A new building identification sign (see **Figure 13**) is also proposed on the site's Church Street frontage. The sign is proposed to be sited at the eastern end of the site in front of the new Residential Building.

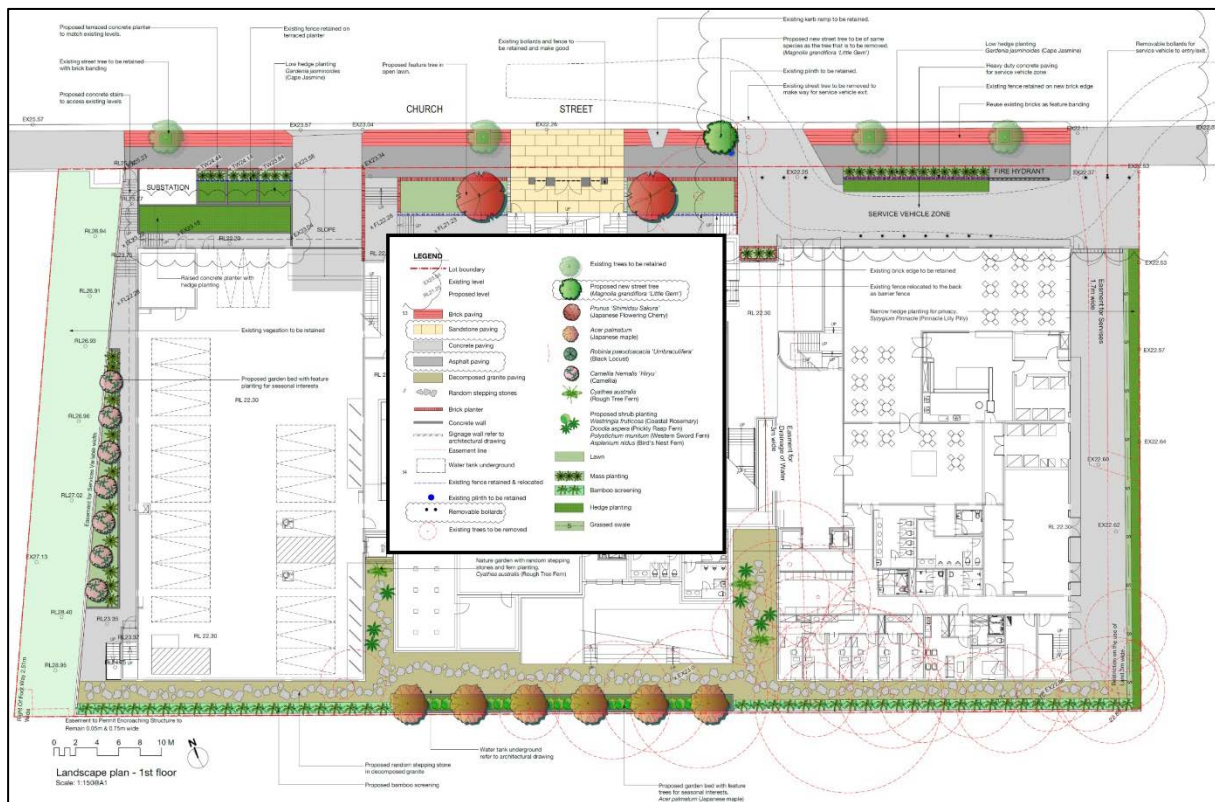


Figure 12 | Proposed Landscape Plan – Ground Level (Source: Moir Landscape Architects)

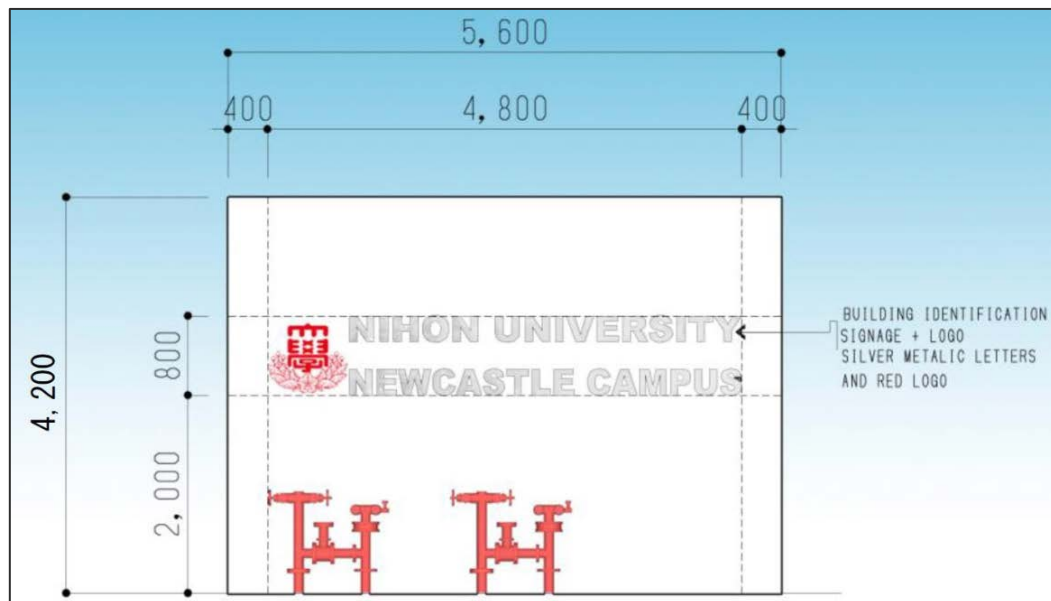


Figure 13 | Proposed Building Identification Sign (Source: Azusa Sekkei 2019)

Site Access and Servicing

Access to the new proposed car park will be provided via the existing Church Street crossover at the western end of the site beneath the new Education Building (see **Figure 14**). Service vehicle access is proposed to be accommodated in a new services zone to be constructed in front of the proposed Residential Building (see **Figure 14**) and accessed via the construction of a third crossover. Use of the services zone is proposed to be restricted to minimise potential conflicts with pedestrians and traffic.

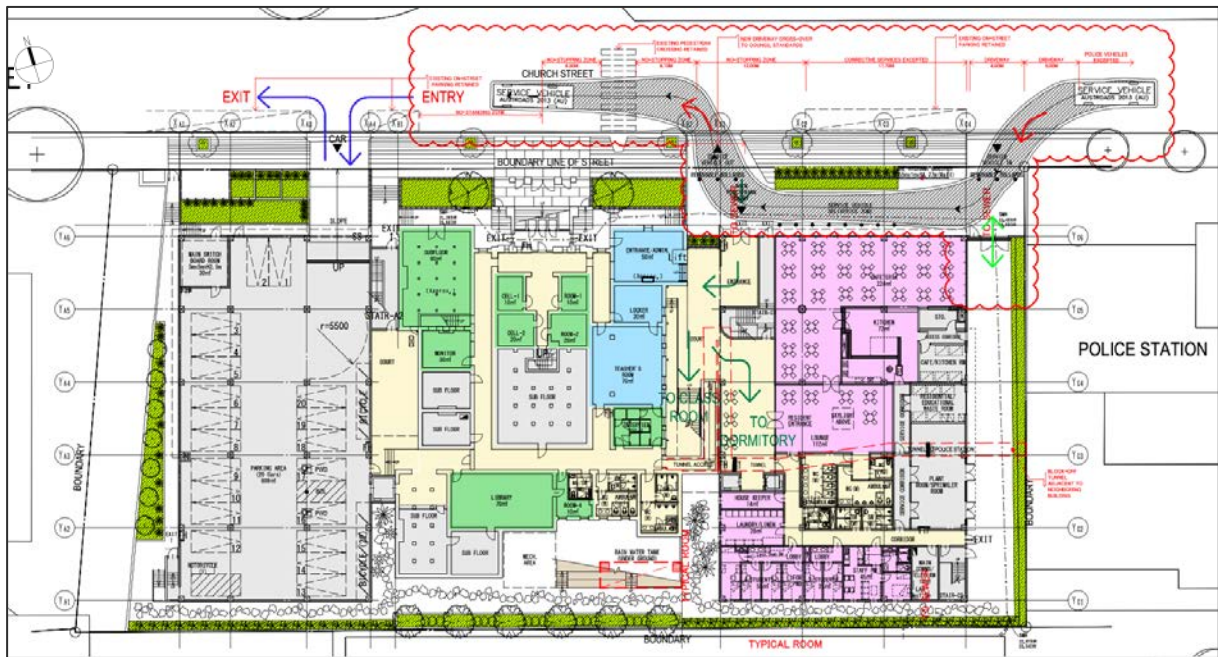


Figure 14 | Service vehicle access arrangement plan (Source: EIS)

2.4 Uses and activities

The site is intended for use as an 'educational establishment', being a privately-operated tertiary institution with associated student accommodation.

The site is proposed to offer services to students on a 24 hour basis, seven days a week, with lessons intended to be carried out between 8am and 8pm over the course of the academic year.

Access and use of the proposed rooftop terrace areas will be restricted to between 7am and 9pm.

A new café for the university students and staff is proposed on the Ground Level of the Residential Building. The proposed café will operate between 6:30am to 10pm, seven days a week and will be managed by Nihon University. The associated outdoor café seating will operate between operational times of the proposed services zone (i.e. 8am to 7pm, weekdays and 8am to 10pm, weekends). The café is not proposed to be open to the general public.

Access and operation of the proposed services zone will be restricted to the following times:

- Monday to Friday: 7am to 8am and 7pm to 8pm.
- Saturdays: 7am to 8am.

No use of the services zone is proposed on Sundays or Public Holidays.

2.5 Staging

The proposal will be delivered in one single stage over three phases, comprising:

- site preparation works, tree removal and building demolition.
- site remediation and validation.
- construction of new built form.



3. Strategic Context

The site is located in an area containing several State and local heritage items and is within the boundaries of The Hill Heritage Conservation Area. The site lies opposite a row of State heritage listed residential terraces and The Grand Hotel, at 8 to 32 Church Street, Newcastle. The State heritage listed former Newcastle East Public School is located diagonally opposite at the corner of Church Street and Bolton Street (see **Figure 15**). The former school was recently redeveloped as a residential apartment building.

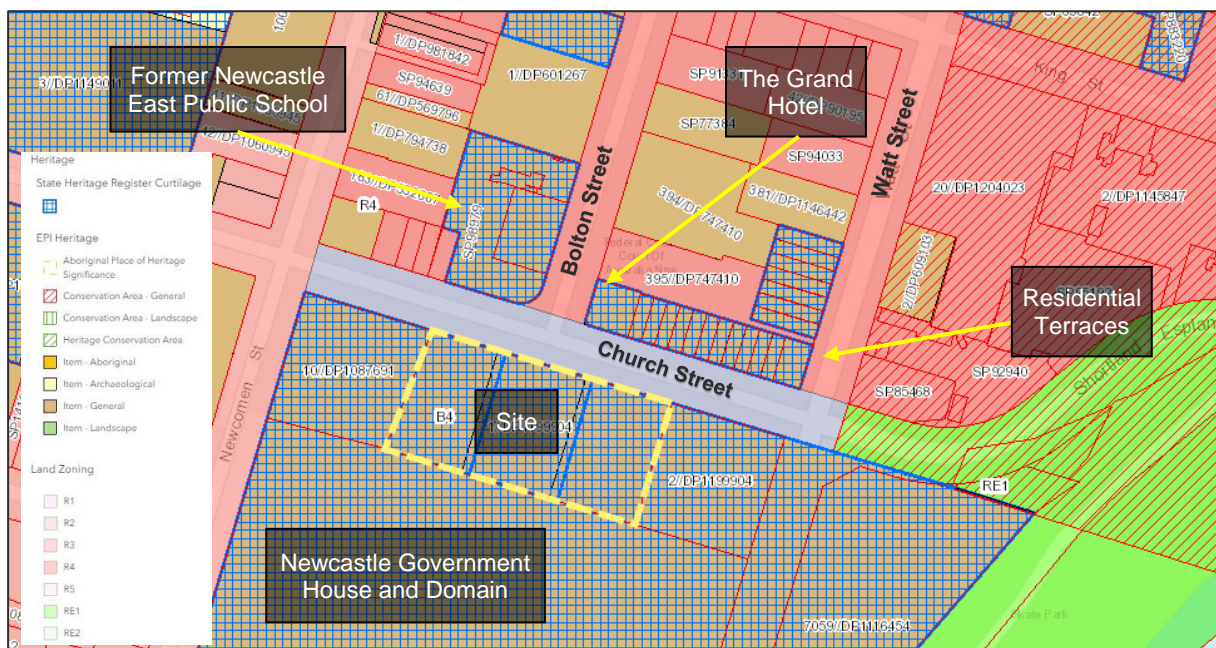


Figure 15 | Site Heritage Context (Source: www.planningportal.nsw.gov.au)

The proposal will contribute to the transition of Newcastle to a service, creative and knowledge city as identified specifically in the Greater Newcastle Metropolitan Plan 2036 (GNMP).

Nihon University compliments the expanding tertiary education sector, anchored by the University of Newcastle located approximately 1km to the west. The Applicant has detailed that a Memorandum of Understanding exists between Nihon University and the University of Newcastle for future collaborations and exchange programs between both tertiary educational establishments.

The proposal will boost the city's educational capacity and facilitate innovation and cultural exchange, helping to reinforce Newcastle as Australia's next metropolitan city. The proposal forms part of the NSW Government's education and innovation cluster as identified in the GNMP. The location of the development aligns with the new international focus for inner city education in Greater Newcastle (see **Figure 16**) in the adaptive reuse of the former Courthouse in the proposal ensuring the development is sympathetic to the existing heritage values of the area.

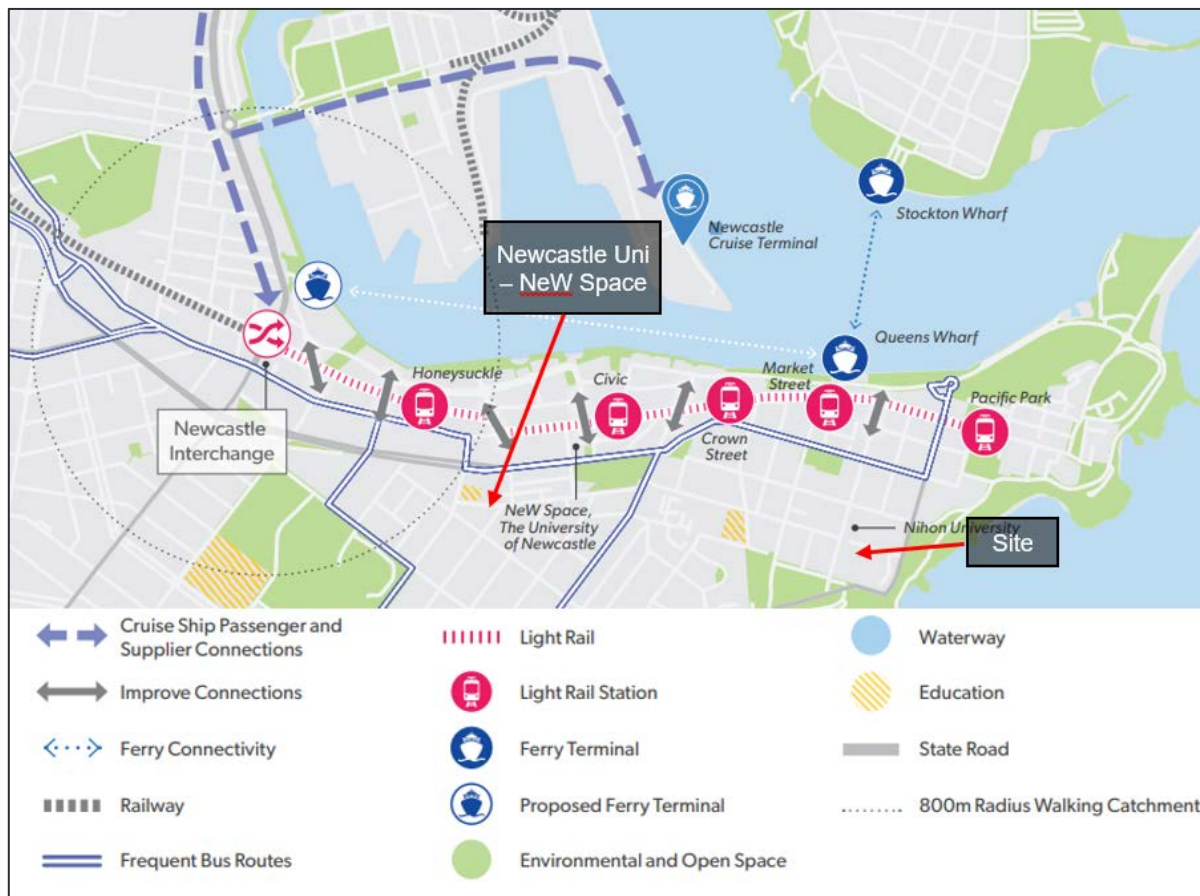


Figure 16 | Newcastle City Centre Connectivity (Source: GNMP 2036)

The Department considers that the proposal is strategically appropriate for the site given:

- it is consistent with the Hunter Regional Plan 2036, as Nihon University will deliver a new tertiary facility, supporting the development of a national Centre of Excellence for Health and Education in Greater Newcastle.
- it is consistent with the GNMP in delivering an international university, ensuring a collaboration with the University of Newcastle in making the education and training sector a key source of growth in Greater Newcastle's economy, and create a new use for the former Newcastle Courthouse.
- it is consistent with Transport for NSW's Future Transport Strategy 2056, as it would provide a new educational facility in a highly accessible location and provide access to additional new employment opportunities close to public transport. The development would also assist in establishing Newcastle as a 'satellite city', encouraging economic and housing growth.
- it is consistent with Infrastructure NSW's State Infrastructure Strategy 2018 – 2038 Building the Momentum, as it facilitates a coordinated and collaborative approach to the provision of language education services.
- it would provide direct investment in the region of approximately \$41.2 million, which would support an anticipated 100 jobs during construction and up to 24 new operational teaching and administrative support jobs.



4. Statutory Context

4.1 State significant development

This proposal is SSD under section 4.36 (development declared SSD) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as the development has a CIV in excess of \$30 million (\$41,237,000) and is for the purpose of an tertiary institution under clause 15 of Schedule 1 of State Environmental Planning Policy (State and Regional Development) 2011.

The Minister for Planning and Public Spaces is the consent authority under section 4.5 of the EP&A Act.

In accordance with the then Minister for Planning's delegation to determine SSD applications, signed on 11 October 2017, the Executive Director, Infrastructure Assessments may determine this application as:

- the relevant Council has not made an objection.
- there are less than 25 public submissions in the nature of objection.
- a political disclosure statement has not been made.

4.2 Permissibility

The site is zoned B4 Mixed Use under Newcastle Local Environmental Plan (NLEP) 2012.

Educational establishments are permissible with consent within the zone, as are the proposed ancillary student accommodation and cafe. Therefore, the Minister for Planning and Public Spaces or a delegate may determine the carrying out of the development.

4.3 Other approvals

Under section 4.41 of the EP&A Act, a number of other approvals are integrated into the State significant development approval process, and consequently are not required to be separately obtained for the proposal.

Under section 4.42 of the EP&A Act, a number of further approvals are required, but must be substantially consistent with any development consent for the proposal (e.g. approvals for any works under the *Roads Act 1993*).

The Department has consulted with the relevant public authorities responsible for integrated and other approvals, considered their advice in its assessment of the project, and included suitable conditions in the recommended conditions of consent (see **Appendix C**).

4.4 Mandatory matters for consideration

4.4.1 Environmental planning instruments

Under section 4.15 of the EP&A Act, the consent authority is required to take into consideration any environmental planning instrument (EPI) that is of relevance to the development the subject of the development application. Therefore, the assessment report must include a copy of, or reference to, the provisions of any EPIs that substantially govern the project and that have been taken into account in the assessment of the project.

The Department has undertaken a detailed assessment of these EPIs in **Appendix B** and is satisfied the SSD application is consistent with the requirements of the EPIs.

4.4.2 Objects of the EP&A Act

The objects of the EP&A Act are the underpinning principles upon which the assessment is conducted. The statutory powers in the EP&A Act (such as the power to grant consent) are to be understood as powers to advance the objects of the legislation, and limits on those powers are set by reference to those objects. Therefore, in making an assessment, the objects should be considered to the extent they are relevant. A response to the objects of the EP&A Act is provided at **Table 2**.

Table 2 | Response to the objects of section 1.3 of the EP&A Act

Objects of the EP&A Act	Consideration
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	Nihon University will ensure the retention and reuse of the former Courthouse Building and ensure its ongoing management. The proposal represents the development of suitably zoned land to provide additional educational facilities near the Newcastle city centre. The educational establishment will provide social, cultural and economic benefits to the community.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposal includes measures to deliver ecologically sustainable development (refer to Section 4.4.3).
(c) to promote the orderly and economic use and development of land,	The adaptive reuse and conservation of the State heritage listed former Courthouse Building meets the objectives of the zone to provide a tertiary educational establishment in an

accessible location in close proximity to public transport and the nearby Newcastle City Centre.

The development of the site will also provide economic benefits through job creation and infrastructure investment during construction stage.

(d) to promote the delivery and maintenance of affordable housing,	<p>The proposal will not result in the loss of any existing affordable housing provisions in the locality.</p> <p>The proposal involves student and teacher accommodation that supports the proposed development.</p>
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	<p>The proposal would not result in the loss of any threatened or vulnerable species, populations, communities or significant habitats.</p>
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	<p>The proposal consists of the adaptive reuse and conservation of the State heritage listed former Courthouse Building and will provide two new architecturally sympathetic buildings adjacent.</p> <p>No significant impacts to built and cultural heritage, including Aboriginal cultural heritage, are considered likely by the proposal. See Section 6.5 for more detail.</p>
(g) to promote good design and amenity of the built environment,	<p>The proposal has been designed to respond to the State heritage significance of the existing built form on the site and surrounding area. The proposal incorporates principles of ecologically sustainable development (ESD) and has had regard to the NSW Government's 'Better Placed' design objectives, and specific advice given by the Council's Urban Design Consultative Group and the Heritage Council.</p>
(h) to promote the proper construction and maintenance of buildings, including the	<p>The Applicant has prepared management plans to ensure construction and maintenance is</p>

protection of the health and safety of their occupants,	undertaken in accordance with legislation, guidelines, policies and procedures.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	The Department publicly exhibited the proposal (Section 5.1), which included consultation with Council and other public authorities and consideration of their responses (Sections 5.1 and 6).
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The Department publicly exhibited the proposal as outlined in Section 5.1 , which included notifying adjoining landowners, placing a notice in newspapers and displaying the proposal on the Department's website and at Council during the exhibition period.

4.4.3 Ecologically sustainable development

The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*, section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- the precautionary principle.
- inter-generational equity.
- conservation of biological diversity and ecological integrity.
- improved valuation, pricing and incentive mechanisms.

The Department's initial assessment of the exhibited proposal identified a shortfall of appropriate sustainability measures for a development of this scale. The Applicant was requested to provide a sustainability report that outlined measures to ensure the development could achieve a minimum 4 star Green Star rating.

In its RtS, the Applicant provided a Preliminary Green Star Sustainability Report, which set out the ESD initiatives and sustainability measures proposed to be implemented. These include:

- establishment and implementation of appropriate building operations and management systems.
- construction and operational waste reduction measures and strong emphasis on recycling.
- use of appropriate building materials to ensure of internal acoustic comfort and minimise reverberation in teaching environments.
- use of materials with low volatile organic compounds, such as engineered wood products.
- use of insulated building materials.
- use of energy efficient lighting fixtures.

- building material and design to reduce energy usage and heat loads.
- water recycling options for non-potable uses and the selection of water saving devices and fixtures to minimise water consumption.
- implementation of a Green Travel Plan (GTP) to promote active and public transport modes, provision of bicycle parking and reduce on-site car parking availability.

The Applicant is targeting an as built 4 star Green Star rating through the implementation of the above initiatives and measures. The proposed highly efficient façade system, use of low impact materials, use of highly efficient water fixtures and fittings, optimised air conditioning system, installation of a rooftop photovoltaic array and implementation of a system to educate occupants about the building performance and how it is influenced by occupant behaviour will ensure an ecologically sustainable building is developed.

The Department has recommended conditions of consent requiring the Applicant commit to its ESD performance by certifying the achievement of a minimum 4 star Green Star rating prior to construction and within six months of operations commencing.

The Department has considered the proposed development in relation to the ESD principles. The precautionary and inter-generational equity principles have been applied in the decision making process via a thorough and rigorous assessment of the environmental impacts of the proposal.

The proposal is consistent with ESD principles as described in section 9.3.1 of the Applicant's EIS, which has been prepared in accordance with the requirements of Schedule 2 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

The site is not subject to any known effects of flooding and is not subject to bushfires. The site would not be impacted by changes in sea level resulting from climate change.

Overall, the proposal is consistent with ESD principles and the Department is satisfied the proposed sustainability initiatives will encourage ESD, in accordance with the objects of the EP&A Act.

4.4.4 Environmental Planning and Assessment Regulation 2000

Subject to any other references to compliance with the EP&A Regulation cited in this report, the requirements for Notification (Part 6, Division 6) and Fees (Part 15, Division 1AA) have been complied with.

4.4.5 Planning Secretary's Environmental Assessment Requirements

The EIS, RtS and RtS Addendum are compliant with the Planning Secretary's Environmental Assessment Requirements (SEARs) and are sufficient to enable an adequate consideration and assessment of the proposal for determination purposes.

4.4.6 Section 4.15(1) matters for consideration

Table 3 identifies the matters for consideration under section 4.15 of the EP&A Act that apply to SSD in accordance with section 4.40 of the EP&A Act. The table represents a summary for which additional information and consideration is provided for in **Section 6** (Assessment) and relevant appendices or other sections of this report and EIS, referenced in the table.

Table 3 | Section 4.15(1) matters for consideration

Section 4.15(1) Evaluation	Consideration
(a)(i) any environmental planning instrument	Satisfactorily complies. The Department's consideration of the relevant EPIs is provided in Appendix B of this report.
(a)(ii) any proposed instrument	The Department's consideration of the draft EPIs is provided in Appendix B of this report.
(a)(iii) any development control plan (DCP)	Under clause 11 of the SRD SEPP, DCPs do not apply to SSD. Notwithstanding, consideration has been given to relevant DCPs at Appendix B .
(a)(iiia) any planning agreement	Not applicable.
(a)(iv) the regulations <i>Refer Division 8 of the EP&A Regulation</i>	The application satisfactorily meets the relevant requirements of the EP&A Regulation, including the procedures relating to applications (Part 6 of the EP&A Regulation), public participation procedures for SSD and Schedule 2 of the EP&A Regulation relating to EIS.
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	Likely impacts are proposed to be appropriately mitigated or conditioned - refer to Section 6 and Appendix B of this report.
(c) the suitability of the site for the development	The site is suitable for the development as discussed in Sections 3, 4 and 6 of this report.
(d) any submissions	Consideration has been given to the submissions received during the exhibition period. See Sections 5 and 6 of this report.
(e) the public interest	Refer to Sections 6 and 7 of this report.

4.4.7 Biodiversity Conservation Act 2016

Under section 7.9(2) of the *Biodiversity Conservation Act 2016* (BC Act), SSD applications are “to be accompanied by a biodiversity development assessment report (BDAR) unless the Planning Agency Head and the Environment Agency Head determine that the proposed development is not likely to have any significant impact on biodiversity values”.

The proposed works are not likely to have a significant impact on biodiversity values. The Environment, Energy and Science Division (EESD) of the Department (formally the Office of Environment and Heritage) and the Department have determined that the Nihon University SSD application is not required to be accompanied by a BDAR.



5. Engagement

5.1 Department's engagement

In accordance with Schedule 1 of the EP&A Act, the Department publicly exhibited the application from 23 May 2019 until 19 June 2019 (28 days). The application was exhibited at the Department and on its website, at NSW Service Centres and at City of Newcastle Council's office.

The Department placed a public exhibition notice in the Newcastle Herald on 23 May 2019, and notified adjoining landholders and relevant State and local government authorities in writing. The Department representatives visited the site to provide an informed assessment of the development.

The Department has considered the comments raised in the public authority and public submissions during the assessment of the application (**Section 6**) and/or by way of recommended conditions in the instrument of consent at **Appendix C**.

5.2 Summary of submissions

The Department received a total of eight submissions, including seven submissions from public authorities and one submission from the general public providing comments. **Table 4** and **Table 6** below provide a summary of the issues raised in the submissions, and copies of the submissions may be viewed at **Appendix A**.

5.3 Key Issues – Government Agencies

A summary of the key issues raised in the six submissions received from Government Agencies is provided below.

Table 4 | Summary of Government Agency submissions to the EIS exhibition

Environment Protection Authority (EPA)

EPA did not object to the proposal but commented that an NSW EPA Accredited Site Auditor be engaged to confirm site suitability following completion of the required additional contamination investigations.

Heritage Council of New South Wales (Heritage Council)

The Heritage Council raised no objections to the proposal, advising it supported the proposal as proposed by the EIS. The following comments were also provided on the proposed adaptive reuse of the significant spaces:

- a movable heritage plan be developed in accordance with an appropriate study and inventory to ensure that these elements are incorporated into a comprehensive interpretation strategy.

- a more sympathetic streetscape treatment must be employed to ensure a sympathetic relationship to the setting and Courthouse.

The Heritage Council also recommended several conditions of consent, requiring that all impacts to areas of high significant fabric be limited, a Heritage Interpretation Plan be developed and submitted for endorsement and an Archaeological Research Design and Excavation Methodology be prepared to guide the archaeological program.

Environment, Energy and Science Division (EESD) (formally Office of Environment and Heritage)

EESD commented that an Aboriginal Cultural Heritage Assessment report must be prepared in accordance with the requirements of the SEARs.

Roads and Maritime Services (RMS)

RMS did not object to the proposal and provided the following comments:

- the Department should ensure appropriate traffic measures are implemented to ensure traffic efficiency and road safety during construction phase.
- consideration be given to ensuring appropriate driveway sight lines are provided to allow for safe vehicle movements.

Transport for NSW (TfNSW)

TfNSW reviewed the application and provided the following recommended conditions:

- that the Applicant be required to develop a Green Travel Plan (GTP) for endorsement for the operation of the proposal prior to the issue of the Occupation Certificate.
- that the Applicant prepare a Construction Traffic and Pedestrian Management Plan (CTPMP) for implementation prior to the issue of the Construction Certificate for the site.

5.4 Key Issues – Council/Community

5.4.1 City of Newcastle

A summary of the key issues raised by Council are provided below in **Table 5**.

Table 5 | Summary of Council's submissions to the EIS exhibition

City of Newcastle (Council)

Council does not object to the proposal, however, it provided the following comments for consideration:

- further development of the façade design is encouraged to present the impression of an important educational building in an urban setting.

-
- a conservative approach has been taken when modelling vehicle activity for future traffic growth, as such, the results should be reviewed and updated to reflect a maximum number of students, inclusive of the University of Newcastle students.
 - the eastern service vehicle driveway should be widened, and a turning facility provided to allow for opposing vehicle movements to minimise potential on-street queueing impacts.
 - all vehicles are required to enter and exit the site in a forward direction to minimise potential impacts associated with the proposed increase in pedestrian activity in the area.
 - concern is raised that the car parking proposed is insufficient to cater for all staff, maintenance vehicles, and other associated uses that require car parking access to the university.
 - a GTP be prepared to promote and facilitate the use of alternative transport.
 - public domain works proposed over the footpath at the frontage of the site, reconstruction of kerb and gutter, road shoulder works and kerb and blister crossings at the intersection of Bolton and Church Streets will be subject to separate approval under section 138 of the *Roads Act 1993*.
 - development over the existing drainage easement affecting DP 1199904 must allow for sufficient clearance to enable reasonable and viable future maintenance, likely in the order of 4.5m.
 - the acoustic assessment should be amended to address potential noise impacts from external sources and updated to confirm whether any noise attenuation is required.
 - a more detailed contamination assessment and consideration of existing data must be undertaken in accordance with the relevant guidelines to confirm the suitability of the site and a RAP prepared.
 - the Applicant should clarify the absence of the certification confirming that the section 7.12 developer contribution estimate has been prepared in accordance with clause 25J of the EP&A Regulation.
 - the exempt provisions for signage under Division 4 and Schedule 1 of the ED SEPP does not apply to the SSD application as is it not development *'carried out by or on behalf of a public authority in connection with an existing educational establishment*.
 - the Waste Management Plan only provides waste allowances for five days per week and not the proposed seven days a week operation.
 - further components of waste storage are to be considered, being the design of the bin storage rooms, provision of bulky goods storage and green waste management.
 - prior to approval of the development, a satisfactory engagement agreement of statement of intent from a commercial waste collection provider is required.

5.4.2 Community Submissions

One submission was received from the community which raised concern with the adequacy of the Applicant's Statement of Heritage Impact, particularly the absence of any references to Aboriginal cultural heritage or consideration of Council's *Heritage Strategy 2013-2019* and *Aboriginal Heritage Management Strategy 2018-2021*.

5.5 Response to Submissions

Following the exhibition of the application, the Department placed copies of all submissions received on its website and requested the Applicant provide a response to the issues raised in the submissions and the following additional issues identified by the Department:

- a Sustainability Report outlining measures to be incorporated in the development to reach a minimum 4 star Green Star rating or demonstrated equivalency
- submission of final versions of the RAP, Aboriginal Cultural Heritage Assessment Report and the Heritage Interpretation Strategy.

On 19 September 2019, the Applicant provided a Response to Submissions (RtS) (**Appendix A**) addressing the issues raised during the exhibition of the proposal. The RtS also proposed minor amendments to the proposal:

- removal of service delivery driveway and nomination of a service delivery loading zone on Church Street.
- confirmation of existing and proposed amendments to on-street parking arrangements.
- amendments to the design of the waste storage rooms, generally being the separation of waste storage rooms for café and kitchen facilities, and education and residential facilities.

The following additional information was also provided by the Applicant in its RtS:

- a Preliminary Green Star Sustainability Report.
- a Heritage Interpretation Plan.
- an Aboriginal Cultural Heritage Assessment.
- an Aboriginal Archaeological Assessment.
- a conceptual RAP.

The RtS was made publicly available on the Department website and was referred to the relevant public authorities. An additional six submissions were received from Council and Government Agencies, including the Heritage Council, ESSD, RMS, TNSW and the EPA.

EESD, RMS and EPA provided no further comments on the proposal. A summary of the comments provided by Council, the Heritage Council and TNSW are provided in **Table 6** and copies of the submissions may be viewed at **Appendix A**.

Table 6 | Summary of RtS submissions

Council

Council confirmed the Applicant's RtS has addressed several aspects of its original submission. However, Council advised it did not support the proposed kerb side loading/service zone located on Church Street and reiterated its comments regarding the recommended design amendments to ensure servicing vehicle movements were satisfactorily accommodated on-site.

Council also requested the following additional information be provided by the Applicant prior to determination:

- an updated stormwater plan detailing the proposed diversion of the existing stormwater asset.
- submission of interim site auditor advice that confirms the adequacy of the submitted site contamination assessment details and confirms the site's development suitability.

Council also recommended several conditions of consent for consideration.

Heritage Council

The Heritage Council reviewed the RtS and accompanying Statement of Heritage Impact (SHI) and commented that the Applicant's responses were considered appropriate. Notwithstanding, the Heritage Council continued to raise concern with the Applicant's proposed streetscape treatment and management of historical archaeology. The following conditions were recommended:

- a suitably qualified heritage landscape consultant to design a sympathetic streetscape treatment that does not impede the understanding of the Courthouse and its relationship to its environment and setting.
- an Archaeological Research Design and Excavation methodology must be prepared to guide the archaeological program.
- the Archaeological program must be directed by a suitably qualified and experienced archaeologist that demonstrates their ability through a response to the Heritage Council's Excavation Director Criteria.
- within 12 months of the end of the archaeological works, a final excavation report must be prepared and lodged with the Heritage Council of NSW.

TNSW

TNSW reviewed the RtS and provided recommended conditions of consent relating to the preparation of a GTP and CTPMP.

5.6 Response to Submissions Addendum

The Department requested the Applicant address Council's additional comments on the submitted RtS, particularly matters concerning service vehicle access and site contamination.

The Applicant provided a RtS Addendum on 14 November 2019, in response to the Department's request. The RtS Addendum provided additional information and clarification on several matters, including:

- confirmation that the café would be for the exclusive use of the university.
- an updated final Aboriginal Cultural Heritage Assessment report (ACHA).
- confirmation that an accredited site auditor had been engaged and prepared interim advice confirming the appropriateness of the proposed remediation strategy.
- evidence from Council that the site auditor's interim advice had addressed Council's previous comments regarding site contamination.
- evidence from Council that the Applicant's proposed amendments to the service vehicle access arrangements were satisfactory in principle.

In response to the positive outcomes from the Applicant's consultation with Council, the RtS Addendum also outlined proposed amendments to the service vehicle site access arrangements to accommodate a dedicated off-street services zone in front of the proposed Residential Building.



6. Assessment

The Department has considered the EIS, the issues raised in submissions and the Applicant's RtS in its assessment of the proposal. The Department considers the key issues associated with the proposal are:

- heritage impacts.
- built form and urban design.
- traffic and transport.
- site contamination.

Each of these issues is discussed in the following sections of this report. Other issues were taken into consideration during the assessment of the application and are discussed at **Section 6.5**.

6.1 Heritage Impacts

The site contains the State heritage listed former Courthouse Building and forms part of the broader State heritage listed Newcastle Government House and Doman (see **Figure 15**). The site is also located within The Hill Heritage Conservation Area and is surrounded by several other State and local heritage items (see **Figure 15**), including a row of residential terraces, The Grand Hotel and the former Newcastle East Public School.

The proposal seeks consent to demolish the more recent 1949 Administration Building (little significance) and 1966 Supreme Court Building (moderate significance) additions to the former Courthouse Building. Consent is also sought for the construction of two new modern building additions in their place and for minor internal demolition and refurbishment works within the former Courthouse Building to improve its usability and to meet BCA and Disability Discrimination Act 1992 (DDA) compliance requirements.

Excavation and civil works associated with the proposal have the potential to expose an existing brick-lined drainage culvert that traverses the site and may have local heritage significance. The site has also been identified as potentially containing intrinsic Aboriginal cultural heritage value.

A single public submission was received which commented that the Applicant's Statement of Heritage Impact (SHI) did not reference Aboriginal cultural heritage or provide consideration of Council's *Heritage Strategy 2013-2019* and *Aboriginal Heritage Management Strategy 2018-2021*. The Department notes that the Applicant's SHI assesses the European heritage aspects of the proposal and that separate technical reports have been submitted to assess both Aboriginal Cultural Heritage and any archaeological cultural heritage aspects of the proposal.

Section 4.41 of the EP&A Act removes the requirement for separate approval under Part 4 or section 139 of the *Heritage Act 1977* to be obtained for demolition works, excavation works, or the carrying

out of development in relation to the land on which the building or relic are located. Notwithstanding, the Department has considered the suitability of the proposal, and its likely impacts, on the existing built environment in the locality.

6.1.1 Heritage

The Applicant's EIS was supported by a Statement of Heritage Impact (SHI) which assesses the impact of the proposal on the existing heritage significance of the site and State heritage significant Courthouse Building. The report was prepared having regard to a number of reports and background material, including the Newcastle Courthouse Conservation Management Plan 2015 (CMP), previously prepared to inform the sale of the site. The Applicant supplemented its heritage assessment with the submission of a Heritage Interpretation Plan with its RtS.

The Applicant's SHI identifies the existing built form and internal fabric of the Courthouse Building and additions as being of little to moderate to high heritage significance. Specifically, the Courthouse Building is graded as being of high significance, while the Administration Building and Supreme Court Building are graded as being of little and moderate significance respectively (see **Figure 17**). The heritage significance grading of the internal fabric of the Courthouse Building varies from little to high significance (see **Figure 18**).

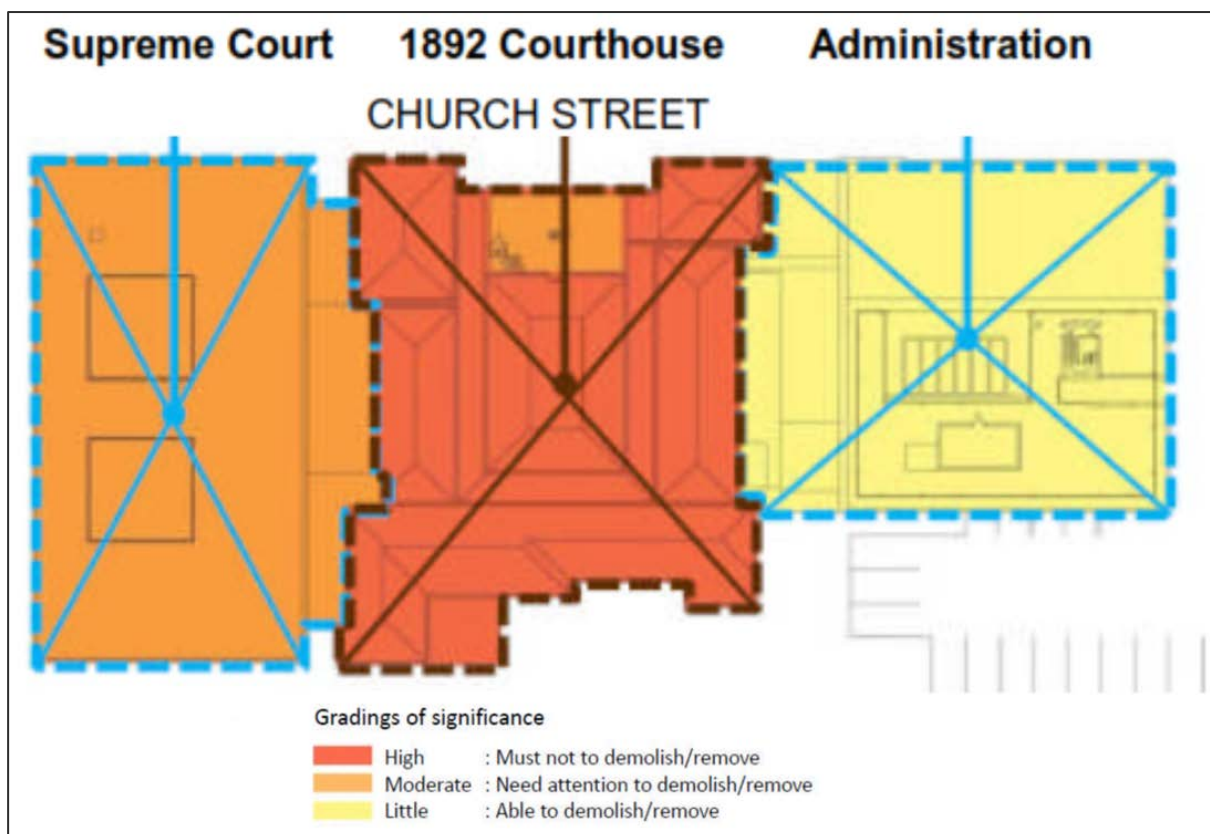


Figure 17 | Heritage Significance Grading (Source: SHI)



Figure 18 | Internal Heritage Significance Grading of Courthouse Building (Source: SHI)

The Department notes that Council raised no objections to the proposal on heritage grounds. It also commented that the proposal's façade design response, and clarification provided in the RtS, satisfactorily addressed Council's comments regarding the relationship between new and old built form and the proportions of the residential terraces opposite.

The Heritage Council advised it supported the proposal, commenting that:

- the design had been well thought out and respected the heritage significance of the site.
- the design response of the proposal aligned with the CMP which states that any new building is designed to acknowledge the significance of the former Courthouse Building and is deferential to it in terms of siting, scale, detailed resolution and materials.

While the Heritage Council confirmed its support for the proposal, it advised that the Applicant's RtS had not addressed its original recommendation that a sympathetic streetscape treatment be designed. It added that it was difficult to determine if the existing cast iron fence would be retained and that the tree species selected did not relate to the precinct and would potentially obscure the Courthouse Building façade.

To ensure these residual matters were addressed and other heritage significant elements of the building are protected, the Heritage Council recommended conditions of consent requiring:

- impacts to areas and fabric of high significance be limited only to works required to make the building functional.
- the landscape design for the front setback be amended to be more sympathetic to the heritage setting.
- a moveable heritage plan be developed to ensure significant elements of the building are incorporated into a comprehensive HIP.

The Applicant's EIS and SHI acknowledges the high heritage significance grading of the Courthouse Building and the importance of its retention and continued preservation. However, the Applicant

outlines that the retention and adaptive reuse of the existing Administration and Supreme Court Buildings was not possible due to the following:

- the Administration Building provides little contribution to the heritage significance of the site and its removal is consistent with the CMP.
- the existing buildings would not accommodate the floor area and operational requirements of the proposal.
- modifications required to the Supreme Court Building to accommodate the teaching and university operational requirements would require significant alterations to existing built form and compromise the heritage integrity of the building.

The adaptive reuse and internal works proposed within the Courthouse Building have been designed in accordance with the recommendations and policies contained in the CMP. Notably, minimal internal fabric is proposed to be removed to make the existing building functional for the proposal, with the greatest changes proposed to areas and fabric generally graded as of little significance.

The Applicant's SHI further outlines that the proposal satisfies the policies and guidelines listed in the CMP, as:

- the new building additions are limited to the footprints of the existing Administration and Supreme Court Buildings (Policy 43).
- the proposed new built form is setback behind the front setback of the Courthouse Building and are of a design and scale that maintains the prominence of the Courthouse Building within the Church Street streetscape (Policies 44 to 46).
- proposed creation of new internal openings are limited in size to ensure original spaces and elements remain substantially unchanged (Policy 48).
- external alterations to the eastern and western elevations are minimal and will facilitate the connection of the new built form to the existing Courthouse Building (Policy 48).

The streetwall height of the proposed new modern built form has been designed to align with the main cornice over the entry to the Courthouse Building, with the fourth level of each building set back further approximately 31 m into the site (see **Figure 19**).

The new additions have also been designed as a separate form to the Courthouse Building, retaining its prominence in the streetscape. Physical connections between the old and new are proposed by new glazed atriums that are also setback from the front building alignment of the Courthouse Building.

The design of the front elevation of the new built form also respects the existing proportions of the Courthouse Building, particularly the alignment of the lower masonry walls of the Courthouse Building with the first floor of the new Residential and Education Buildings (shown dashed red on **Figure 19**). The vertical expression of the façade louvre system also respects the vertical forms of the State heritage significant residential terraces opposite.



Figure 19 | Aerial photomontage – south easterly view (Source: EIS)

The Department has assessed the proposal and notes that by focusing the design of the proposal around the former Courthouse Building, the Applicant has reinforced the importance of the building's State heritage significance. Additionally, careful consideration has been provided to the manner in which the new built form is proposed to integrate with the existing heritage significant built form. It is also acknowledged that the proposed demolition of the Administration and Supreme Court Buildings will have minimal effect on the heritage significance of the site.

The existing cast iron front fence is also detailed on the submitted landscape plans proposed to be largely retained. This was also clarified by the Applicant in its RtS Addendum. The Department acknowledges that the front setback of the Residential Building is now proposed to accommodate a services zone, with its use restricted to one hour periods on weekday mornings and evenings and Saturday mornings. The design of the services zone has been sized to accommodate a 10.5m long garbage truck and does not require the removal or augmentation to the existing cast iron front fence.

To ensure this occurs and in addition to the recommended Heritage Council conditions of consent, the Department recommends details be provided demonstrating the retention and integration of the existing cast iron fence into the final landscape design.

Impacts on the heritage significance of surrounding heritage items are not considered to be adverse and the proposal will unlikely impact on their existing gradings. Contextually, the proposal will integrate with the modern residential redevelopment of the former Newcastle East Public School site diagonally opposite and will be in keeping with the established scale of the existing built environment. Further, northerly views from the adjoining James Fletcher Hospital oval would be largely unobstructed by the proposed upper levels of the new building additions.

The proposed retention and reuse of the former Courthouse Building is considered to be a positive

outcome and minimises any potential adverse impacts on the built environment of the locality. In addition to the retention of the Courthouse Building, the Applicant's SHI proposes the following measures:

- installation of a plaque in a visible, but subservient location, that conveys simple information regarding the site and its history.
- installation of internal signage within the Courthouse Building and in a trafficked area of the building that provides historical information of the site and significance of the area.
- retention and display of historical moveable heritage items, including the courtroom and office furniture.
- adoption and application of a naming strategy, development of a dedicated website, brochure and holding an annual open day to provide insight into the history of the site.

These measures were considered to be an appropriate response by the Heritage Council and will ensure the former functions of the Courthouse Building are reinterpreted.

The Department concludes that the proposal and associated heritage impacts are acceptable, and the recommended conditions will ensure that the heritage significance of the Courthouse Building will be protected and conserved.

6.1.2 Archaeology

The Applicant's EIS was supported by a Baseline Archaeological Assessment (BAA) report which identified the potential for the development to encroach on an existing mid-19th century brick-lined culvert and uncover known 1940's air raid shelters located underground at the rear of the existing Administration Building.

The Applicant's BAA details that intact portions of the existing culvert are considered to have moderate archaeological potential and would contribute to the understanding of Newcastle's late 19th century stormwater management systems. Intact remains of the existing air raid shelters are considered to hold local significance.

No objections or comments were provided by Council and the Heritage Council also raised no objections but provided recommended conditions of consent that require:

- the preparation of an Archaeological Research Design (ARD) and excavation methodology to guide the Archaeological program.
- the Archaeological program be directed by a suitably qualified and experienced archaeologist.
- a final excavation report be prepared and lodged with the Heritage Council within 12 months of the end of the archaeological works.

The BAA report notes that the exact depth of the culvert is unknown, but would likely be exposed during any deep excavations for piles or strip footings and associated infrastructure works.

The Department is satisfied that the Heritage Council's recommended conditions of consent are suitable to manage the proposal and potential impacts to the existing archaeological items of

significance. The conditions will require archaeological investigations to be undertaken in accordance with an ARD and excavation methodology prepared by a suitably qualified person and ensure that exposure of the shelters and culvert are limited, and that the appropriate procedures and protection measures are implemented where they are.

6.2 Built Form and Urban Design

The Applicant's EIS, as amended by its RtS and RtS Addendum, was supported by architectural drawings and landscape drawings. The EIS was also supported by an Arboricultural Impact Assessment Report (Arborist report).

The proposal involves the demolition of the existing Administration and Supreme Court Buildings and the construction of two new three, part four storey buildings and internal demolition and adaptive reuse works within the former Courthouse Building. The new Residential and Education Buildings will present as contemporary additions to the existing former Courthouse Building, with the new built forms proposed to be attached to the heritage eastern and western elevations of the Courthouse Building by glass atriums and new circulation spaces.

The proposed development has a total GFA of 6,605sqm and new built form that will have a maximum height of 16.6m. The proposal does not comply with the maximum 10m building height limit specified under NLEP 2012. The Applicant has submitted a Clause 4.6 Variation Request seeking consent to vary the clause. Consideration of the submitted variation request is provided below in **Section 6.2.1**.

Council raised no objections to the proposal on bulk and scale ground and noted in its EIS submission that its Urban Design Consultative Group generally supported the design concept and massing, but raised concern regarding the aesthetic expression of the new buildings. It was suggested that a façade design incorporating a combination of horizontal and vertical massing would better fit with the locality and that each new building façade should be designed to express their individual functionality.

The Applicant responded in its RtS with an Urban Design Response that provided a detailed further justification for the proposed façade design submitted. Council responded advising that the response provided satisfied its previous comments.

The Heritage Council supported the proposal and commented that the proposed new buildings satisfied the CMP that states where any new buildings are designed, they should be deferential to the former Courthouse Building in terms of siting, scale, detailed resolution and materials. Conditions of consent were recommended requiring a more sympathetic streetscape treatment to be established which does not impact on the understanding and relationship of the former Courthouse Building to its environment and setting.

As detailed above in **Section 6.1.1**, the Department considers the proposed façade design of the new buildings to be acceptable within the exiting heritage significant setting. The design submitted provides strong horizontal relationship with the cornice over the entry to the Courthouse Building and lower masonry walls. Conversely, the facade louvre treatment of the proposed new Residential and Education Buildings comprise vertical expressions that respects the vertical forms of the State

heritage significant residential terraces opposite.

The Department has considered the proposal's building height and suitability of the submitted variation request and the proposal's landscape and urban design further below.

6.2.1 Building Height

The proposed Residential and Education Buildings building heights range between 10.1m (along the Church Street frontage) and 16.6m at the rear, fourth storey component of each building. The proposal building heights exceed the maximum 10m building height permitted by clause 4.3 of NELP 2012 by up to 6.6m. The extent of the proposed non-compliance is visually illustrated by the red line in **Figure 20** and **Figure 21** (yellow shading) below.

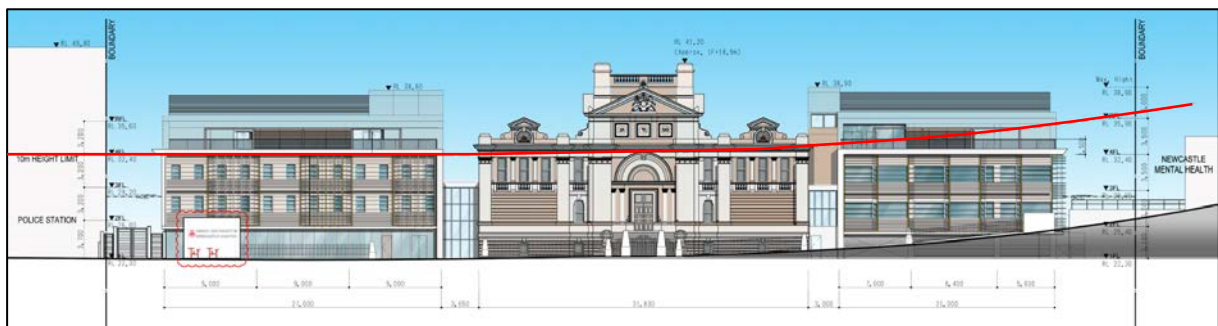


Figure 20 | Proposed northern elevation (Source: EIS)

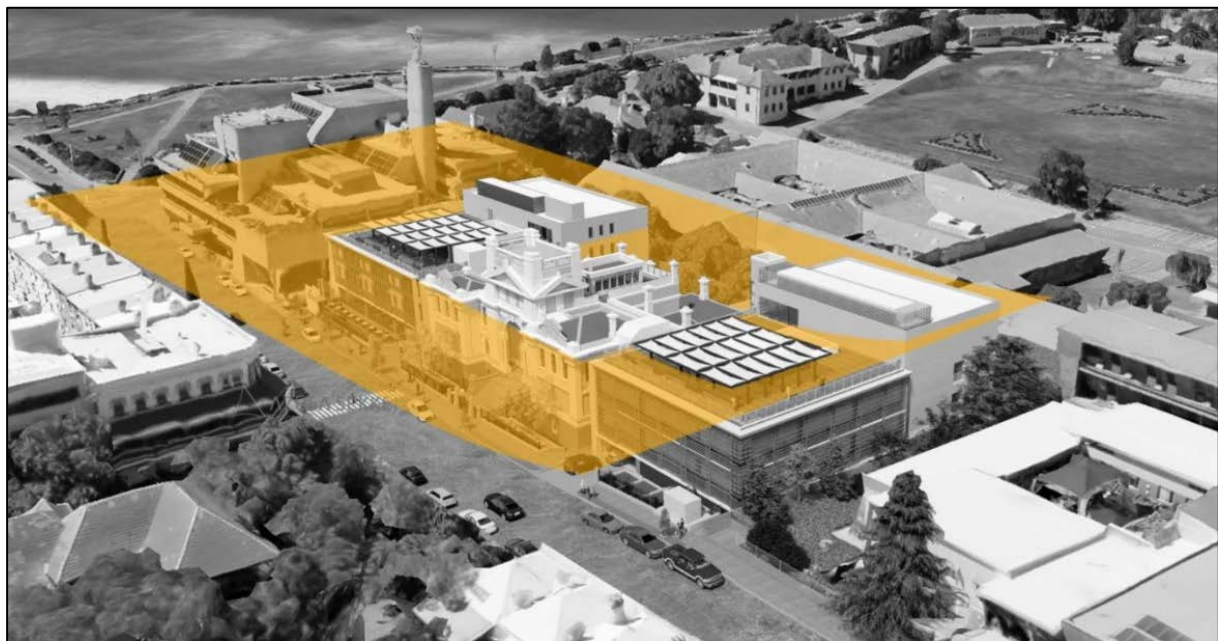


Figure 21 | 3D view showing extent of height non-compliance (Source: EIS)

The Department notes that the 0.1m non-compliance at the front portions of each building are minor, with the major non-compliance located at the rear, fourth storey of each building. This mass is setback approximately 31m from the front Church Street boundary and exceeds the height limit by 3.3m. The proposed non-compliance increases to 6.6m to accommodate the proposed height of the new lift

overrun structures. The proposed rooftop terrace pergola structures are also proposed to protrude above the maximum height limit by 1.6m.

No submissions were received raising concerns with the proposed height exceedance. The proposal was also presented to Council's UDCG and the Heritage Council prior to its lodgement, who both provided their general support for the design and massing of the proposal.

The justification provided in the Applicant's EIS and accompanying Clause 4.6 Variation Request has been prepared with regard to the Department's policy *Guidelines to Varying Development Standards 2011* and the decisions of Dixon SC in *Brigham vs Canterbury – Bankstown Council [2018] NSWLEC 1406* and of Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118*.

The Applicant's clause 4.6 argues the following:

- the existing buildings on-site currently exceed the permitted height limit, including the Courthouse Building (maximum height of 18.9m), which is proposed to be retained.
- the front three storey portion of the proposed new buildings are lower in height than the buildings they are proposed to replace.
- the proposal is lower in height than the existing Newcastle Police Station building immediately adjacent to the east.
- consistent with the findings of Dixon SC, the Applicant seeks to rely on only the first 'test' established in *Wehbe v Pittwater Council [2007] NSW LEC 827*, wherein compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances as the proposal satisfies the two objectives of clause 4.3 of NLEP 2012 as follows:
 - the locality comprises a mixture of built form scales that the proposal will remain generally consistent and would therefore respond to the desired character of the locality.
 - the scale of the new building is generally consistent with the scale of the existing built form on the site and is in keeping with the existing scale and dominance of the former Courthouse Building.
 - the non-compliant portions of the proposal do not adversely restrict or impact on neighbouring development's access to daylight.
- sufficient environmental planning grounds exist to support the development and the proposed non-compliances as:
 - it enhances the existing State significant heritage character of the site and former Courthouse Building through its adaptive reuse.
 - the geological constraints of the site limit the ability to provide at-grade open space for which the rooftop terraces and associated pergolas provide open space with a high level of amenity.
 - NLEP 2012 does not prescribe an FSR control and therefore does not seek to quantitatively control building bulk and scale.
- the proposal is consistent with the objectives of the B4 mixed use zone.
- contravening the development standard does not raise a matter of state or regional significance.
- there is no public benefit in complying with the building height development standard given that there would be no unreasonable impacts that would arise from the proposed variation.

The Department has assessed the proposed height exceedance and has considered the Applicant's proposal and its justification for the proposed building height variation. The proposed variation request is considered reasonable under the circumstances and sufficient environmental planning grounds, unique to a site, have been demonstrated by the Applicant to justify the proposed development standard variation.

As illustrated in the comparative overlay shown in **Figures 22 and 23**, the proposed new buildings will be comparable in scale to the Administration and Supreme Court Buildings and will not result in any detrimental impacts to the existing Church Street streetscape.



Figure 22 | Existing northern elevation (Source: EIS)

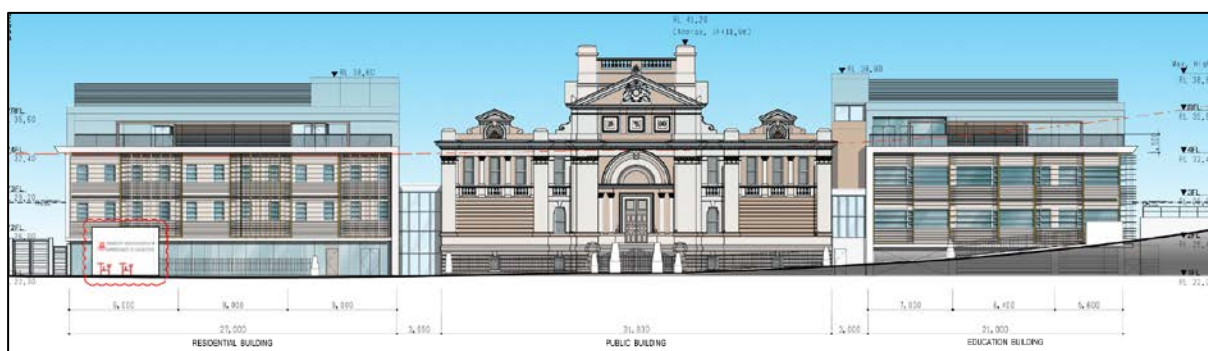


Figure 23 | Proposed northern elevation (Source: Additional Information)

The location of the primary exceedance is setback significantly from Church Street and remains secondary in prominence to the former Courthouse Building. The existing built environment is characterised by a mixture of development scales, such that the proposed bulk and scale new buildings will remain in keeping with this established character and will not result in any adverse off-site amenity or environmental impacts.

The site is environmentally constrained with the requirement to ensure of the retention, protection and adaptive reuse of the former Courthouse Building. The proposal provides the opportunity to adaptively reuse the former Courthouse Building, while providing new contemporary built forms that sympathetically respect the heritage significance of the State heritage significant building. It is again noted that the design and massing are supported by the Heritage Council of NSW.

The Department has also considered the proposed height non-compliance in the context of the objectives outlined in clause 4.3 of NLEP 2012 and is satisfied that the Applicant has demonstrated that compliance

with the building height development standard is unnecessary under the circumstances, having regard to the following:

- the scale and height of the proposal does not detract from the positive contribution the proposed redevelopment will provide toward the desired future character of the locality.
- the height non-compliance will not result in a built form that is inconsistent with the established hierarchy of the locality.
- the proposal and the associated non-compliance does not adversely impact on adjoining developments accessing daylight.

6.2.2 Landscape and urban design

The proposed redevelopment comprises a landscape design that incorporates Japanese styles that seek to reflect the revised layout and use of the site, but is compatible with the character of the site and setting (see **Figure 12**). The landscape design will consist of a new pavement design within the forecourt, which has been designed to orientate linear to the former Courthouse Building in plan view.

The proposed terrace areas have been designed to provide students and teachers places to relax and are complemented by Japanese Zen gardens and landscaped planter boxes (see **Figure 25**).

With the exception of one street tree, the proposed design will retain all other street trees and significant heritage landscape features of the site, including the cast iron fence and water bubbler (see **Figure 26**). One street tree requires removal to accommodate the proposed new services zone crossover but will be supplemented with a new street tree planting immediately adjacent.

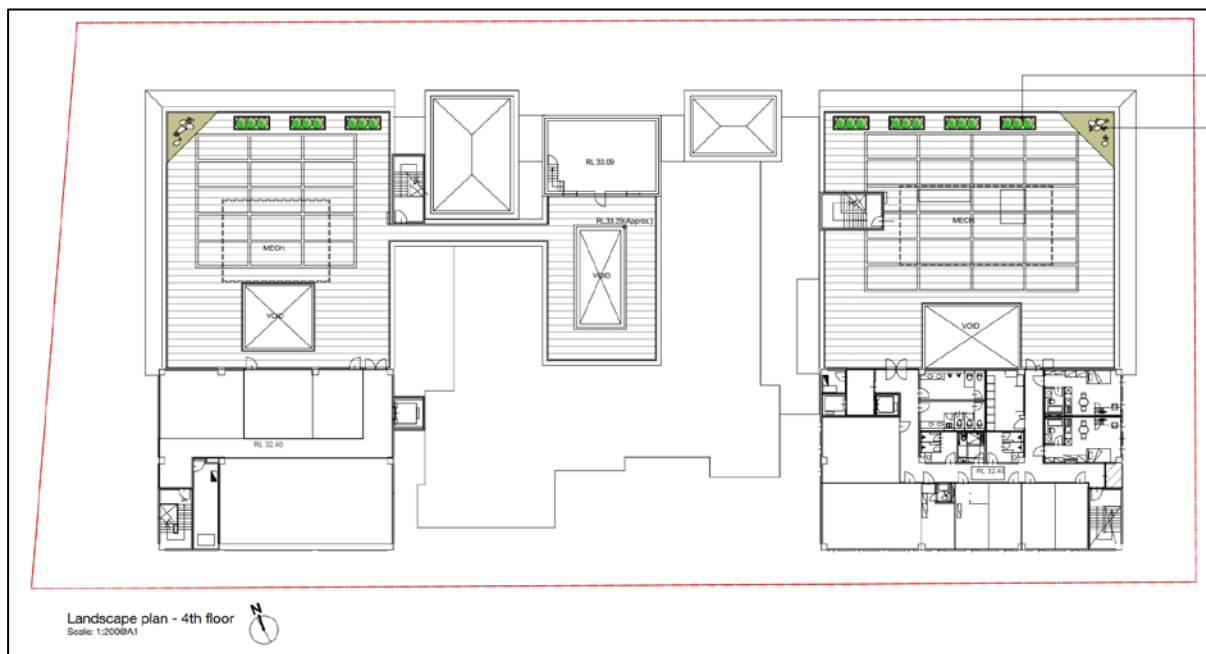


Figure 24 | Proposed rooftop terrace landscape design (Source: Moir Landscape Architects)



Figure 25 | Existing cast iron fence and water bubbler (Source: Moir Landscape Architects)

The redevelopment of the site will also result in the removal of 29 trees during site preparation works, the large majority of which are located at the rear of the site along the rear boundary fence. The Applicant's Arborist Report details that the location of the proposed building footings and associated infrastructure works will detrimentally impact on the tree protection zones of these trees and impact on their stability and/or health.

The retention value of trees identified for removal have been assessed as being low to moderate. However, the retention of any trees would require a substantial redesign and reduction in the overall floor area and viability of the proposal.

The Arborist Report included recommendations for tree protection to ensure that public domain works did not adversely impact on the health of the existing street trees. The Department recommends that tree protection measures be imposed as conditions of consent.

No objections to the landscape design of the proposal, including the proposed extent of tree removal, were raised in submissions received. However, the Heritage Council commented that the design may impede on the understanding of the Courthouse and recommended a condition of consent be imposed requiring a more sympathetic streetscape design treatment to be designed by a landscape architect in consultation with the Heritage Council.

The Department is generally satisfied with the proposed landscape design and treatment of the site and acknowledges the loss of trees surrounding the site are unavoidable. The concerns of the Heritage Council regarding the retention of the existing cast iron fence and associated sandstone plinths are noted. As illustrated in **Figure 12** and **Figure 26**, the existing fencing is proposed to be largely retained, however some fencing is proposed to be removed or its location modified to accommodate the services zone and provide an improved open court in front of the campus. The Department has however included Heritage Council's condition in the recommended conditions of consent.



Figure 26 | Church Street streetscape landscape elevation (Source: Moir Landscape Architects)

The proposed services zone is considered necessary and has been designed to operate within the relevant design and swept path limitations of waste and service vehicles. Further, the existing cast iron fence and sandstone plinths, which constitute a prominent feature of the heritage setting of the site, have been accommodated and incorporated into the site where possible.

6.3 Traffic and Parking

The Application was supported by a Traffic and Parking Assessment (TPA) report which provides an assessment of the proposal's potential traffic and parking impacts on the immediate locality. The Applicant also provided a detailed response in its RtS and RtS Addendum to the parking and service vehicle access concerns raised by Council during the exhibition of the proposal.

The proposal seeks consent to demolish the existing Supreme Court Building and associated 16 space car park and at-grade 18 space car park behind the existing Administration Building. A new 20 space car park is proposed to be constructed beneath the new Education Building, with vehicle access provided via the existing driveway crossover on Church Street.

On the basis that it would result in a net reduction in vehicle movements compared to the former operations of the Newcastle Courthouse, the Department is satisfied that the traffic associated with the proposal is satisfactory. The Applicant's TPA report projects a parking demand of 19 spaces which would generate a corresponding 19 vehicle movements during both the AM and PM peak periods. The projected vehicle movements were also modelled as not impacting on the existing AM and PM Level of Service (LoS) of A and B, respectively, at the Church Street/Watt Street/Shortland Esplanade intersection.

Consistent with TfNSW's recommendation, the Department proposes a condition of consent be imposed requiring the preparation and implementation of a construction traffic and pedestrian management plan prior to the commencement of any works on-site.

6.3.1 Parking

The Applicant's TPA report states a parking demand of 111 car parking spaces is generated by the proposal. The calculation has been based on the parking rate which applies to the Newcastle City Centre (i.e. one space per 60sqm of GFA) outlined in the Newcastle Development Control Plan 2012

(DCP). These rates do not strictly apply to the proposal however, as the site is not identified within the boundary of the Newcastle City Centre. Notwithstanding, the Applicant's TPA has requested that the Newcastle City Centre rates be applied to the proposal given the site lies just opposite the City Centre.

No objections were raised in any community or public authority submissions received. However, Council commented that the car parking proposed was insufficient to cater for all staff, maintenance vehicles, and other associated uses that require car parking access to the university and that a GTP should be prepared to promote and facilitate the use of alternative transport.

The proposal includes both a student residential (i.e. boarding house) and adult education component, which attract different car parking demands under Council's DCP. The development will have a total GFA of 6,605sqm and accommodate eight admin staff, up to 12 teaching staff (including eight resident teachers), four hospitality staff, 100 resident exchange students, six local students per day and delivery of a 108 bed residential complex.

The Department notes that the applicable parking rates for the proposal are outlined in Table 1 of Section 7.03.02 Traffic Parking and Access of the DCP. Consideration of the proposal under the different parking rates demonstrates the need for the following:

- Newcastle City Centre – 111 car spaces.
- Table 1 Parking Rates:
 - adult education – 77 car spaces, seven bicycle spaces and four motorcycle spaces.
 - boarding house – 55 car spaces, 17 bicycle spaces and three motorcycle spaces.

Based on the DCP, a total of 132 car spaces, 24 bicycle spaces and seven motorcycle spaces would be required. This would require the delivery of 21 car spaces above that required by the Newcastle City Centre rates.

The Applicant proposes only 20 car parking spaces, one motorcycle space and 22 bicycle parking spaces are proposed. This represents a shortfall of:

- 91 car spaces under the Newcastle City Centre parking rate, or
- 112 car spaces, two bicycle spaces and six motorcycle spaces under the Table 1 Parking Rates.

It is considered, however, that the residential component of the proposal is unlikely to generate any demand for car parking on the basis that the temporary student residents are unlikely to have and will not own vehicles. Further, both the residential and adult education components of the proposal are directly related (i.e. resident students attend the same premises for classes), whereby parking provided for one use would theoretically meet the demand generated by the other. Accordingly, the car parking demand generated by the proposal under the Table 1 Parking Rates of the DCP is considered to be more appropriate.

This still represents a shortfall under the DCP (i.e. 57 car spaces and three motorcycle spaces), but is considered to be a more appropriate reflection of the potential parking demand based on the DCP.

The Applicant has sought a variation to the total on-site car parking requirement arguing that the existing courthouse use had a historic 31 space deficit and that resident students and staff would not generate a parking demand as they would not own a vehicle.

Comparative car parking data from other tertiary institutions was also presented in the Applicant's TPA report to demonstrate a trend whereby limited on-site student car parking is provided.

The Applicant also proposes to prepare and implement a green travel plan (GTP) prior to the commencement of operations and occupation of the development to better promote alternate travel modes and reduce reliance on vehicle trips.

The Applicant provided further justification for the parking shortfall and DCP variation in its RtS, outlining that only administration staff, hospitality staff and six local students would generate a daily parking demand, with additional provision for visitors. In total, it was projected that a demand for 19 on-site car parking spaces would be created, such that the proposed 20 spaces would be sufficient.

Council subsequently confirmed that the Applicant's RtS response had satisfactorily addressed its previous car parking concerns.

The Department has considered the Applicant's TPA and response provided with its RtS and also notes that Council no longer raises a concern with the amount of on-site car parking proposed. It is also noted that TfNSW and RMS raised no concerns with the proposed amount of parking proposed.

It is acknowledged that a reduced student/car parking space ratio was adopted for the University of Newcastle's (UoN) NewSpace educational establishment development and that the likely parking demand generated by this proposal is not comparative given the unique nature of the temporary-resident students.

The site is also well serviced by public transport, with connections to bus routes and the Newcastle Light Rail to the north. Further, 22 bicycle parking spaces and associated end-of-trip facilities are proposed.

The Department considers the Applicant's request to vary the on-site car parking requirement for the proposal to be appropriate and believes that the 20 car parking spaces proposed will sufficiently cater for the administration and hospitality staff and visitor demand. It is also noted that sufficient capacity will be available for six local students, which are likely to attend outside of normal teaching/office hours when administration staff are unlikely to be on-site.

The Department is also satisfied that the reuse of the existing driveway crossover servicing the proposed car park is adequate, noting this remains consistent with the existing location servicing the existing car park beneath the Supreme Court Building.

The Department recommends a condition of consent requiring the preparation and implementation of a GTP prior to the commencement of operations to ensure appropriate measures are incorporated prior to commencement of operation to encourage reduced reliance on private vehicle trips and the increased use of sustainable transport measures.

6.3.2 Service Vehicle Access

Service vehicle access to the site will be required for functions associated with the university, residential accommodation and café operations.

Service vehicle access arrangements for the proposal were amended by the Applicant in its RtS Addendum and in consultation with Council to satisfy its continued concerns regarding the provision of satisfactory service vehicle access.

As illustrated in **Figure 27**, the Applicant proposes to accommodate a services zone in the front setback of the proposed Residential Building at the eastern end of the site. The new services zone will cater for deliveries and waste collection and has been designed to cater for a 10.5m rear-lift garbage truck (see **Figure 28**).

To facilitate the proposed one-way entry and exit movements into the new services zone, a new crossover is also proposed to be constructed on Church Street adjacent to the proposed entrance of the university building.

Use and operation of the proposed services zone will be restricted to:

- Monday to Friday: 7am to 8am and 7pm to 8pm.
- Saturdays: 7am to 8am.

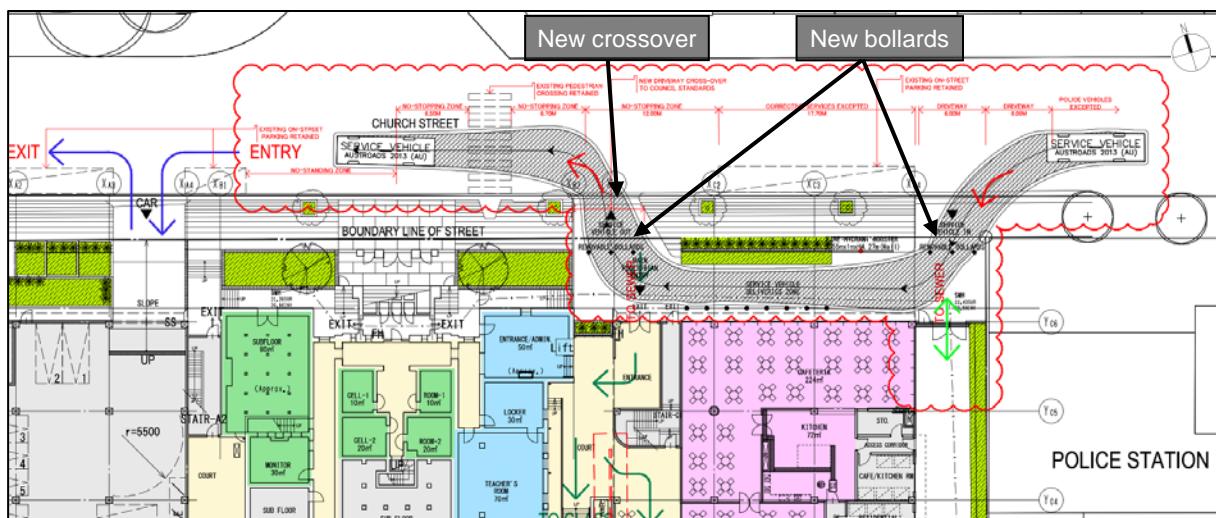


Figure 27 | Service vehicle access arrangement plan (Source: EIS)

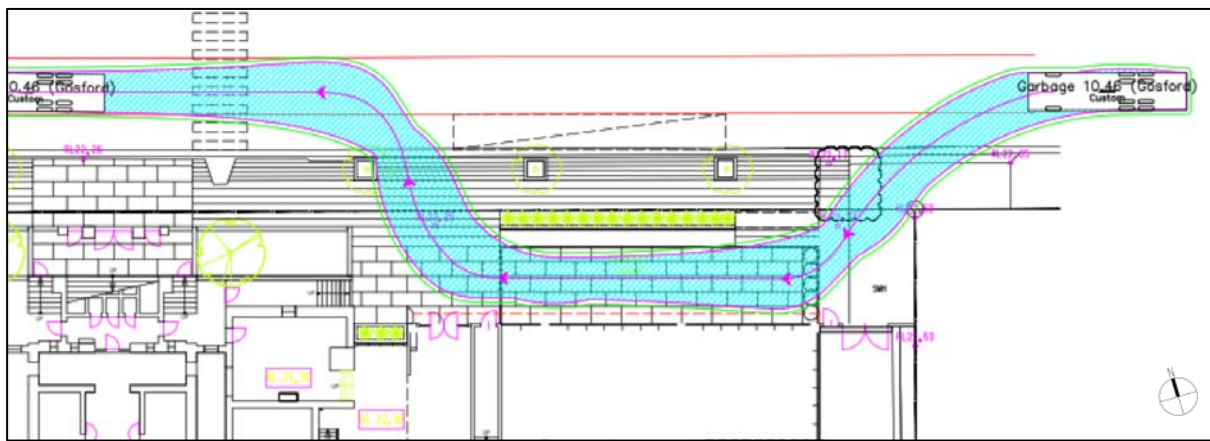


Figure 28 | Service zone garbage truck swept path analysis (Source: SECA Solution)

No use of the services zone is proposed to be permitted on Sundays and Public Holidays or outside of the proposed operating times. Removable bollards are proposed to be installed to prevent access/use outside of these hours. The proposed on-site car park will also be used to cater for smaller delivery vehicles at all times.

Evidence of Council's in principle support for the proposed servicing arrangements was submitted with the Applicant's RtS Addendum. The Department also notes that the proposed new service vehicle access arrangements would have limited impact to existing on-street car parking, with the proposed new crossover located within an existing 'No Stopping' signposted area. The proposed one-way operation of the services zone removes the requirement for large waste and service vehicles to perform reversing manoeuvres on-site or within the road network. This will significantly improve operational safety and allow for the use of the services zone to be managed at all times.

The Department is satisfied that the proposed service vehicle access arrangement provides a suitable off-street arrangement for the proposal. The new services zone will limit potential impacts on existing traffic movements along Church Street and will satisfactorily contain waste collection and service functions on-site.

The Applicant advises that a waste services contractor would be engaged closer to the commencement of operations. In addition, the Department recommends that a condition of consent be imposed requiring the Applicant prepare and implement a comprehensive operational management plan for the proposal that includes, but not limited to, procedures concerning the operation and management of the proposed services zone.

6.4 Site Contamination

The EIS was supported by a Phase 1 Environmental Site Assessment (ESA) – Technical Note and Remediation Action Plan – Technical Note. The ESA Technical Note provided a summary of two previous studies undertaken on the site, including a Phase 1 ESA, prepared in 2012 and a Detailed Site Investigation (DSI) report, prepared in 2016. The 2016 DSI report was prepared based on a limited number of soil samples (see **Figure 29**) due to the inaccessible nature of the site.

The ESA concluded the site contained a low to medium potential that existing activities on or adjacent to the site had impacted on soils and groundwater and it recommended further investigations following the removal of any existing buildings. The 2016 DSI report recorded the presence of Total Recoverable Hydrocarbon (TRH), benzo(a)pyrene and lead in excess of the relevant commercial and residential criteria. It also noted the potential for impacts due to the presence of a fuel storage tank to the east of the site, most likely on the adjacent Police Station site, though these findings would not limit the site's redevelopment potential subject to further assessment and/or remediation.

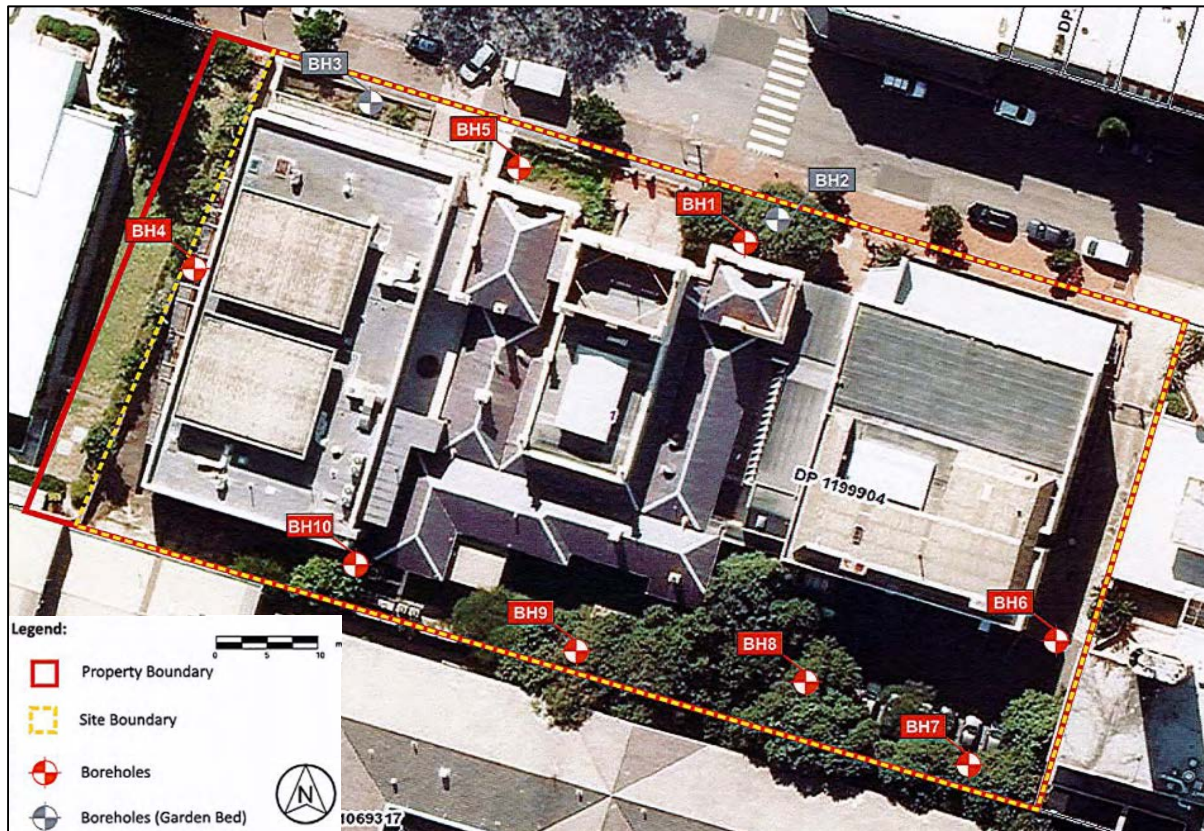


Figure 29 | DSI borehole test pit locations (Source: EIS)

Accordingly, the ESA recommended that:

- additional detailed investigations be undertaken following the demolition of the existing Administration and Supreme Court Buildings.
- where necessary, prepare and implement a RAP, based on its technical note, that:
 - identifies the need for further investigations to address data gaps.
 - includes an updated conceptual site model that evaluates the potential risks to human health and the environment.
 - details the implantation of the remediation strategy and an unexpected finds protocol.
- preparation of a validation report following the implementation of the RAP that confirms the site is suitable for the proposed use.

Council raised concerns with the adequacy of site contamination investigations undertaken and requested a more detailed comprehensive report be prepared in accordance with the relevant legislation and guidelines.

The EPA raised no concerns but recommend an accredited Site Auditor be engaged to confirm the suitability of the site following the completion of any additional investigations.

Given the potential presence of site contamination on-site and the site's State heritage significance, the Department requested the Applicant prepare and formally submit a RAP with its RtS.

Accordingly, the Applicant provided a conceptual RAP with its RtS. The conceptual RAP proposes two remediation scenarios that would be capable of mitigation or removing potential harm to human health if further investigations deemed remediation of the site necessary. These include the excavation and removal of impacted soils or the retention of impacted materials on-site beneath a suitable capping layer.

Council responded that the Applicant's RtS did not fully address its original concerns. Council recommended that the Applicant be required to provide the advice of an interim Site Auditor to confirm that the details submitted were suitable.

The Applicant subsequently engaged a NSW EPA accredited Site Auditor to undertake a site audit in relation to the assessment and remediation of contamination at the site and determine the appropriateness of the remediation strategy for the site. The Site Auditor concluded that:

- the approach to undertaking further investigations and preparing a detailed RAP based on those investigations is appropriate.
- the conceptual RAP is considered appropriate to address contamination identified to date and has allowed for data gaps to be addressed.
- the site can be made suitable by implementing the conceptual RAP, updated accordingly following the completion of further detail investigations.
- remediation methodology is readily available to address any impacts verified from fuel storage.

The Site Auditor also recommended several conditions of consent to ensure the future investigations undertaken address their recommendations and that where recommended to be prepared, the final RAP be reviewed and certified by an accredited Site Auditor.

The Department has considered the details submitted by the Applicant, as updated by its RtS and RtS Addendum, and acknowledges that existing site constraints have limited the ability for all areas of the site to be investigated.

The investigations undertaken to date have identified a low to medium potential for the site to be impacted by contaminated soils. The implementation of the proposed conceptual RAP provides acceptable remediation approaches to ensure that any verified site contamination does not present as a future ongoing risk.

The Department acknowledges that Council has subsequently advised the Applicant by email that it

considers the Site Auditor's advice has addressed Council's comments, confirming the documentation is appropriate for the site.

The Department considers the conditions of consent recommended by the Applicant's Site Auditor are acceptable and will ensure that the appropriate investigations are undertaken post-demolition to address the identified data gaps.

The Department has provided detailed consideration of the proposal against SEPP 55 in **Appendix B**. It is concluded that the Applicant has adequately addressed clause 7 of SEPP 55 and that the site can be made suitable for its intended use.

The Department has recommended conditions of consent requiring:

- further targeted site investigations be undertaken following demolition works.
- where necessary, update and finalise the conceptual RAP based on the results of the additional site investigations and endorsed by an accredited Site Auditor prior to the commencement of remediation works.
- preparation of a validation report following the completion of any required remediation works that must be reviewed by an accredited Site Auditor.
- preparation and submission of a site audit report and site audit statement certifying that the site is suitable for the proposal prior to any occupation.
- where necessary, preparation of a Long Term Environmental Management Plan.

6.5 Other Issues

The Department's consideration of other issues is provided below in **Table 7**.

Table 7 | Summary of other issues raised

Issue	Findings	Recommended Condition
Aboriginal cultural heritage	<ul style="list-style-type: none"> • The Applicant's submitted draft ACHA Report with its EIS. • The EESD and Department advised the Applicant that the ACHA report must be finalised prior to the determination of the proposal. • Concern was raised in a public submission that the Applicant had failed to consider Aboriginal cultural heritage or consideration of Council's <i>Heritage Strategy 2013-2019</i> and <i>Aboriginal Heritage Management Strategy 2018-2021</i>. 	<p>The Department has recommended a condition of consent requiring the recommendations of the ACHA be applied in full.</p> <p>In addition, the Department has also recommended a condition of consent requiring the preparation and implementation of a heritage interpretation strategy in consultation with RAPs where any objects or</p>

- The Applicant submitted a final comprehensive ACHA report with its RtS Addendum. This report was prepared having regard to the relevant legislation and guidelines, previous studies undertaken on surrounding sites and included mandatory consultation undertaken with Registered Aboriginal Parties (RAPs).
 - The AHCA report detailed that an Aboriginal Heritage Information Management System search did not identify any recorded Aboriginal sites. The site was also assessed as having low archaeological significance but may hold higher cultural significance with intrinsic value to the Aboriginal community.
 - Consultation with the RAPs generally concluded that the recommendations of the ACHA report were endorsed. Specific comments from RAPs identified:
 - the area holds high cultural value importance given its location along the Newcastle foreshore.
 - high likelihood objects of significance will be located *in situ*.
 - The Department acknowledges the proposed bulk earthworks associated with the proposal involve excavations that have the potential to expose *in situ* relics.
 - The ACHA report recommended that sub surface test excavations be undertaken to determine the presence of any objects or deposits. Where objects or deposits are found, the ACHA report recommends the preparation of a Cultural Heritage Management Plan in consultation with RAPs.
- deposits are revealed during test excavations.

- The Department supports the finding of the ACHA and concurs with the recommendations provided. In addition, where any objects or deposits are revealed, the Department recommends that a heritage interpretation strategy be prepared in consultation with RAPs.

Waste Management

- The application and EIS were supported by a Waste Management Report (WMR) that addressed the proposal's future operations. The WMR provided an assessment of expected waste to be generated by the proposal and the corresponding garbage and recycling requirements for the proposal.
- Based on these requirements, the exhibited design included provision for a garbage room on the ground floor of the proposed Residential Building.
- Council considered the waste calculations to be lower than anticipated given the use and 7 days per week operations and that room for bulky goods storage should be provided for residents.
- It also recommended green waste management be addressed and details provided of the engagement of a commercial waste collection provider.
- The Applicant's RtS provided revised waste calculations and amended the design of the garbage rooms based on the updated projected waste quantities. It also responded, advising that:
 - a commercial waste collection provider would be engaged prior to occupation, when more operational details of the university are known.

The Department has recommended a condition of consent requiring:

- the Applicant prepare an Operational Management Plan that includes details concerning operational waste management procedures, including the services zone.
- evidence to be submitted prior to the commencement of operations detailing the engagement of a commercial waste collection provider.

- bulky goods storage was not necessary as resident students were temporary and all facilities were provided.
- provision would be made for two organic green waste bins that are capable of being stored in the garbage rooms and presented to the kerb for collection.
- The Department notes that Council confirmed in its RtS submission that the Applicant's response had satisfactorily addressed its previous comments.
- The Department is satisfied that the revised waste stream calculations presented by the Applicant and the amended capacity of the garbage rooms are more consistent with the proposed operational characteristics of the proposal and in accordance with the EPA's '*Better Practice Guide for Resource Recovery in Residential Developments 2019*'.
- The revised waste collection procedures proposed by the Applicant in its RtS Addendum, including the establishment of a dedicated services zone at the front of the site, are also considered satisfactory to cater for the expected collection frequency of three times per week.

Noise and vibration

- The EIS was supported by a Noise and Vibration Assessment – Operation and Construction (NVA), which assesses the potential construction and operational noise and vibration impacts of the proposal on nearby sensitive receivers.
- The NVA was supplemented by a response and submitted with the RtS in

The Department has recommended construction noise and vibration conditions of consent requiring:

- the preparation of a detailed Construction Noise and Vibration

response to Council's comments that the NVA did not address impacts from existing external noise sources.

- The NVA identified several sensitive resident receivers located opposite the site and existing commercial receivers located adjacent to the east and south.

Construction Noise

- Under a worst-case scenario (i.e. equipment operating simultaneously), construction noise emissions from demolition and excavation activities were predicted to exceed construction noise goals and were likely to result in residences to the north being 'highly noise affected' (i.e. exposed to noise levels above 75 dB). The remaining construction activities generally comply with the construction noise goals.
- Construction vibration noise levels were considered unlikely to result in an adverse disturbance to nearby receivers or result in structural damage.
- Mitigations measures are proposed to reduce the likely construction noise and vibration impacts, including:
 - neighbour consultation before and during construction.
 - appropriate work scheduling to minimise noise impacts during quieter periods.
 - selection of quieter plant and equipment.
 - use of barriers and existing structures as noise barriers.
 - locating noise sources as far away as possible from sensitive receivers.

Management Plan that includes.

- all construction activities comply with best practice vibration management criteria to ensure no adverse impact to existing buildings or structures.
- the implementation of respite periods.
- the installation and monitoring of noise at sensitive receiver locations to determine when sensitive receivers become 'highly noise affected' (i.e. noise levels exceed 75 dB(A) in accordance with the ICNG) and where additional respite may be required.
- Compliance with the ICNG construction noise management levels (RBL + 10 dB(A) where feasible and reasonable.

The Department has recommended operational noise conditions of consent requiring:

- the Applicant prepare an operational management plan to ensure use of the rooftop areas is managed to ensure excessive noise is not generated, such as restricting use to informal

- implementing noise and vibration monitoring.

Operational Noise

- Potential operational noise sources include the rooftop areas, mechanical plant and parking/service vehicle operations.
- Noise levels associated with the use of the café (until 10pm) and rooftop terraces (until 9pm), 7 days per week were not predicted to exceed project noise trigger levels at all times.
- Mitigation measures are recommended to limit impacts from these areas, including the proposed installation of a 1.5m high balustrade around the rooftop terrace perimeter to help attenuate noise emissions during use.
- Emissions from mechanical plant are not yet known, though noted that they could be reasonably mitigated to ensure the specified project noise trigger levels were not exceeded.
- Predicted service vehicle and car park operations were not expected to be significantly greater than the previous operations associated the former Courthouse. Waste collections would be limited to three times per week and would be temporary in nature.
- Noise impacts from external noise were assessed as not having an adverse impact on the future internal amenity levels of the proposal. Single glazed windows are proposed that will provide a 25 dB noise reduction (when closed), ensuring compliance internal amenity levels within the residential rooms of the proposed are achieved.
- gatherings and no events or teaching.
- use of the rooftop terraces to be limited to 9 pm daily.
- post operation noise monitoring be undertaken within two months of commencement of operations of each development stage to ensure the effectiveness of mitigation measures installed.
- that all plant and equipment must be maintained and operated in a properly and efficiently.
- noise associated with plant, machinery or other equipment must not exceed the established project noise trigger levels.
- the provision of noise attenuating measures should noise monitoring identify exceedance of project noise trigger levels.

- The Department is satisfied that the NVA has assessed accurately assessed the potential construction and operational noise and vibration impacts on surrounding receivers. Noise impacts from potential external sources have also been satisfactory mitigated against.
- Mitigation measures outlined in the Applicant's NVA will appropriately limit the exposure of noise on surrounding sensitive receivers and are recommended to be implemented in full and through the preparation of a construction environmental management plan.

Infrastructure
and services

- The stormwater design for the proposal, as amended by the RtS, comprises the construction of a new 900mm concrete stormwater pipe to replace the existing damaged culvert/stormwater pipe.
- Council commented that this design could be a viable option, subject to clarification being provided prior to determination demonstrating:
 - the location of the proposed 3m wide easement.
 - building and footing extents.
 - vertical and horizontal clearances within the easement.
 - how access will be achieved along easement.
- The Department notes that the proposed new pipe will be located between the existing Courthouse Building and new Residential Building at a depth between 3.3m and 3.5m. Sufficient spaces greater than 3m is available between the building forms available to establish a new easement.

The Department has recommended a condition of consent requiring:

- the final stormwater drainage design for the proposal to be completed in consultation with and to Council's satisfaction prior to the issue of any construction certificate.
- the old easement for drainage be extinguished and a new easement for drainage of water, 3m wide, be established over the centerline of the new stormwater pipe.

- The proposed alignment of the new pipe is generally clear of overhead obstructions, with the exception of a section obstructed by a proposed staircase to level 1 (i.e. approximately 10m in length).
- The Department notes that the alternative option is to route the new stormwater pipe around the rear of the Residential Building and along the eastern side boundary. While this option may be possible, it is noted that the eastern boundary of the site is affected by two existing easements – a restriction on the use of land 3m wide and an easement for services 1.7m wide benefiting Lot 2 DP 1199904.
- The Department considers that the option presented in the Applicant's revised Stormwater Management Plan to be the most suitable option. Sufficient space is available to establish an easement for maintenance, with minimal obstructions.

Development Contributions

- The proposal attracts a development contribution at a rate of 1% of the CIV (less the cost of the adaptive reuse of the Courthouse Building – clause 25J(3)(m)) in accordance with Part B – City Centre Council's *Section 94A Development Contributions Plan 2009* (Plan).
- In its RtS, the Applicant clarified Council's request, confirming that the section 94A development contribution estimate was calculated in accordance with clause 25J of the Regulation.
- Council responded in its RtS submission that it was satisfied with the Applicant's

The Department has recommended the imposition of Council's standard development contributions condition of consent.

response and recommended a condition of consent requiring a monetary contribution of \$288,992.



7. Evaluation

The Department has reviewed the EIS, RtS and RtS Addendum and assessed the merits of the proposal, taking into consideration advice from the public authorities, including Council and concerns raised in the public submission. Issues raised have been considered and all environmental issues associated with the proposal have been thoroughly addressed. The impacts of the proposal have been addressed in the EIS, the RtS and RtS Addendum. Conditions of consent are recommended to ensure that impacts are managed appropriately. The Department considers the development is in the public interest and should be approved subject to conditions.

The proposed Nihon University Newcastle Campus development provide for the adaptive reuse of the State heritage significant former Newcastle Courthouse. Two new contemporary building additions will be constructed on either side of the former Newcastle Courthouse, replacing more recent additions with lesser heritage significance. The new additions have been sympathetically designed to ensure the heritage significance and prominence of the former Newcastle Courthouse is not adversely impacted.

The proposed establishment of a new educational establishment will provide for new tertiary education language courses and exchange programs that will strengthen cultural and educational relationships within an urbanised environment with high accessibility and amenity. The proposal will complement the expanding educational sector within Newcastle's city centre.

The proposal is consistent with the objects of the EP&A Act, including facilitating ecologically sustainable development, and is consistent with the State's strategic planning objectives.

The key issues raised in the submissions include heritage, landscaping, site contamination, noise, parking and servicing and waste management. The Department has considered the merits of the proposal and considers it acceptable with regard to these key issues because:

- the proposal, including the demolition of the Administration and Supreme Court Buildings, will not result in adverse heritage impacts and will not impact on the significance grading of the State heritage listed former Newcastle Courthouse.
- the proposed built form, including the request to vary the maximum 10m height limit, is considered acceptable and will not result in unreasonable bulk and scale or amenity impacts upon surrounding land uses and is an appropriate aesthetic response to the site context.
- the proposed landscaping and urban design arrangements will improve the quality of the streetscape and, subject to recommended conditions, will provide a complementary design response to the façade of the heritage significance of the former Newcastle Courthouse.
- the proposed parking provision will satisfy the likely parking demand generated by the proposal, noting that no parking demand would be generated by the 100 student residents

and a condition of consent has been recommended requiring the provision of 22 bicycle parking spaces.

- several conditions are recommended to mitigate and manage construction and operational traffic, noise and vibration, including the operation and management of the services zone.
- conditions are recommended to require the proposed project to achieve a minimum 4 Star Green Star rating, as targeted by the Applicant, to ensure that the building is ecologically sustainable.
- the assessment and proposed management of site contamination is considered acceptable to make the site suitable for the proposed land use and the Department has recommended conditions of consent to ensure the appropriate steps are undertaken by the Applicant to ensure this occurs.



8. Recommendation

It is recommended that the Executive Director, Infrastructure Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report.
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant consent to the application.
- **agrees** with the key reasons for approval listed in the notice of decision.
- **grants consent** for the application in respect of Nihon University Newcastle Campus.
- **signs** the attached development consent and recommended conditions of consent.

Recommended by:

David Gibson

Team Leader

Social Infrastructure



9. Determination

The recommendation is **Adopted** by:

David Gainsford

Executive Director

Infrastructure Assessments

11/12/19.



Appendices

Appendix A – List of Documents

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning, Industry and Environment's website as follows:

1. Environmental Impact Statement

<https://www.planningportal.nsw.gov.au/major-projects/project/10356>

2. Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/SSD-9787/submissions/13111/3251>

3. Applicant's Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/10356>

4. Applicant's Response to Submissions Addendum

<https://www.planningportal.nsw.gov.au/major-projects/project/10356>

Appendix B – Statutory Considerations

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)

To satisfy the requirements of section 4.15(a)(i) of the EP&A Act, this report includes references to the provisions of the EPis that govern the carrying out of the project and have been taken into consideration in the Department's environmental assessment.

Controls considered as part of the assessment of the proposal are:

- State Environmental Planning Policy (State & Regional Development) 2011 (SRD SEPP).
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP).
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP).
- State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP).
- State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP).
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55).
- State Environmental Planning Policy No. 64 – Advertising Structures and Signage (SEPP 64).
- Draft State Environmental Planning Policy (Remediation of Land) (Draft Remediation SEPP).
- Draft State Environmental Planning Policy (Environment) (Draft Environment SEPP).
- Newcastle Local Environmental Plan 2012 (NLEP 2012).

COMPLIANCE WITH CONTROLS

State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)

Table 1 | SRD SEPP compliance table

Relevant sections	Consideration and comments	Complies
3 Aims of Policy The aims of this Policy are as follows: (a) to identify development that is State significant development	The proposed development is identified as SSD.	Yes
8 Declaration of State significant development: Section 4.36 (1) Development is declared to be State significant development for the purposes of the Act if: (a) the development on the land concerned is, by the operation of an environmental planning instrument, not permissible without development consent under Part 4 of the Act, and	The proposal is permissible with development consent. The development is a type specified in Schedule 1.	Yes

(b) the development is specified in Schedule 1 or 2.

Schedule 1 State significant development —general (clause 8 (1)) 15 Educational Establishments (3) Development for the purpose of a tertiary institution (within the meaning of <i>State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017</i>), including associated research facilities, that has a capital investment value of more than \$30 million.	The proposal comprises development for the purpose of a tertiary institution and has a CIV in excess of \$30 million.	Yes
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State Environmental Planning Policy (Infrastructure) 2007

The Infrastructure SEPP aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and providing for consultation with relevant public authorities about certain development during the assessment process.

The proposal does not trigger consideration under the Infrastructure SEPP. Notwithstanding, the Department has consulted and considered the comments from the relevant public authorities (refer to **Sections 5** and **6** of the report). The Department has included suitable conditions in the recommended conditions of consent (see **Appendix C**).

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

The Education SEPP commenced on 1 September 2017 and aims to simplify and standardise the approval process for child care centres, schools, TAFEs and universities while minimising impacts on surrounding areas and improving the quality of the facilities. The Education SEPP includes planning rules for where these developments can be built, which development standards can apply and constructions requirements. The application has been assessed against the relevant provisions of the Education SEPP.

Pursuant to clause 44 of the Education SEPP, the proposed student accommodation portion of the proposal does not constitute development for the purpose of a university. The Education SEPP therefore does not apply to this ancillary portion of the proposal. Notwithstanding, the proposed student accommodation portion of the proposal is considered to be ancillary to the proposed educational establishment land use, which is permissible with consent in the B4 Mixed Use zoned under the Newcastle Local Environmental Plan 2012.

Clause 57 of the Education SEPP requires traffic generating development that involve addition of 50 or more students to be referred to the RMS. The Application was referred to RMS in accordance with this clause.

State Environmental Planning Policy (Coastal Management) 2018

The Coastal SEPP aims to promote an integrated and co-ordinated approach to land use planning in the coastal zone by managing development in the coastal zone and protecting the environmental assets of the coast, establishing a framework for land use planning to guide decision-making in the coastal zone, and mapping the 4 coastal management areas (the coastal wetlands and littoral rainforests area, the coastal vulnerability area, the coastal environment area and the coastal use area) that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016. The Coastal SEPP replaces SEPPs 14, 26, and 71.

As illustrated in **Figure 31** and **Figure 32**, the site is mapped in a Coastal Environment Area zone and Coastal Use Area zone identified by the SEPP.

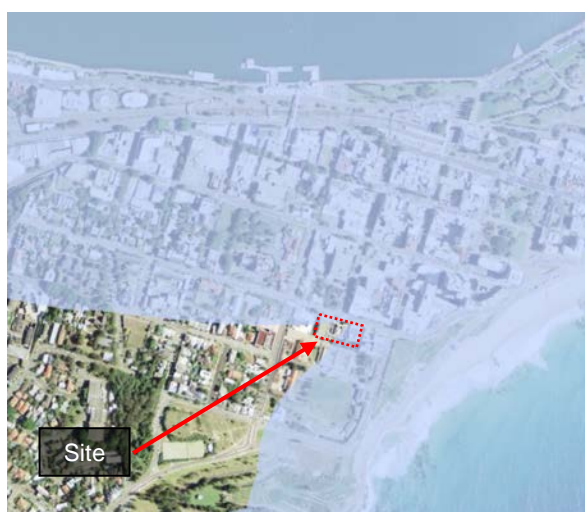


Figure 30 | Coastal Management Area Map



Figure 31 | Coast Use Area Map

An assessment of the proposal against the requirements under Divisions 3 to 5 of the Coastal Management is provided below.

Table 2 | Consideration of the Coastal Management SEPP

Coastal Management SEPP	Department Comment/Assessment
Clause 13 Development on land within the coastal management area	
1. Development consent must not to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to	Refer to responses provided below.

cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	A Stormwater Management Plan has been prepared for the proposal to ensure that the integrity and resilience of the environment is maintained. It was previously acknowledged by the Department that the proposal was not likely to have any significant impact on biodiversity values in granting a waiver to the requirement for the Applicant to prepare a BDAR.
(b) coastal environmental values and natural coastal processes,	<p>The site is located between 120m and 140m west from the top of the escarpment at the edge of Fletcher Park, and approximately 180m to the edge of Newcastle Beach. It is also noted that a man-made boardwalk structure extends the length of Newcastle Beach.</p> <p>Having regard to these characteristics, it is not considered that the coastal environmental values or natural processes would be impacted by the proposal.</p>
(c) the water quality of the marine estate (within the meaning of the <i>Marine Estate Management Act 2014</i>), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,	The site is not located near any sensitive coastal lakes. The drainage design for the site has been designed to ensure that it satisfies Council's requirements for discharge into the existing street network.
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	The proposal will not impact on any marine vegetation, native vegetation and fauna and their habitats or impact on any undeveloped headlands and rock platforms.
(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for	The site is not located in or adjacent to any existing public open space and will not impact on access to any existing foreshore, beach or headland areas.

members of the public,
including persons with a
disability,

(f) Aboriginal cultural heritage, practices and places,	The proposal involves the redevelopment of an existing urban site and would not detrimentally impact on any Aboriginal cultural heritage, practices or places of significance.
(g) the use of the surf zone.	The proposal will not impact on any surf zones.
2. Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:	The proposal has been sited within the boundaries of an existing urban B4 Mixed Use zoned site. The location of the proposal, its siting behind existing built form and its proposed scale will not have any adverse impacts on the coastal management area.
(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or	
(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.	

Clause 14 Development on land within the coastal use area

1. Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:	Refer to responses provided below.
(a) has considered whether the proposed development is likely to cause an adverse impact on the following:	
i. existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	The site is not located in or adjacent to any existing public open space and will not impact on access to any existing foreshore, beach or headland areas.
ii. overshadowing, wind funneling and the loss of views from public places to foreshores,	The proposal comprises the redevelopment of an existing urban site and will not result in adverse overshadowing or wind funneling impacts or impact on any views from a public place.
iii. the visual amenity and scenic qualities of the coast, including coastal headlands,	The visual amenity of the local coastal zone and its surroundings will not be impacted on by this proposal. The site is setback from the escarpment edge behind existing built form such that it would not be readily visible from the coast or any nearby headlands.
iv. Aboriginal cultural heritage, practices and places	The proposal involves the redevelopment of an existing urban site and would not detrimentally impact on any Aboriginal cultural heritage, practices or places of significance.
v. cultural and built environment heritage, and	The proposal will involve the demolition of non-original built form additions to the State Heritage significant former Courthouse Building and construction of two new part three and four storey buildings adjacent.

The new built forms and their design have been designed to ensure that the prominence of the existing Courthouse Building is retained and conserved.

(b) is satisfied that:	
i. the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or	The proposal has been sited within the boundaries of an existing urban B4 Mixed Use zoned site. The location of the proposal, its siting behind existing built form and its proposed scale will not have any adverse impacts on the coastal management area.
ii. if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	The proposed use of the site for the purposes of an educational establishment and associated residential accommodation will not give rise to adverse impacts on the existing coastal use area.
iii. if that impact cannot be minimised—the development will be managed to mitigate that impact, and	
(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	The site is not visible from the nearby coastal environment due to the level differences. Notwithstanding, the scale of the proposed built form is generally consistent with that which is proposed to be demolished and will be in keeping with the existing surrounding built form.

Clause 15 Development in coastal zone generally – development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.	The proposal involves the redevelopment of an existing urban B4 Mixed Use zoned site. The location of the proposal, its siting behind existing built form and its proposed scale will ensure that its development does not increase the risk of coastal hazards on the site or other surrounding land.
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State Environmental Planning Policy (Affordable Rental Housing) 2009

The ARH SEPP aims to provide a consistent planning regime for the provision of affordable rental housing and delivery of affordable rental housing and to support local business centres by providing affordable rental housing for workers close to places of work.

The proposal incorporates the provision of seven on-site staff boarding rooms and one University Exchange Manager unit within the proposed new Residential Building component that satisfy the definition of a 'boarding house' under the Standard Instrument – Principle Local Environmental Plan.

Division 3 of the ARH SEPP therefore applies, in part, to the proposal. Consideration of the relevant clauses is provided below in **Table 3**.

Table 3 | ARH SEPP compliance table

Relevant sections	Consideration and comments	Complies
Clause 26 Land to which this Division applies.	The site is zoned B4 Mixed Use under NLEP 2012 and is identified as a land use zone to which Division 3 Boarding houses of the ARH SEPP applies.	Yes
Clause 29 Standards that cannot be used to refuse the consent	1(a) The site does not contain an FSR control and this subclause is therefore not applicable.	N/A
	1(b) Residential accommodation is not specified as development that is prohibited under the NLEP 2012 and its therefore permissible with consent. This subclause is therefore not applicable	N/A
	1(c) The site contains a listed heritage item and therefore this subclause is not applicable.	N/A
	2(a) Building Height – the proposal exceeds the maximum 10 m building height controls specified under NLEP 2012.	No – the consent authority may refuse the development on this ground.
	2(b) Front landscaping is proposed to be revised and updated as part of the proposal. The streetscape setting is mixed and each site have a unique individual character. A condition of consent is recommended to be imposed requiring the landscaping to be further refined	Yes

to provide a more sympathetic response to the heritage setting.

2(c) The proposed ground floor café will satisfactorily receive a minimum four hours of sunlight between 10am and 3pm.	Yes
2(d) The proposal accommodates a rooftop terrace area and internal terraces that provide greater than 20sqm of private open space with a dimension exceeding 3m The proposed University Coordinator Manager is not proposed to have direct access to a private open space area.	No – the consent authority may refuse the development on this ground
2(e) Under the ARH SEPP, a total of 5 parking spaces are required for the boarding house component of the proposal as follows – 4 spaces for the resident teachers, plus an additional space for the University Exchange Manager. A total of 20 spaces are provided in total with the new proposed car park	Yes
2(f) Each single lodgement resident teacher room is provided with a gross floor area greater than 12sqm.	Yes
(3) Each resident teacher boarding room contains a private kitchen and bathroom facilities.	Yes

The Department is satisfied that the proposed resident teacher boarding house accommodation proposed as part of this proposal will provide appropriate levels of amenity for its future occupants. While it is noted that the proposal does not comply with the maximum building height or private open space requirements for the University Exchange Manager, the Department notes the 'boarding house' component is minor in the overall context of the proposal.

State Environmental Planning Policy No. 55 - Remediation of Land

SEPP 55 aims to ensure that potential contamination issues are considered in the determination of a development application.

Total Recoverable Hydrocarbon (TRH), benzo(a)pyrene and lead in excess of the relevant commercial and residential criteria were recorded at the site in the limited samples collected. Potential impacts from a fuel storage tank to the east of the site were also noted, but not assessed in detail. It was concluded that despite these findings, the site could be made suitable subject to further assessment and/or remediation.

Based on these findings, it was recommended:

- that additional detailed investigations be undertaken following the demolition of the existing Administration and Supreme Court Buildings.
- where necessary, a RAP be prepared and implemented that:
 - identifies the need for further investigations to address data gaps
 - includes an updated conceptual site model that evaluates the potential risks to human health and the environment
 - details the implantation of the remediation strategy and an unexpected finds protocol.
- that a validation report be prepared following the implementation of the RAP that confirms the site is suitable for the proposed use.

The Applicant subsequently submitted a conceptual RAP which outlined two remedial scenarios that were capable of satisfactorily making the site suitable, where remediation was deemed necessary.

Interim Site Auditor advice was also prepared by a NSW EPA accredited Site Auditor and submitted with the Applicant's RtS Addendum. The Site Auditor concluded that:

- the approach to undertaking further investigations and preparing a detailed RAP based on those investigations is appropriate.
- the Cardno conceptual RAP is considered appropriate to address contamination identified to date and has allowed for data gaps to be addressed.
- the site can be made suitable by implementing the conceptual RAP, updated accordingly following the completion of further detail investigations.
- remediation methodology is readily available to address any impacts verified from fuel storage.

The Site Auditor also recommended conditions of consent to ensure future investigations undertaken addressed the auditor's recommendations and that where recommended to be prepared, the final RAP be reviewed and certified by an accredited Site Auditor.

Table 4 below provides an assessment of the proposal against the relevant provisions of SEPP 55.

Table 4 | Assessment against relevant SEPP 55 provisions

Relevant Clause	Assessment/Comment
Clause 7	
(1) A consent authority must not consent to the carrying out of any development on land unless:	In accordance with clause 7(1)(a), the consent authority has considered the submitted ESA and DSI reports, conceptual RAP and interim Site Auditor advice prepared for the proposal. Contaminants identified within the limited soil sampling undertaken has been assessed
(a) it has considered whether the land is contaminated, and	

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in sub clause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

(3) The applicant for development consent must carry out the investigation required by sub clause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

above the relevant criteria, but are capable of being satisfactorily remediated to ensure the site is suitable for the proposal.

Further detailed site investigations will be undertaken to verify these findings, and where necessary, the conceptual RAP will be updated and finalised.

Advice received from the NSW accredited Site Auditor confirms that the documents submitted and conceptual RAP propose an acceptable remediation strategy for the proposal that is capable of making the site suitable for the proposed education and residential land uses.

As noted above, an ESA, DSI and conceptual RAP have been submitted and considered in the Department's assessment of the proposal. It is further noted that interim Site Auditor advice provided confirms that the proposed remediation strategy for the proposal is appropriate and that the site can be made suitable for the proposed land uses.

The Department is satisfied that the Applicant has carried out the necessary investigations capable. Appropriate conditions of consent have been recommended to ensure further detailed investigations are undertaken following the demolition of existing buildings, and where necessary, the conceptual RAP is updated and finalised.

Clause 9

For the purposes of this Policy, a category 1 remediation work is a remediation work (not being a work to which clause 14 (b) applies) that is: (d) development for which another State environmental planning policy or a regional environmental plan requires development consent, or

The site contains a listed heritage item and is located in a heritage conservation zone. Therefore, any remediation work required would be characterised as Category 1 remediation.

Accordingly, the Applicant has sought development consent for these works.

Clause 9

(1) A category 1 remediation work is identified as advertised development, unless the remediation work is: (a) designated development, or (b) State significant development.

The proposal is State significant development and is therefore not categorised as 'advertised development'.

The proposal has been exhibited in accordance with the relevant requirements for State significant development.

(2) Pursuant to section 29A of the Act, the period specified in clause 65 (5) (d) of the *Environmental Planning and Assessment Regulation 1994* is extended to 30 days in relation to development identified as advertised development by this clause.

The Department is satisfied that the Applicant has adequately addressed clause 7 of SEPP 55 and that the site can be made suitable for its intended use, subject to recommended conditions of consent requiring:

- further targeted site investigations be undertaken following demolition works.
- where necessary, update and finalise the conceptual RAP based on the results of the additional site investigations and endorsed by an accredited Site Auditor prior to the commencement of remediation works.
- preparation of a validation report following the completion of any required remediation works that must be reviewed by an accredited Site Auditor.
- preparation and submission of a site audit report and site audit statement certifying that the site is suitable for the proposal prior to any occupation.
- where necessary, preparation of a Long Term Environmental Management Plan (LTEMP).

State Environmental Planning Policy No. 64 – Advertising and Signage

State Environmental Planning Policy No 64- Advertising and Signage (SEPP 64) applies to all signage that under an EPI can be displayed with or without development consent and is visible from any public place or public reserve.

Development consent is sought for a single building identification sign that is proposed to display the name of the institution, Nihon University Newcastle Campus. The proposed signage structure will have a maximum height of 4.2m and width of 5.6m and comprise of two lines of signage text 800mm in height (see **Figure 33**). The sign is proposed to be located at the eastern edge of the site, adjacent to the proposed service vehicle access point (see **Figure 34**).

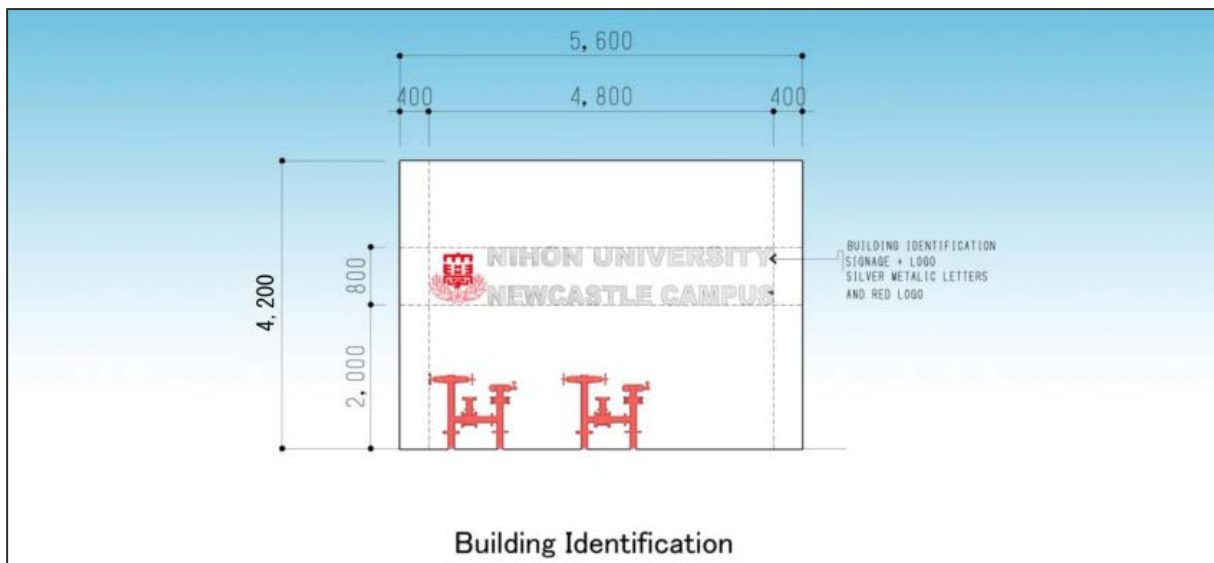


Figure 32 | Nihon University Building Identification Sign – Church Street Elevation (Source: EIS)

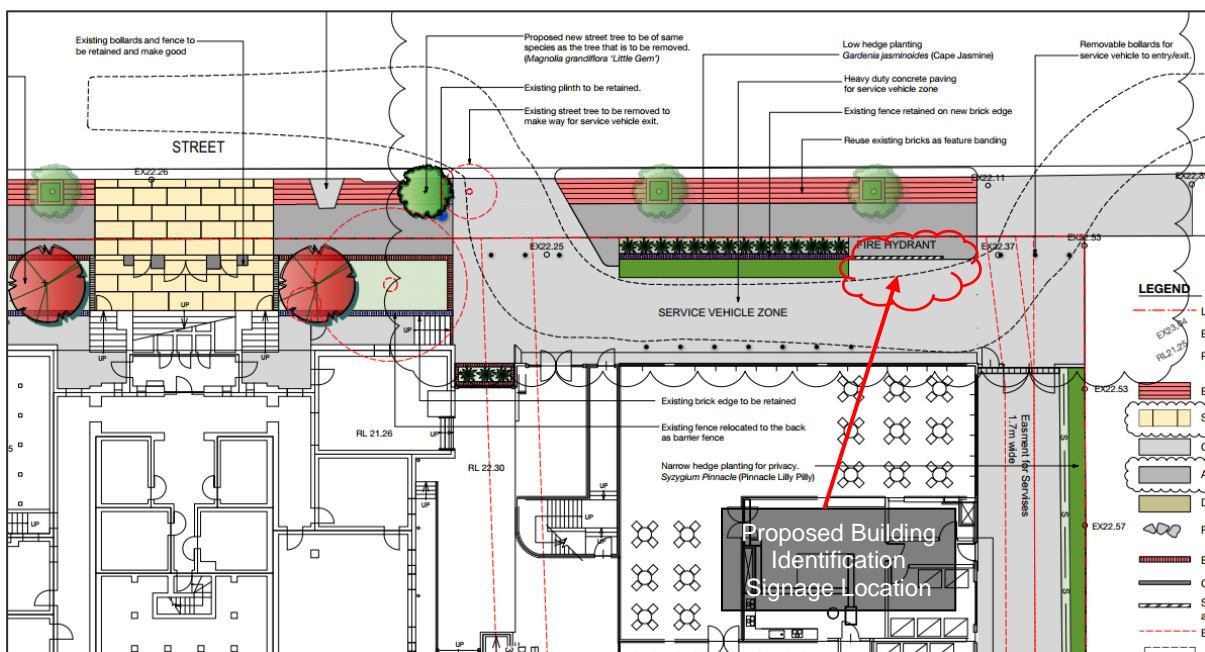


Figure 33 | Signage Location (Source: EIS)

Under clause 8 of SEPP 64, consent must not be granted for any signage application unless the proposal is consistent with the objectives of the SEPP and with the assessment criteria which are contained in Schedule 1. **Table 3** below demonstrates the consistency of the proposed signage with these assessment criteria.

Table 4 | SEPP 64 compliance table

Assessment Criteria	Comments	Compliance
1 Character of the area		
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	<p>The proposed signage is contemporary in design and will be consistent with the proposed new Residential Building associated with the proposal.</p> <p>The contemporary nature of the signage design will not be out of character with the surrounding locality, with the brutalist architecture style of the adjoining Newcastle Police Station.</p>	Yes
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	<p>Church Street has little to no outdoor advertising such that a comparison can be reasonably made.</p> <p>The existing Administration Building of the former Newcastle Courthouse included a roof-mounted building identification sign, though it is noted this will be demolished along with the rest of the Administration Building.</p> <p>Notwithstanding, it is not considered that the proposed design and siting of the building identification sign will create an adverse impact on, or negative precedent for the locality.</p>	Yes
2 Special areas		
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other	While the site contains a State Heritage listed building and is located in in a local heritage conservation zone, the contemporary design of the sign aligns	Yes

conservation areas, open space areas, waterways, rural landscapes or residential areas?

with the contemporary building additions proposed for the site.

3 Views and vistas

Does the proposal obscure or compromise important views?

No views or vistas will be impacted by the proposed signage.

Yes

Does the proposal dominate the skyline and reduce the quality of vistas?

Does the proposal respect the viewing rights of other advertisers?

The proposed building identification sign will not impact on any viewing rights of other advertisers.

Yes

4 Streetscape, setting or landscape

Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?

The signage design integrates the proposed fire hydrant and booster to minimise its impact on the streetscape. The building identification signage text is then positioned at a height that is proportional to the scale of the signage structure and the fire hydrant and booster below.

Yes

The proposed 4.2m height of the signage structure is in keeping with the 10.1m height of the proposed Residential Building and adjacent Newcastle Police Station.

Does the proposal contribute to the visual interest of the streetscape, setting or landscape?

The proposed contemporary design of signage will ensure it does not negatively impact on the heritage setting of the locality.

Yes

Does the proposal reduce clutter by rationalising and simplifying existing advertising?

The proposal does not include advertising signage.

N/A

Does the proposal screen unsightliness?

Signage has been designed in keeping with the contemporary additions to the site

Yes

and makes use of simple, legible text. The single sign is not considered to contribute to signage clutter.

Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No signage is proposed above the main hospital buildings or existing vegetation.	Yes
Does the proposal require ongoing vegetation management?	No ongoing vegetation management will be required by the proposed signage.	Yes

5 Site and building

Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposed scale and design of the signage is compatible with the site, the proposed new contemporary built form additions to the site.	Yes
Does the proposal respect important features of the site or building, or both?	The proposed siting of the building identification sign at the eastern edge of the site will ensure that the State Heritage significance of the former Courthouse Building is not detracted from.	Yes
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage has been designed to complement the proposed contemporary additions to the site and integrates the required fire hydrant and booster to minimise their impact on the streetscape setting.	Yes

6 Associated devices and logos with advertisements and advertising structures

Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposed signage will display the Nihon University logo. This does not detract from the design of the signage and better communicates the tertiary education nature of the building and place.	Yes
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7 Illumination

Would illumination result in unacceptable glare?	No internal illumination is proposed. Small external lights are proposed to be directed towards the sign face.	Yes
Would illumination affect safety for pedestrians, vehicles or aircraft?	The Department recommends a condition of consent to ensure that lighting is directed at the signage only and does not result in adverse off-site illumination impacts.	
Would illumination detract from the amenity of any residence or other form of accommodation?	The proposed intensity of illumination is not designed to result in glare impacts or light spill.	Yes
Can the intensity of the illumination be adjusted, if necessary?	The proposed illumination of signage is intended to occur at all times consistent with the operations of the tertiary education facility.	Yes
Is the illumination subject to a curfew?	The proposed subtle lighting will assist resident students to better identify the location of the site within the broader streetscape during the evening.	

8 Safety

Would the proposal reduce safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed design and location of signage is not anticipated to have an adverse impact on pedestrian or any public road.	Yes
Would the proposal reduce safety for any public road?		

Draft State Environmental Planning Policy (Remediation of Land)

The Draft Remediation SEPP will retain the overarching objective of SEPP 55 promoting the remediation of contaminated land to reduce the risk of potential harm to human health or the environment.

Additionally, the provisions of the Draft Remediation SEPP will require all remediation work that is to be carried out without development consent, to be reviewed and certified by a certified contaminated land consultant, categorise remediation work based on the scale, risk and complexity of the work and require environmental management plans relating to post-remediation management of sites or

ongoing operation, maintenance and management of on-site remediation measures (such as a containment cell) to be provided to council.

The Department is satisfied that the proposal will be consistent with the objectives of the Draft Remediation SEPP.

Draft State Environmental Planning Policy (Environment)

The Draft Environment SEPP is a consolidated SEPP which proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property. Once adopted, the Draft Environment SEPP will replace seven existing SEPPs. The proposed SEPP will provide a consistent level of environmental protection to that which is currently delivered under the existing SEPPs. Where existing provisions are outdated, no longer relevant or duplicated by other parts of the planning system, they will be repealed.

Given that the proposal is consistent with the provisions of the existing SEPPs that are applicable, the Department concludes that the proposed development will generally be consistent with the provisions of the Draft Environment SEPP.

Newcastle Local Environmental Plan (NLEP) 2012

The NLEP 2012 aims to encourage the development of housing, employment, infrastructure and community services to meet the needs of the existing and future residents of the City of Newcastle LGA. The NLEP 2012 also aims to conserve and protect natural resources and foster economic, environmental and social well-being.

The Department has consulted with Council throughout the assessment process and has considered all relevant provisions of the NLEP 2012 and those matters raised by Council in its assessment of the development (refer to **Section 5**). The Department concludes the development is consistent with the relevant provisions of the NLEP 2012. Consideration of the relevant clauses of the NLEP 2012 is provided in **Table 5**.

Table 5 | Consideration of the NLEP 2012

NLEP 2012	Department Comment/Assessment
Clause 2.1 Land use zones	<p>The site is zoned B4 Mixed Use under NLEP 2012. Development for the purposes of an educational establishment is permissible with consent. The proposed student accommodation portion of the proposal is considered ancillary to the proposed educational establishment land use and is therefore also permissible with consent.</p> <p>The proposal is considered to be consistent with the zone objectives as follows:</p> <ul style="list-style-type: none">the proposed educational establishment will contribute to the mixture of permissible land uses within the mixed use zone.

- the proposal is highly accessible and is located within approximately 370m of the Newcastle Beach Light Rail Stop.
- the proposed educational establishment land use will support nearby commercial land uses and not impact on the viability of those centres.

Clause 2.7 Demolition of buildings	Development consent is being sought as part of this SSD application for the demolition of components of the existing building.
Clause 4.3 Building height	<p>The site is mapped on the NLEP 2012 Height of Buildings Map as being subject to a maximum 10m building height.</p> <p>The proposed new Residential and Education Buildings have a maximum height of 16.6m.</p> <p>Consideration of the proposed height exceedance is provided in Section 6.2 of this report and below against the provisions of clause 4.6 of NLEP 2012. The Department concludes that compliance with the maximum building height control applying to the site is unnecessary under the circumstances.</p>
Clause 4.6 Exceptions to development standards	<p>The proposal does not comply with the maximum building height permitted under clause 4.3 of NLEP 2012. The SSD application is supported by a written request pursuant to clause 4.6 of NLEP 2012 seeking an exemption to compliance with the maximum building height development standard.</p> <p>The Department has considered the Applicant's written request in detail in Section 6.2. The Department concludes that compliance with the development standard is unnecessary and that sufficient environmental planning grounds exist to justify contravening maximum 10 m building height.</p>
Clause 5.10 Heritage conservation	<p>In accordance with subclause 2, this SSD application seeks development consent for the demolition of the existing non-original Administration Building and Supreme Court Building. Consent is also sought for internal demolition works and alterations to the State Heritage listed former Courthouse Building.</p> <p>The Applicants' EIS was supported by a Statement of Heritage Impact (SHI) and Baseline Archaeological Assessment which assesses the impact of the proposal on the existing heritage significance of the site and Courthouse Building. The Applicant supplemented its heritage assessments through the submission of a Heritage Interpretation Plan, Aboriginal Cultural Heritage Assessment (ACHA) Report and Aboriginal Archaeological Assessment (AAA) with its RtS.</p> <p>Heritage</p> <p>The Department has considered the Applicant's EIS, SHI and supporting</p>

assessments and the comments provided in submissions received from Council and the Heritage Council in its assessment of the proposal.

The Department notes that Council raises no objections to the proposal on heritage grounds and commented that the Applicant's design response regarding the façade treatment of the new building additions satisfactorily addresses its concerns regarding the relationship between new and old built form.

To ensure the proposal provides greater emphasis of the former Courthouse Building within the development, the Heritage Council has recommended conditions of consent to ensure the landscape design for the front setback is more sympathetic to the heritage setting. The NSW Heritage Council has also recommended conditions of consent relating to the procedures surrounding archaeological investigations to be undertaken on-site.

The Department has concluded that the proposal and associated impacts are acceptable, and the recommended conditions will ensure that the heritage significance of the Courthouse Building and archaeological remains will be protected and conserved. Detailed consideration of heritage impacts is provided in **Section 6.1**.

Archaeology

The Applicant's Baseline Archaeological Assessment (BAA) report was prepared for the proposal which identified the potential for the development to encroach on an existing mid-19th century brick-lined culvert and uncover known 1940's air raid shelters located underground at the rear of the existing Administration Building.

Intact portions of the existing culvert are considered to have moderate archaeological potential and would contribute to the understanding of Newcastle's late 19th century stormwater management systems. Intact remains of the existing air raid shelters are considered to hold local significance.

The BAA report notes that the exact depth of the culvert is unknown but would likely be exposed during any deep excavations for piles or strip footings. It is recommended that an Archaeological Research Design and Excavation Methodology be prepared in order to develop detailed mitigation measures.

Aboriginal Cultural Heritage

The Applicant's ACHA Report provides an assessment of the impact of the proposal on Aboriginal cultural heritage on and associated with the site. This

included mandatory consultation with Registered Aboriginal Parties during the preparation of both assessments.

The report concludes the deep soil profile of the site has the potential for *in situ* or *non-in situ* Aboriginal objects and/or deposits of conservation value. Generally, however, the site was assessed as having low archaeological significance, but held higher cultural significance with intrinsic value to the Aboriginal community.

The ACHA report recommended a phases of sub surface test excavations to identify the extent and or presence of any Aboriginal cultural deposits or objects. Where revealed, it was recommended that a Cultural Heritage Management Plan be prepared in consultation with the Registered Aboriginal Parties and the ACHA report be updated outlining the results of the test excavation phase.

Clause 6.1 Acid sulfate soils	<p>The site is mapped on the NLEP 2012 Acid Sulfate Soils Map as being located on Class 5 acid sulfate soils.</p> <p>Notwithstanding, no works are proposed that will be 5m below the Australian Height Datum or result in the water table being lowered by 1m.</p>
Clause 6.2 Earthworks	<p>Development consent is being sought for earthworks as part of this SSD application. The proposed extent of earthworks are considered acceptable as follows:</p> <ul style="list-style-type: none">(a) the works would not adversely impact on the existing drainage patterns and soil stability of the locality.(b) the proposed works will not impact on the capacity for any future redevelopment of the land.(c) excavated fill exported off site will be conditioned to be suitably validated prior to its removal.(d) the extent of earthworks proposed will not detrimentally impact on the amenity of adjoining land uses, with the scale of proposed development generally consistent with the existing buildings on site.(e) No fill is required to be imported to the site.(f) the likelihood of discovering and impacting on any relics has been assessed as low to moderate. Conditions of consent are recommended to ensure the appropriate processes are implemented where any items of significance are uncovered during site works.(g) the site is not located such that the proposed works would adversely impact on any watercourse, drinking water catchment or environmentally sensitive area.(h) sediment and erosion control measures are proposed to be implemented

on-site by the Applicant during site works to minimise any potential for off-site impacts.

Other policies

In accordance with Clause 11 of the SRD SEPP, Development Control Plans (DCPs) do not apply to State significant development. Despite this provision, consideration of the relevant development controls contained within Newcastle Development Control Plan 2012 (DCP) is provided in **Table 6**.

Table 6 | Newcastle DCP compliance table

Control	Department Comment/ Assessment
Section 3.10 Commercial Uses	
3.10.01 Height of buildings	<p>The site is mapped on the NLEP 2012 Height of Buildings Map as being subject to a maximum 10m building height.</p> <p>The proposed new Residential and Education Buildings have a maximum height of 16.6m.</p> <p>Consideration of the proposed height exceedance is provided in Section 6.2 of this report and against the provisions of clause 4.6 of NLEP 2012 in Table 5 above.</p> <p>The Department concludes that the height of the proposal is generally consistent with the existing building elements that are proposed to be replaced and existing built form in the surrounding locality. Therefore, compliance with the maximum building height control is unnecessary under the circumstances.</p>
3.10.03 Streetscape and front setbacks	<p>The proposed setback of the new Residential and Education Buildings will generally align to that of the built form being replaced on the site. The introduction of an active land use activity on the ground floor of the new Residential Building (i.e. the university café) will help ensure that the new built form provides a positive contribution to the local context.</p>
3.10.04 Side and rear setbacks	<p>Proposed side and rear setbacks will not impact on the privacy, private open space or solar access of adjoining properties. All works will be required to comply with the BCA.</p>
3.10.05 Street activation	<p>The proposal will contribute to an active street frontage through the operation of the new ground floor café within the new Residential Building. While not open to the general public, its operation will assist in activating the space and adjoining street level public domain.</p>
3.10.06 Building design and appearance	<p>The new built form additions and their connections with the existing former Courthouse Building have been designed in a sympathetic manner that does not detract from the heritage significance of the existing building.</p>

The modern additions help to clearly define the 'old' and 'new' that will in turn help reinforce the heritage significance of the former Courthouse Building.

The proposed façade treatments on the new built form have also been designed to emphasise the vertical rhythm of the existing terrace built forms opposite.

3.10.07 Views and privacy	The proposal will not adversely impact on any views or privacy.
3.10.08 Fencing and walls	The existing cast iron front fence will be retained and refurbished as part of the proposal.

Section 4.03 Mine Subsidence

Control 1. Mine Subsidence Board Approval	Correspondence received from the Applicant from Subsidence Advisory NSW, dated 16 May 2019, confirms that the geotechnical investigations for the proposal have been endorsed.
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Section 4.04 Safety and Security

4.04.01 Crime Prevention through Environmental Design (CPTED)	<p>CPTED measures have been incorporated into the design of the proposal to minimise the potential for crimes and the incidence of crime.</p> <p>Both natural and technical surveillance measures are integrated into the proposal through the use of a CCTV security system and design of window opens, the ground floor café use and rooftop terrace areas that will provide natural surveillance of the adjoining public domain.</p> <p>Access control to the new Nihon Campus will be managed via a security system that limits access to building occupants only.</p> <p>The design also incorporates clear elements that help define the boundary between the public and private domain.</p> <p>Ongoing management and maintenance of the site will ensure space management measures are incorporated into the operation of the proposal. These measures will ensure the site remains clean and managed that will deter incidences of crime and graffiti.</p>
4.04.03 Principles for specific uses – residential accommodation	<p>The design of the Residential Building provides for window opening in the front building elevation that face Church Street to maximise casual surveillance of the adjoining public domain.</p> <p>Entrance to the campus buildings and car park will be access controlled for approved occupants only.</p>

Section 5.01 Soil Management

5.01.01 Erosion prevention

5.01.02 Sediment control	The submitted concept stormwater design incorporates appropriate on-site measures to minimise the off-site transmission of sediment and erosion into Council's existing stormwater network.
5.01.03 Cut and fill	<p>The existing site has previously been cut in the western portion of the site to accommodate the easterly slope across the site. Substantial retaining surrounding the western and southern boundaries of the site.</p> <p>Further cut in the southwestern corner of the site is proposed to accommodate the proposed car park and expanded footprint of the proposal. The additional cut will lower the existing finished floor level (FFL) by approximately 1m, with deeper spot excavation required to accommodate the proposed lift wells.</p> <p>Any excess spoil generated is proposed to be reused on site. The stormwater design for the proposal accounts for the proposed FFLs and existing infrastructure that traverses the site to ensure adequate drainage is provided for the proposal.</p>

Section 5.02 Land Contamination

5.02.03 Remediation work	<p>The Department is satisfied that the investigations undertaken and conceptual RAP prepared can make the site suitable for the proposed educational establishment land use.</p> <p>A review conducted by an Interim Site Auditor and submitted with the RtS Addendum confirmed the Applicant's proposed approach to the assessment and remediation (where necessary) of site contamination was appropriate.</p> <p>Conditions of consent are recommended requiring:</p> <ul style="list-style-type: none"> • further detailed investigations be undertaken following demolition works and for the conceptual RAP to be updated and finalised (where necessary). • the final RAP must be reviewed by an accredited Site Auditor prior to remediation works. • a Site Audit Statement and validation report must be prepared following those works to confirm that the remediation works were undertaken correctly and that the site is suitable. • the preparation and implementation of a Long Term Environmental Management Plan where site remediation was required. • preparation and implementation of an unexpected finds protocol.
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Section 5.04 Aboriginal Heritage

5.04.01 Due diligence and development assessment	<p>The Applicant submitted an Aboriginal Cultural Heritage Assessment (ACHA) Report with its RtS that was subsequently updated in its RtS Addendum.</p> <p>Consultation with the broader Aboriginal community outlined in the ACHA report identified that the site had cultural significance with intrinsic value.</p> <p>The ACHA Report concludes that the site has the potential for <i>insitu</i> or <i>non-insitu</i> Aboriginal objects and/or deposits of conservation value but was assessed as having low archaeological significance. The ACHA report recommended the carrying out of sub surface test excavations following the demolition works and the preparation of a post-test excavation report and Cultural Heritage Management Plan, where objects or deposits are uncovered.</p> <p>A condition of consent is recommended to ensure that all site works cease and OEH contacted in the event any objects and/or deposits are uncovered during construction.</p>
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Section 5.05 Heritage Items

5.05.01 General principles	<p>The Applicant's proposal is supported by a SHI that assesses the impact of the proposal on the existing State heritage significance of the site and Courthouse Building. The Applicant supplemented its heritage assessments through the submission of a Heritage Interpretation Plan with its RtS.</p> <p>In accordance with the objectives, the proposal seeks consent for the retention and reuse of the State significant former Courthouse Building and the demolition of the less contributory building elements flanking either side.</p>
5.05.02 Integrating heritage items into new developments	<p>The proposal seeks to retain and reuse the existing former Courthouse Building, with only minor internal demolition works proposed to ensure its usability and BCA compliance are satisfactory.</p> <p>The proposed new Residential and Education Buildings will provide contemporary additions that juxtapose the existing heritage fabric of the former Courthouse Building. The physical connection and integration of the new and old built form is proposed to be achieved via double height glass atriums.</p>
5.05.03 Changing the use of a heritage item	<p>The Applicant has submitted a BCA Compliance Report which provides several recommendations to ensure the proposal is capable of achieving compliance with the requirements of the BCA. The report concludes that the identified non-compliances are capable of being addressed to comply.</p>

5.05.04 Conserving significant elements of adjoining public domain	The proposal will ensure that the existing cast iron front fenced is substantially retained. No works are proposed within the adjoining public domain.
5.05.06 Development in the vicinity of a heritage item	<p>The proposal is mapped within the boundary of the Newcastle Government House and Domain (State Heritage Register Item 01841) which extends further south taking in the grounds of James Fletcher Hospital and Newcastle Police Station.</p> <p>The proposal seeks to demolish the existing non-contributory building elements of the former Newcastle Courthouse and replace them with contemporary three/four storey additions with a maximum height of 16.6m to the top of the lift overruns. The proposed scale of the new building additions will be in keeping with the existing built environment.</p>

Section 5.06 Archaeological Management

5.06.01 Archaeological management	Due to the known presence of 1940's air raid shelters and potential for intact sections of a brick-lined culvert and associated moderate significance of these relics, the Applicant's BAA report recommends the preparation of an Archaeological Research Design and Excavation Methodology to identify and detail proposed mitigation measures.
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Section 7.02 Landscape, Open Space and Visual Amenity

7.02.02 General controls	<p>The landscape scheme for the proposal will retain existing street trees and provide two additional feature trees at the campus entrance. Opportunities for substantial vegetation in other areas of the site are limited due to the proposed development footprint, however approximately 10% of the site will be proposed for deep soil planting.</p> <p>The retention of existing street trees will assist in integrating the new built form within the streetscape and help to soften any perceived bulk of new building additions.</p>
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Section 7.03 Traffic, Parking and Access

7.03.01 Traffic studies and plans	<p>The Applicant proposes a total of 20 car parking spaces, one motorcycle space and 22 bicycle parking spaces are proposed, which represents a shortfall based on the DCP calculated parking demand.</p> <p>The Applicant has sought a variation to the total on-site car parking requirement arguing the existing courthouse use has a historic 31 space deficit and that resident students and staff would not generated a parking</p>
7.03.02 Parking provision	
7.03.03 Travel demand management	

7.03.04 Design and layout of parking and access	<p>demand. It also noted that the demand generated by administration and hospitality staff would be accommodated satisfactorily on-site.</p> <p>Comparative car parking data from other tertiary institutions was also presented by the Applicant to justify the provision of limited on-site student car parking.</p> <p>The Applicant also proposes to prepare an implement a green travel plan (GTP) prior to the commencement of operations and occupation of the development to better promote alternate travel modes and reduce reliance on vehicle trips.</p> <p>The Department is satisfied with the Applicant's request to vary the on-site car parking requirement for the proposal and considers the proposed 20 car parking spaces will sufficiently cater for the administration and hospitality staff and potential visitor demand. It is also noted that sufficient capacity will be available for 6 local students, which are likely to attend outside of normal teaching/office hours, such that administration staff are unlikely to be on-site.</p> <p>The Department recommends a condition of consent be imposed requiring the preparation and implementation of a GTP prior to the commencement of operations to ensure appropriate measures are incorporated from day one operations to encourage reduced reliance on private vehicle trips and the increased use of sustainable transport measures.</p>
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Section 7.05 Energy Efficiency

7.05.01 Business development	<p>The Applicant will target an as built 4 star Green Star rating through the implementation of a range of initiatives and measures. The proposed highly efficient façade system, low impact materials, use of highly efficient water fixtures and fittings, optimised air conditioning system, installation of a rooftop photovoltaic array and implementation of a system to educate occupants about the building performance and how it is influenced by occupant behaviour will ensure an ecologically sustainable building is developed.</p>
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Section 7.06 Stormwater

7.06.02 All development	<p>In response to Council's concerns, a revised Stormwater Management Plan was prepared and submitted with the Applicant's RtS that proposes the construction of a new concrete stormwater pipe in a new location to replace the poor condition of the existing drainage culvert/stormwater pipe traversing the site.</p> <p>The new stormwater pipe will intercept upstream flows via a new pit at the southern boundary and convey flows north to the existing stormwater pit</p>
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(proposed to be reconstructed) at the northern site boundary, prior to its discharge into Council's existing stormwater network in Church Street.

In addition, a 50kL rainwater tank is proposed in accordance with Council's on-site detention storage requirements, with all runoff collected passed through a first-flush device.

The Applicant also proposes to extinguish the existing stormwater easement and to create a new 3m wide easement for drainage to match the new stormwater pipe alignment.

7.06.03
Infrastructure

In accordance with Council's requirements, the existing drainage culvert/stormwater pipe were inspected by CCTV to assess the existing condition of the drainage infrastructure.

The results of this inspection influenced the proposed stormwater concept design for the site, which proposes the construction of a new stormwater pipe with improved access for maintenance.

Section 7.08 Waste Management

7.08.02 Demolition
and construction

Waste generated during the demolition phase of works will be limited to the existing Administration and Supreme Court Buildings, and minor internal waste associated with upgrade works within the former Courthouse Building.

All waste generated by the proposal will be required to be managed according to a Waste Management Plan that will be required to be prepared prior to the issue of a Construction Certificate.

7.08.03 Operational
waste

The proposal, as amended by the RtS, proposes the provision of 10 x 1,100L mobile garbage bins, that are proposed to be stored in two separate waste rooms, with rooms dedicated to the Education/Residential uses and café.

Bins are proposed to be collected three times per week based on waste stream calculations, with collections to proposed to occur in the dedicated services zone.

The ongoing management and waste collection services are proposed to be finalised prior to the commencement of operations. The Department has recommended a condition of consent requiring the preparation of an operational management plan that will be required to include details of the management of waste collections.

Section 7.09 Advertising and Signage

7.09.01 Types of signage and controls

The proposed building identification sign does not align with a signage type outlined under section 7.09.01 of the DCP. Further consideration of the special use sign is provided below against the general controls under section 7.09.02.

7.09.02 General design guidelines

The proposed signage structure will have a maximum height of 4.2m and width of 5.6m and comprise of two lines of text 800mm in height (see **Figure 33**). The proposed building identification signage structure has been designed to integrate the fire booster pump infrastructure to help minimise its impact on the streetscape.

The modern design of the signage is considered in keeping with the modern building additions and has been positioned at the eastern end of the site so as not to detract from the prominence of the heritage significant former Courthouse Building.

Further consideration of the proposed signage has been provided above under the Schedule 1 Assessment Criteria of SEPP 64 and was found to be acceptable.

Appendix C – Recommended Instrument of Consent

Attach relevant development consent and recommended conditions of consent.