

# HERITAGE IMPACT STATEMENT

Fernhill estate, Mulgoa Road, Mulgoa NSW

Proposed Event: Symphony Concert



for

Simon & Brenda Tripp

DECEMBER 2013

## EXECUTIVE SUMMARY

Fernhill is a rare colonial estate on the edge of the Sydney basin that has retained its early buildings, largely intact, and its original grant lands in totality. There is no other similar estate within the Sydney region that has retained its buildings, land and setting.

The present DA is for the holding of a symphony concert as a one-off event on the property.

The conclusion of this HIS is that the proposed symphony concert will have no adverse affect on the heritage significance of the Fernhill estate.

This report refers to a revised (draft) Conservation Management Plan (CMP) for the Fernhill estate prepared in May 2013 by Paul Davies Pty Ltd.

This HIS supports the DA for a Symphony concert as part of a process of holding of events at Fernhill which provide a creative and sound way of providing funds for the conservation of one of the major early Colonial period estates of Sydney.



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## 1.0 INTRODUCTION

### 1.1 THE BRIEF

This heritage impact statement (HIS) has been prepared on behalf of Simon & Brenda Tripp to accompany a development application to Penrith City Council for a development proposal to hold a one-off Symphony concert on the the State Heritage listed and locally heritage-listed Fernhill estate located at Mulgoa Road, Mulgoa.

### 1.2 APPROACH AND METHODOLOGY

This HIS will review the relevant statutory heritage controls, assess the impact of the proposal, make recommendations as to the level of heritage impact and provide recommendations to mitigate any heritage impacts.

The methodology used in this report is in accordance with the principles and definitions set out in the Australia ICOMOS Burra Charter 2013 and its Practice Notes, the guidelines of the NSW Heritage Manual and in accordance with the latest version of The NSW Heritage Branch Statements of Heritage Impact guidelines.

This HIS draws on an updated CMP for the site prepared by Paul Davies Pty Ltd in May 2013.

### 1.3 LIMITATIONS

The Fernhill estate has been visited and photographed by Paul Davies and other staff of Paul Davies Pty Ltd on several occasions during 2013.

The historical outline in this report provides a brief summary only of material covered extensively in the updated CMP for the site.

### 1.4 AUTHOR IDENTIFICATION

This report was prepared by Paul Davies Pty Ltd, Architects and Heritage Consultants, 180 Darling St Balmain NSW 2041.

This report was authored by Chery Kemp, Heritage Specialist and Paul Davies, Director.

### 1.5 OWNERSHIP

Fernhill is presently owned by Angus Securities who have been in control of the estate since it went into receivership. Angus Securities have entered a joint venture with Simon and Brenda Tripp to consolidate the core part of the estate, and to seek development from the peripheral areas of the estate to settle the debts that presently exist on the property.

Simon & Brenda Tripp seek to hold events on the Fernhill estate within the core estate area to fund conservation and maintenance works to the property.



## 1.6 DEFINITIONS

For the purposes of this report

**Local** refers to Penrith City Council area; and

**State** refers to New South Wales.

The following definitions used in this report and are from *Article 1: Definitions* of The Burra Charter 2013, the Australian ICOMOS Charter for the Conservation of Places of Cultural Significance.

**Place** means a geographically defined area. It may include elements, objects, spaces and views. Place may have tangible and intangible dimensions.

**Cultural significance** means aesthetic, historic, scientific, social or spiritual value for past, present or future generations.

Cultural significance is embodied in the *place* itself, its *fabric*, *setting*, *use*, *associations*, *meanings*, records, *related places* and *related objects*.

Places may have a range of values for different individuals or groups.

**Fabric** means all the physical material of the *place* including elements, fixtures, contents and objects.

**Conservation** means all the processes of looking after a *place* so as to retain its cultural significance.

**Maintenance** means the continuous protective care of a *place* and its *setting*.

Maintenance is to be distinguished from repair which involves *restoration* or *reconstruction*.

**Preservation** means maintaining a *place* in its existing state and retarding deterioration.

**Restoration** means returning a *place* to a known earlier state by removing accretions or by reassembling existing elements without the introduction of new material.

**Reconstruction** means returning a *place* to a known earlier state and is distinguished from *restoration* by the introduction of new material.

**Adaptation** means changing a *place* to suit the existing *use* or a proposed use.

**Use** means the functions of a *place*, including the activities and traditional and customary practices that may occur at the place or are dependent on the place.

**Compatible use** means a *use* which respects the *cultural significance* of a *place*. Such a use involves no, or minimal, impact on cultural significance.

**Setting** means the immediate and extended environment of a *place* that is part of or contributes to its *cultural significance* and distinctive character.

**Related place** means a *place* that contributes to the *cultural significance* of another place.

**Related object** means an object that contributes to the *cultural significance* of a *place* but is not at the place.

**Associations** mean the connections that exist between people and a *place*.

**Meanings** denote what a *place* signifies, indicates, evokes or expresses to people.

**Interpretation** means all the ways of presenting the *cultural significance* of a *place*.



## 1.7 SITE LOCATION

The current Fernhill estate land encompasses approximately 700 hectares in 14 titles, while the core historic Fernhill estate has an area of 435 hectares. This core area, which is encompassed by the State Heritage Register listing, includes three allotments: Lot 2, DP 541825 (containing Fernhill house & garden); Lot 10 DP 615085 (surrounding the core house & garden allotment, and including a small parcel of land on the eastern side of Mulgoa Road) and Lot 11, DP 615085 (area north of the racecourse, with a frontage to Mulgoa Road). The overall site includes two lots fronting Mulgoa Road, 6 lots in Mayfair Road and a large rear parcel of land in two lots fronting Fairlight Road.



Figure 1: Current boundary of the Fernhill Estate lands (outlined in red). This land encompasses a variety of allotments of land, as outlined in Figure 2 below. Source: Image prepared by Paul Davies Pty Ltd, overlay onto NSW Land & Property Information Six Maps satellite image

Lots currently encompassed by the Fernhill estate are outlined in the table below.

Table 1: Lots currently part of the Fernhill Estate including heritage status and description

Name of area	Lot and DP Nos.	Heritage Listing Status	Description and road frontage (if any)
Core Fernhill Estate Area	Lot 2, DP 541825	SHR and LEP listed	Fernhill house and garden
	Lot 10, DP 615085	SHR and LEP listed	Area surrounding house and garden, with frontage to Mulgoa Road on the eastern side, and including a small parcel of land on the eastern side of Mulgoa Road
	Lot 11, DP 615085	SHR and LEP listed	Area north-east of house and garden, with frontage to Mulgoa Road on the eastern side



Name of area	Lot and DP Nos.	Heritage Listing Status	Description and road frontage (if any)
Northern Fernhill curtilage area	Lots 1-4, DP260373 Lot 2, DP 211795  Lot 12, DP610186	LEP listed as part of Fernhill curtilage area (Item No. 2260873)	Four forested lots fronting Mayfair Road to the north  Forested lot with no road frontage, lot east of Lot 1, DP 260373  Forested lot with a long frontage to Mayfair Road to the north
Western area	Lot 31, DP 237613  Lot 1, DP549247	Not heritage listed	Two sparsely forested lots to the west and south-west of the core area. Lot 31 has no road frontage.  Lot 1 has a road frontage to Fairlight Road at its southern end, and also adjoins the site of the SHR and LEP-Listed Fairlight (Lot 22, DP 625510).  Both of the lots encompass land originally belonging to the Fairlight estate.
Eastern area	Lot 1, DP 570484 Lot 6, DP173159 Lot 100, DP717549	LEP listed as part of Fernhill curtilage area (Item No. 2260873)	Area north of Mulgoa village, on the western side of Mulgoa Road, all lots with frontage to Mulgoa road

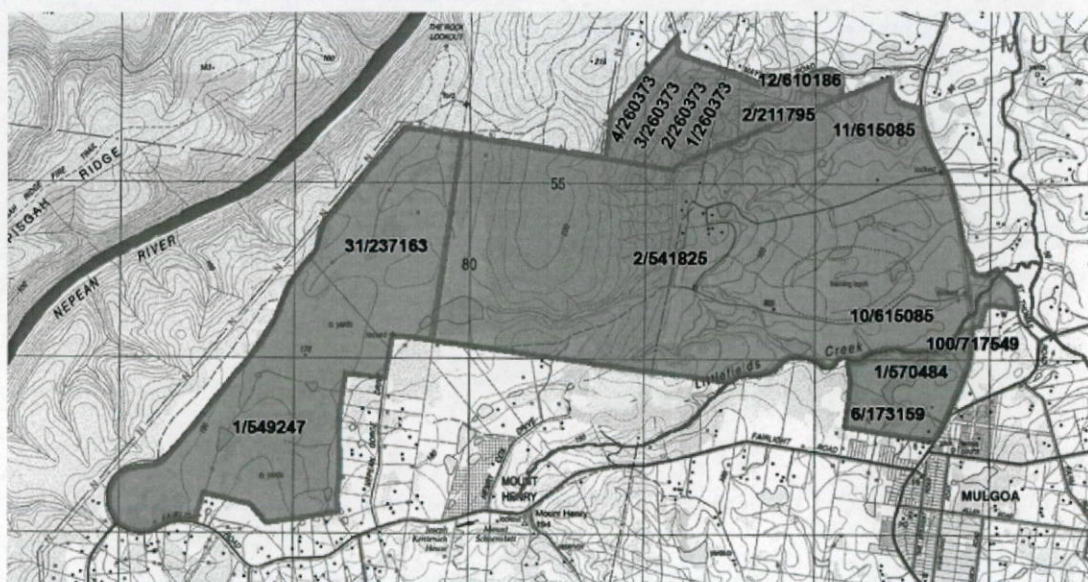


Figure 2: site plan showing the Fernhill estate land, including Lot and DP numbers for allotments

## 1.8 STATUTORY LISTINGS AND CONTROLS

### NSW Heritage Act 1977

Fernhill is included on the State Heritage Register (SHR) as item no 00054 gazetted 2 April 1999. Earlier a Permanent Conservation Order was placed on the property in 1981. The SHR boundary is outlined on Figure 3 below. Note that the area under the SHR listing does



not include the whole Fernhill estate. At the time of listing the core estate comprised 2 lots, since then there has been further sub-division.

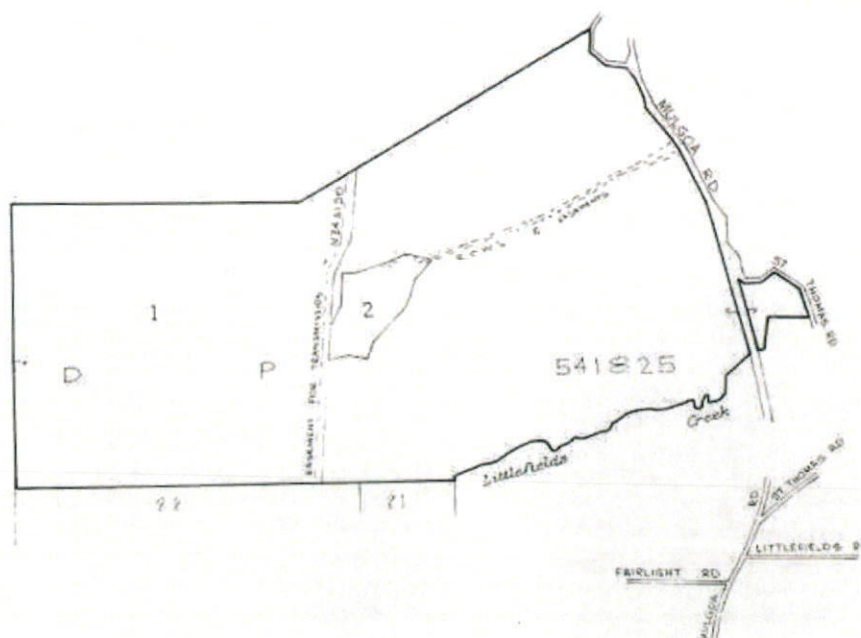


Figure 3: Fernhill SHR listing boundary, which includes Lot 2, DP 541825, Lot 10, DP 615085 (including small parcel of land on the eastern side of Mulgoa Road) and Lot 11, DP 615085 Source: SHR listing form, NSW Heritage Branch, OEH

### Penrith Local Environmental Plan 2010

Fernhill, its outbuildings and landscape are heritage listed in the Penrith LEP 2010 as Item No. 2260128, an item of state significance. The listing includes the parcel of land on the eastern side of Mulgoa Road, north of the site of St. Thomas Anglican Church, Mulgoa.

Areas of the extended site have also been heritage listed in the Penrith LEP 2010 as items of local significance for their significance in relation to Fernhill (see details in Table 1 below). The LEP heritage listing boundary for Fernhill is outlined in Figures 4 and 5 below, and includes Lots 10 and 11, DP 615085 and Lot 2, DP 541825 (the SHR listed area) as the core "Fernhill" listing.

Fernhill was also a heritage item in the previous Penrith LEP, however the adjoining lands were not listed at that time.



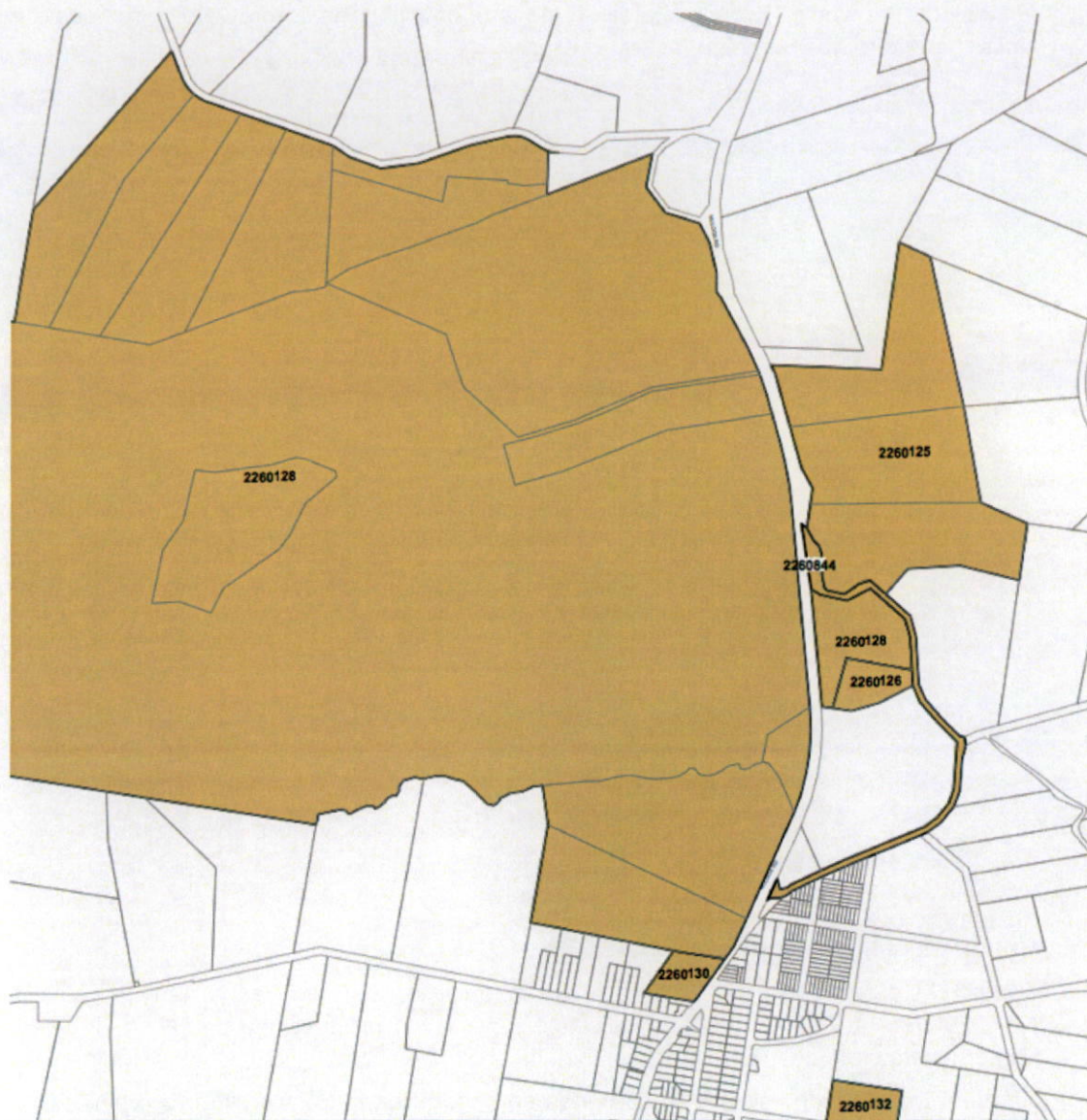


Figure 4: Extract: Penrith LEP 2010 Heritage Map 007, showing part of the Fernhill site at left (coloured, Heritage Item No. 2260128). This also shows the locations of adjacent heritage items, numbered (see Table 2 for detail).



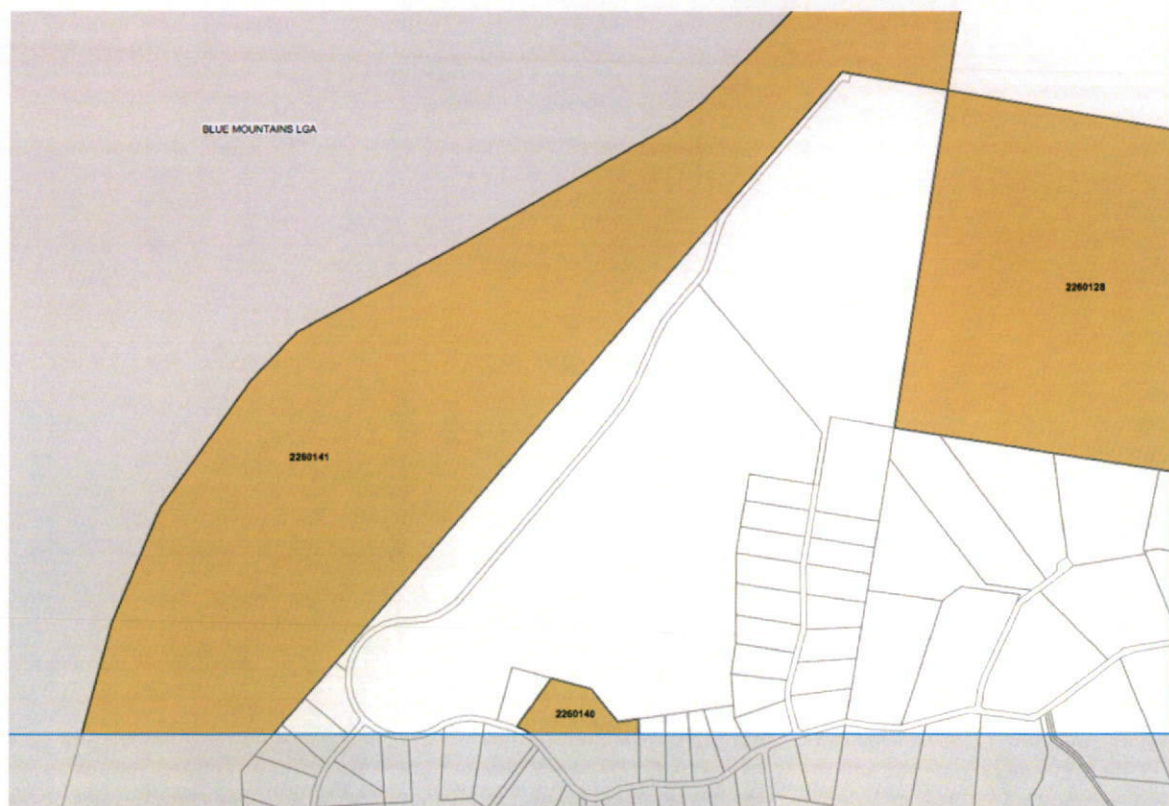


Figure 5: Extract: Penrith LEP 2010 Heritage Map 001, showing the western part of the Fernhill estate under the LEP heritage listing (coloured) at right. The nearby separately listed sites are Fairlight (Heritage Item No. 2260140 to the south), which adjoins Fernhill estate lands which are not heritage-listed, and item 2260141 to the west, which is a local heritage item in the LEP. (Details of heritage items in the vicinity of Fernhill outlined in Table 2 below).

Fernhill is in the vicinity of a number of other heritage items on the SHR and on the Penrith LEP 2010 heritage list, outlined in Table 2 below and illustrated in the Figures 4, 5 and 6 above.

Table 2: Heritage Items in Mulgoa in the vicinity of Fernhill

Item name	Address	Lot & DP Nos.	Heritage Status	Heritage Item No. in LEP 2010
Curtilage of Fernhill	1147-1187 Mulgoa Road and 10-156 Mayfair Road	Lot 100, DP 717549; Lot 1, DP 570484; Lot 6, DP 173159; Lot 5, DP 23781; Lot 12, DP 610186; Lot 2, DP 211795; Lots 1-4, DP 260373.	Local	2260873
Mulgoa Public School building, hall, residence and trees	1189-1193 Mulgoa Road	Lot 1, DP 853475	Local	2260130
St Thomas Anglican Church and cemetery	43-57 St Thomas Road	Lot 1, DP 996994 and Lot 1, DP 1035490	State	2260126



Item name	Address	Lot & DP Nos.	Heritage Status	Heritage item No. in LEP 2010
The Cottage	1012–1046 Mulgoa Road and 2–24 St Thomas Road	Lots 2–4, DP 241971	State	2260125
Former Mulgoa Road Alignment	St Thomas Road		Local	2260844
Fairlight (house, outbuilding and gardens)	377–429 Fairlight Road	Lot 22, DP 625510	State	2260140
Table Rock Lookout	716–782 Fairlight Road	Lot A, DP 164835	Local	2260141

## 1.9 NON-STATUTORY LISTINGS

Fernhill was identified in the Cumberland County Council list of Historic Buildings 1961-1967, and was listed on the (now obsolete) Register of the National Estate.

Fernhill is listed on the NSW National Trust Register.

## 2.0 HISTORICAL SUMMARY

The history of the Mulgoa Valley, the Mulgoa Township, the Fernhill Estate, the Cox family and landscape design in the 19th century is included in the recently updated CMP for the site. Below is a summary of the Cox family history relating to Mulgoa and the development of the Fernhill estate from the CMP.

### 2.1 COX FAMILY

The Mulgoa Valley has particular historic associations with the Cox family. They were in the Valley for three generations between the 1810s and 1900s. The different branches of the family were centred on the estates of Glenmore, Winbourne, Fernhill and Mulgoa Cottage.

The Cox family name is associated with the development and improvement of stock: cattle sheep and horses. The Cox family pioneer in the Mulgoa Valley was William Cox (1764-1837) who had arrived in New South Wales on the *Minerva* in 1800. Cox was a lieutenant in the NSW Corps, and as a member of the Officer class in Colonial NSW enjoyed the privilege of farming on a land grant while still holding down his official military duties. Within one year of arriving in Sydney, Cox had secured land grants of 1,500 acres of agricultural land at Petersham, Ryde and Castle Hill. Cox was rewarded for his work supervising the construction of first road over the Blue Mountains with 2000 acres on the Macquarie River near Bathurst, the property given the name Hereford.

On the first day of his governorship, New Years Day 1810, Macquarie reinstated a number of Colonel William Paterson's grants of 1809 made in the Mulgoa Valley, including 300 acres to Edward Cox, the youngest son of William Cox. Edward at the time of the grant was aged four and a half years and the application for the grant was made by his mother Rebecca, who stated she required the land.

The following is a list of land grants to the Cox family in the Mulgoa Valley:

- 300 acres to Edward Cox: 1 January 1810
- 100 acres to William Cox: 8 October 1816;



- 200 acres to William Cox: 8 October 1816;
- 820 acres to William Cox: 8 October 1816;
- 600 acres to George Cox: 8 October 1816;
- 400 acres to Henry Cox: 18 January 1817;
- 760 acres to William Cox: 18 January 1817; and
- 850 acres to William Cox: 5 April 1821

The Cox family acquired neighbouring freehold land in the 1810s and 1820s to increase their pastoral land.

In the Valley each of the Cox brothers established from the 1820s their own estates – Winbourne, Glenmore and Fernhill. George Cox's (1795-1868) Winbourne was developed from 1824, shortly after his marriage to Elizabeth Bell of Belmont, Richmond in 1822. Henry Cox's (1796-1874) Glenmore was developed from 1823 on his marriage to Frances McKenzie, the daughter of Alexander McKenzie, an official of the Bank of New South Wales. Edward Cox's (1805-1868) Fernhill was the last to develop, but originally incorporated the earliest of the homesteads – William Cox's Mulgoa Cottage (c. 1811). William built Cox's Cottage for his sons and their tutor in 1811. William Cox's sons, George, Henry and Edward all lived at Mulgoa Cottage prior to their marriages and development of their own estates.

The family's wealth was based on large pastoral properties west of the Blue Mountains, near Bathurst and Rylstone.

Edward King Cox (1829-1883) was born at Mulgoa Cottage, the eldest son of Edward Cox and his wife Jane Maria. He was sent to Europe in 1852 to study sheep breeding, and prior to his return in 1855 married Millicent Anne Standish, the second daughter of Richard J.L. Standish of Gin Lodge, Tralee, County Kerry, Ireland. On their return, Edward King took on the management of the family's large sheep stations at Rawdon, Rylstone with Mulgoa Cottage as the head station. At Mulgoa Cottage were born Edward Standish (1856) and Herbert Montgomerie Standish (1859). The couple's other children were born at either Fernhill or Rawdon.

Edward King Cox is acknowledged 'as the great improver of Australian merino'. Edward King Cox improved the merino stud developed by his father through introducing Silesian merino in 1856 on his return from Europe, and Tasmanian rams in 1869 after his father's death.

## 2.2 FERNHILL ESTATE

Edward Cox was originally granted 300 acres in 1810, which he increased in the 1830s through alienation of land owned by his brothers and father. By 1840 the landholdings of Edward Cox totalled 2,315 acres. Today, Fernhill Estate (385 hectares or 951 acres) incorporates Edward Cox's original land grant and portions of Hobby's and Slade's original grants.

Edward Cox's land was cleared extensively after 1810 by members of the Cox family, along with their other landholdings, to establish pastoral land. The first building constructed on the current Fernhill estate land was the stables in 1839. The building (still standing) housed the stonemasons whilst the house was constructed. The Cottage was the first building built on the estate dating from around 1810, however it is located on the eastern side of Mulgoa Road and is not within the current Fernhill estate site.

Fernhill House was completed some time between 1842 and 1845 and while the architect is not documented, it bears features suggestive of the work of Mortimer Lewis (who was the NSW colonial government architect for 15 years). It appears to have been designed originally as a two-storey building, with the 1840s recession leading to its construction as a single storey dwelling. All the sandstone for construction was quarried on the property. Two



stonemasons that Edward Cox imported from Ireland have been identified, Thomas Brady and Michael Meally, both from Country Clare.

The house was built on gently sloping land with panoramic views around the valley.

Fernhill Estate was described as follows in *Our Antipodes* of Colonel Godfrey's account of his visit to Australia in 1852:

A handsome stone house overlooks by far the most lovely and extensive landscape – as a home view – I ever met with in Australia: and its beauty is much enhanced by the taste and success of the proprietor in weeding out the thinly leafed and unsightly kinds of the gum-tree and preserving only that species of eucalyptus called the apple-tree, which, with its stout gnarled branches and crisp tufted foliage, is, when standing alone or in clumps on parkish looking ground, by no means a bad representative of the English oak... a stranger might imagine himself at the country-house of some substantial English squire ...there is a unity of homelike landscape unlike anything else of its kind I have met with out of England.

Edward King Cox inherited Fernhill Estate in 1868 on the death of his father, Edward. Edward King Cox reorganised the estate for the breeding of thoroughbred horses and shorthorn cattle.

Edward King Cox died at Fernhill in July 1883. On probate his estate (over 2300 acres) was valued at £95,572. Under the terms of his Will, the Fernhill Estate was broken up between his two eldest sons. The area west of Mulgoa Road was inherited by Edward Standish Cox, which is the Fernhill Estate. The area east of Mulgoa Road was inherited by Montgomerie Standish Cox, part of which is now The Cottage. Edward Standish Cox owned Fernhill Estate until 1896.

After passing out of Cox family ownership in 1896, Fernhill had a number of owners and changes as follows:

- 1896 to 1906 Frederick Thomas Humphery and Edward Perry Simpson
- 1906 to 1924 Henry James Bell (who brought the property under the Real Property Act, with the Torrens Title issued to Bell on 23 May 1908). During Bell's ownership the house was tenanted by Richard Beindge Baynes and his family (till 1926). Baynes was an alderman for the Shire of Nepean and for the Municipality of Mulgoa, serving as Mayor 1909-1912. There are a number of photographs of Fernhill taken by gifted amateur photographer Arthur Wigram Allen in this period.
- 1924 Baynes' wife Anne Augusta nee Bell (daughter of Henry James Bell) acquired ownership. The Baynes family ceased occupation of Fernhill around 1926, and it briefly operated as a boarding house, during which time it was visited by James Fairfax, who described it in a 1931 publication *Historic Roads Around Sydney*.
- 1930-1955 Hilda Mary Moyes nee Bonner, wife of George Sydney Moyes acquired the property, and resided there, however by the mid-1950s the property had become run-down.
- 1949 a portion of the Fernhill estate was acquired for realignment of Mulgoa Road. This separated a portion of the estate from the remainder.
- 1953 the Water Board placed an easement across the western portion of Fernhill for the overhead ropeway used in the Warragamba Dam construction, the easement being released in 1967. In April 1961 the Electricity Commission of NSW placed an easement adjacent to the Water Board easement and installed an electricity transmission line.



- 1955-1980 Moorilla Pty Ltd, later Fernhill Pastoral Company, acquired the property, both companies owned by John Darling, an influential merchant banker in Sydney at the time. The Darlings contracted the large architectural firm Peddle Thorp & Walker to restore the house and property, upgrading services at the time. The first phase of conservation work was completed in early 1963, using materials from demolished Sydney buildings of the time. The Darlings ran a retail plant nursery, a chicken hatchery, a piggery, poll Hereford cattle, a wildlife breeding facility and sanctuary and a stone mason's yard on the property. The Darlings built several new dams on the property, realigned the entry from the new Mulgoa Road alignment, and planted shade trees along the northern drive, along Mulgoa Road and in clusters around the property.
- 1966 Fernhill estate subdivided into two allotments: a lot of 926 acres; and a 25 acre lot around the house and the northern right of way from Mulgoa Road.
- 1969 renowned landscape architect Paul Sorensen redesigned the landscaping of Fernhill for the Darling family, including a rose garden, pergolas and a summerhouse. The 1830s stables were converted to a flat.
- July 1970 the carriage loop east of the house had been removed.
- 1978 interim heritage order under the 1977 NSW Heritage Act placed over the eastern part of the property
- 1980 September – purchase by Owston Nominees No. 2 Pty Ltd, a company owned by wealthy Western Australian entrepreneur Warren Anderson. The Andersons constructed a number of new buildings on the property, new landscaping and the two originally separate cellars under the house were connected. The Andersons also acquired some of the surrounding land during their ownership.
- 3 July 1981 Fernhill property placed under a Permanent Conservation Order under the NSW Heritage Act
- 2 April 1999 Fernhill was listed on the NSW State Heritage Register
- 2001 Fernhill estate extensively damaged by fire, destroying a number of outbuildings and damaging fencing and landscaping
- 2010 Fernhill listed on the Penrith LEP 201 heritage schedule.
- 2011 Fernhill placed in receivership and the contents of the house are sold. Angas Securities take control of the property.
- In late 2012 the Tripp family enter a joint venture with Angas to release debt and acquire the balance of the property after select development.

### 3.0 PHYSICAL DESCRIPTION

The proposed Symphony concert event is to be held within the Fernhill Estate's Core Area described below.

#### 3.1 FERNHILL ESTATE– CORE AREA

A thorough physical description of the Fernhill estate and its' surrounds is included in the recently revised Conservation Management Plan, which should be referred to. The Core Area is described in detail in the CMP as Precinct Nos. 1, 2, 3, 4, 5, 6 and 7 of the Fernhill estate. The core area has a frontage to Mulgoa Road, and includes towards its western end, on a small rise, the house and garden and the surrounding Fernhill estate grounds which include landscaping, fenced paddocks, driveways, numerous dams, outbuildings, and a racecourse. It includes a small parcel of land on the eastern side of Mulgoa Road (Lot 2, DP 615085), which is not affected by the event proposal.



The core area of the estate contains the following allotments of land: Lot 2, DP 541825; Lot 10, DP 615085; Lot 11, DP 615085; and Lot 2, DP 615085.

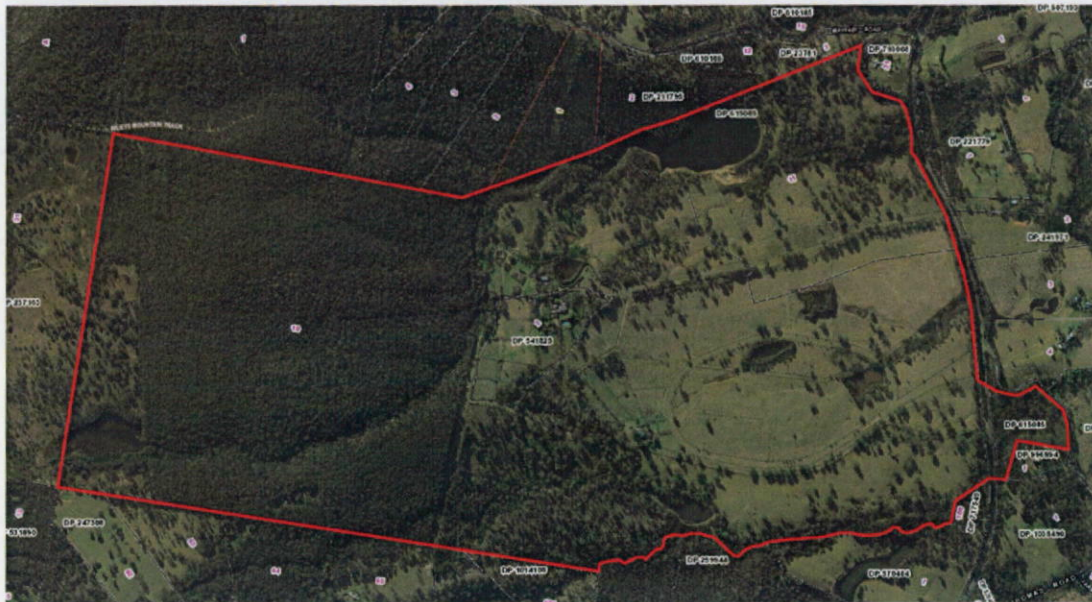


Figure 6: Core Fernhill estate area, including Lot 2, DP 541825 (centre, which contains the house and garden), Lot 10, DP 615085 (which includes a small parcel of land on the eastern side of Mulgoa Road), and Lot 11, DP 615085. Note: Mulgoa Road forms most of the eastern boundary of this area. Source: NSW Land & Property Information Six Maps

## 4.0 SIGNIFICANCE

### 4.1 FERNHILL STATEMENT OF SIGNIFICANCE (FROM REVISED CMP 2013)

Fernhill Estate has historical, associative, aesthetic and representative significance and rarity values at a State level. Fernhill has social significance and research potential at a Local level.

Fernhill comprises an extensive area of modified and natural landscape, that provided a picturesque setting for the house completed c.1842 for Edward Cox. The house was sited like a Greek temple on a rise with significant views to the Mulgoa Valley and specifically St Thomas' Church and Cox's Cottage. These views are, however, no longer present.

The house was constructed of sandstone quarried on the site.

Fernhill is significant for its cultural landscape, which is a rare Australian example of the English landscape school's practice of modifying the natural landscape to create a romanticised natural appearance embellished by a richness of cultural features. The landscape demonstrates a cultural phase in Australia when landscape design was influenced by the teaching of Thomas Shepherd, who advocated the adaptation of the English design technique.

Fernhill is possibly the only intact early colonial parklike estate that was designed with the principles of the English Landscape Garden (a landscape 'Park' in the picturesque manner) but relying entirely on indigenous plant material and the process of elimination (thinning and tree removal) rather than planting. There are significant views and vistas within the property, such as the winding carriage drive to the house through retained apple gums (*Angophora*



*floribunda* and *A. subvelutina*) with remnant glimpses of the house through the clumps of trees carefully created by thinning of native bushland and a reflection of the house in the pond along the southern drive.

The landscape and house have been altered in character and detail during the late 20<sup>th</sup> century, which has reduced its integrity and changed the relationship of the house with its landscape. Remnant trees from the 19<sup>th</sup> century house garden include pines (Stone, Bunya and Hoop) and Camphor Laurels. Landscape architect Paul Sorensen's garden layout from the 1970s largely removed the immediate pastoral setting of the house, separating the house from the broader landscape. This layer of landscape, however, contains fine features including the rose garden, the decorative pergola, and the use of retaining walls and terraced gardens.

Fernhill had an important historical and visual relationship with St. Thomas' Church and Cox's Cottage, but these visual links are now lost. Changes to the land east of the house have altered the relationship of the house with its landscape, St Thomas Church and Cox's Cottage. This group of Cox related sites demonstrate the ambitions and changes in wealth and status of an important early colonial family (the Cox's) from 1810 to 1880s, and despite the loss of visual connection, they retain a loose and important historical relationship.

The Cox family have a particular historical association with Mulgoa Valley where they lived for three generations. The Cox family pioneer in the Valley was William Cox (1764-1837), who made a substantial contribution to the administration, building, pastoral and agricultural development of the NSW colony. William built Cox's Cottage in the Valley for his sons in 1811. Each of William's sons established their own estates in the Valley from the 1820s: Winbourne (George), Glenmore (Henry) and Fernhill (Edward). The Cox family is associated with the development and improvement of stock (cattle, sheep and horses), not just in Mulgoa, but also throughout NSW. Fernhill has particular historical association with Edward Cox and Edward King Cox.

Fernhill is of social significance as one of the early colonial settlements in the Mulgoa Valley, which contributes to the community's sense of identity.

Fernhill has low archaeological potential associated with the use of the house and 1839 stables. The property has Aboriginal archaeological potential in the western portion of the Estate lands.

Fernhill Estate also has areas of environmental significance, including Cumberland Plain Woodland and Shale Sandstone Transition Forest, which are both listed at the State and Federal level as endangered ecological communities.

#### 4.2 SIGNIFICANCE OF THE CORE FERNHILL ESTATE AREA

All of the significance values outlined in the Statement of Significance above are reflected in the core Fernhill estate area, which reflects the original historical Fernhill land grant of 1810, and which comprises of 3 lots – Lots 10 (most of the land surrounding the house and garden, with a frontage to Mulgoa Road and a parcel of land on the eastern side of Mulgoa Road) and 11, DP 615085 (north-eastern corner, fronting Mulgoa Road) and Lot 2, DP 541825 (the house and garden lot). This area comprises the SHR listed land of the Fernhill estate, and encompasses 385 hectares.

Heritage issues relating to the core Fernhill land are:

- the overarching objective of ensuring the ongoing conservation of the house, garden and wider estate grounds



- the protection of the estate as a setting for the Fernhill house and garden (via proposed consolidation of the core estate lands and the northern curtilage area into one allotment)
- the need to provide funds for ongoing conservation works, and
- impact of proposed uses on the heritage significance of the core Fernhill estate

#### 4.3 GRADINGS OF SIGNIFICANCE

The gradings of significance for the Fernhill estate are outlined in Section 4.3 of the revised CMP (pages 148-155).

The elements of the Fernhill estate outlined in Table 3 below have been graded as Moderate, High or Exceptional significance. All other elements of the Fernhill Estate have been graded as of Little Significance, Neutral or Intrusive. In understanding an assessment of the heritage impact of the proposal, this HIS will primarily look at the impact of the proposal on the elements of the Fernhill estate listed in Table 3, potential impacts on heritage items in the vicinity, and will also discuss view issues.

Table 3: Elements of Exceptional High or Moderate Significance on the Fernhill estate

Structure, Space or Element	Grading/Grading No	Notes
Stables Building (c.1839)	Exceptional (1)	Overall grading
Fernhill House (c.1842)	Exceptional (1)	Overall grading
Stone line water reservoir (excluding 1980s concrete roof)	Exceptional (1)	Located west of the north wing of the house
Ruin of winery, date unknown (pre-1950s, possibly mid-1800s)	High (2)	
Original alignment of southern driveway, serpentine carriage drive approach to the house including section of drive near Mulgoa Road no longer used	Exceptional (1)	Located in the landscape to the east of the house
Pair of ornamental stone bridges, part of the original fabric of the site (historical design element in the landscape, rebuilt in the 1960s and again in the 1980s)	Exceptional (1)	Located along the southern driveway to the house
Two quarry sites and setting (used to source sandstone for Fernhill's early buildings; one is located below the road that leads past the aviaries and workshop building to the north-west of the house; the other is located on the far bank of the creek opposite)	Exceptional (1)	West of the house
Reflection pool along southern driveway to house (historically significant design element in landscape)	Exceptional (1)	Along southern driveway to the house
High stone wall with distinctive banding of large and small coursed sandstone rubble with a peak top course (may be contemporary with house)	Exceptional (1) to High (2)	Various areas around the house (note this is distinct from 1980s stone walling around the estate)
Undulating 'park-like' cultural landscape grounds of Estate remaining from the early period of development	Exceptional (1)	Landscape feature
Retained Rough-barked Apple ( <i>Angophora floribunda</i> ) and Broadleaved Apple ( <i>Angophora subvelutina</i> ) throughout Estate grounds	Exceptional (1)	Landscape feature, part of CMP precincts 2-7
Remnant natural landscape (Cumberland Plain Woodland, Shale Sandstone Transition Forest, Sandstone Ridgetop Woodland, Western Sandstone Gully Forrest)	Exceptional (1)	Landscape feature, part of CMP precinct 6
Remaining plantings in the broader landscape from the colonial period including apple gums ( <i>Angophora floribunda</i> and <i>A. subvelutina</i> ) along the original	Exceptional (1)	Located in the landscape and along the southern driveway to house



Structure, Space or Element	Grading/Grading No	Notes
driveway alignment (historical design element)		
Remnant colonial era trees including pines (Stone, Bunya and Hoop) and Camphor Laurels, late 19th century	Exceptional (1)	In the grounds around the house to the south & east
Archaeological potential of original carriage loop (removed with landscape works by Sorensen in 1970s)	Exceptional (1)	East of the house
Archaeological potential of cesspit (located west of original south wing, covered by laundry addition to south wing in early 1980s)	Exceptional (1)	Under laundry addition to south wing of the house
Archaeological deposits associated with early phases of the house (disturbed and impacted by substantial fill following landscaping works by Sorensen in 1970s and subsequent landscaping works in 1980s)	Exceptional (1)	Located in the area surrounding the house and stables
Northern driveway alignment (potentially established in the early 20th century)	Moderate (3)	Located in the landscape to the east of the house
Portion of new southern driveway alignment (changed in the 1950s following realignment of Mulgoa Road)	Moderate (3)	South-east corner of Estate
Tennis court, 1920s	Moderate (3)	South-west of the house
Timber pergola with Doric order sandstone columns (designed by Sorensen in the 1970s)	Moderate (3)	North of the house
Rose garden, sandstone stairs and stone sundial (designed by Sorensen in the 1970s)	Moderate (3)	North of the house
Dammed lake and island (designed by Sorensen in 1970s) with timber bridge and summer house added by Andersons (1980s)	Moderate (3)	East of the house
Littlefields Creek (area of Cumberland Plain Woodland regrowth; creek and its tributaries are original alignments)	Moderate (3)	Southern property boundary
Areas of Cumberland Plain Woodland regrowth	Moderate (3)	Located in CMP precincts 3 and 7
Areas of Alluvial Woodland regrowth	Moderate (3)	Located in CMP precincts 3 and 5

## 5.0 THE PROPOSAL

The proposal is to hold a one-off Symphony Concert on the core Fernhill Estate lands. The layout of the temporary structures and temporary parking areas to be provided for the concert is shown in plans in Attachment 1 to this report.

The proposal will provide for:

- A maximum of 3000 people to attend the concert
- Construction of a temporary outdoor concert stage to be located at the lower end of the small amphitheatre, facing west towards Fernhill house
- Provision of 1000 temporary seats in seating area on flatter land in front of the stage
- Provision of an area for seating on picnic blankets for up to 1700 people with viewing over the temporary seating area
- Provision of up to 300 seats on 12 low platforms (ground level at back) with 25 people seated per platform
- 2 temporary bars either side of the stage
- temporary toilets located either side of the stage
- access via main driveway as per picnic races previously held on the site



- parking on lawn areas as provided previously for attendance at picnic race event on the site
- provision of disabled parking on the far side of the amphitheatre with disabled toilets
- provision of vehicle exit via service entry as per picnic race event previously held on the site
- pedestrian access from parking area via two gates, one each side of the parking area, across laneway and over temporary stair bridge onto the level of the amphitheatre.

## 6.0 HERITAGE PLANNING CONTROLS

### 6.1 NSW HERITAGE ACT 1977 (AS AMENDED)

The proposal requires approval from the NSW Heritage Council under Section 60 of the NSW Heritage Act as the proposed event (Symphony concert) is to be held within the SHR-listed area of the Fernhill estate.

The proposal for the state heritage listed land is to provide temporary structures as outlined above for the holding of a symphony concert for up to 3000 people in attendance. This proposal for a one-off event smaller in patronage than other recent events held on the site is considered to have no long-term adverse impacts on the property (see also comments in the Conclusion to this report).

### 6.2 LEP HERITAGE CONTROLS

Clause 5.10 'Heritage Conservation' in the Penrith LEP 2010 applies to the Fernhill estate lands as most of the land is heritage listed. The relevant objectives of Clause 5.10 (1) are:

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

**Control:** Clause 5.10(4) requires the consent authority (in this case Penrith City Council) to "consider the effect of the proposed development on the heritage significance of the item or area concerned" prior to granting consent.

**Response:** This HIS addresses these issues.

Clauses 5.10(5) and (6) enable the consent authority to require the submission of a CMP and/or a Heritage Impact Statement in relation to any development proposal affecting a heritage item.

**Response:** This HIS and the revised Fernhill CMP have been submitted to comply with these LEP clauses.

**Control:** Clause 5.10(7) requires referral to the NSW Heritage Council in the event that the proposed development affects an archaeological site on land other than land listed on the SHR (i.e. this clause does not apply to the SHR listed portion of the Fernhill estate).

**Response:** The NSW Heritage Council have been briefed on the development and their input has been sought. The proposed event does not impact on any areas of archaeological significance.



**Control:** Clause 5.10(8) requires the consent authority to consider the affect of development on an Aboriginal place of heritage significance, before granting consent, and requires the consent authority to notify the local Aboriginal community about the proposal and to take into account any response received within 28 days.

**Response:** There are Aboriginal heritage sites within the broader site however none within the area affected by this proposed event.

**Control:** Clause 5.10(10) regarding development in the vicinity of heritage items applies to the proposal.

**Response:** The proposed event is considered to have no adverse impact on heritage items in the vicinity, primarily as the event involves only temporary structures and temporary arrangements on the site.

**Control:** The proposal relies on Clause 5.10(10) *Heritage Incentives* of the Penrith LEP 2010 for approval. This clause states:

(10) Conservation incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

**Response:** This clause, along with the change in ownership of Fernhill Estate, triggered the recently prepared revised Conservation Management Plan (CMP) for the site. The clause allows for uses on the site which may not otherwise be allowed within the site's zoning, in accordance with the conditions above. The proposed symphony concert is in accordance with the CMP for the site, supports conservation works, and as a temporary event does not adversely affect the heritage significance of the site or surrounding heritage items, and does not adversely affect the amenity of the surrounding area.

### 6.3 DCP HERITAGE CONTROLS

**Controls:** Section C7 Culture and Heritage of the Penrith DCP 2010 applies to the site and provides planning objectives and guidelines relating to heritage items.

**Response:** As there are no permanent works proposed as a result of this proposal the DCP is not particularly relevant to this application.



## 7.0 ASSESSMENT OF HERITAGE IMPACT

### 7.1 ASSESSMENT AGAINST LEP HERITAGE PLANNING CONTROLS

#### LEP HERITAGE CONTROLS

Table 4: Clause 5.10: Assessment of Heritage Impact

LEP Clause	Discussion and Response
Clause 5.10 (1) (a) to conserve the environmental heritage of Penrith	The proposal is predicated on the conservation of Fernhill and its estate. Fernhill is one of the major heritage items within the Penrith local government area.  The proposal achieves the objective of this clause.
Clause 5.10 (1) (b) to conserve the environmental significance of heritage items including associated fabric, settings and views;	The proposed event assists in the conservation of the environmental significance of the place, by providing funds for conservation works.  The fabric of the buildings and site is conserved and maintained, this is set out in various schedules of work and has already been demonstrated by the works undertaken over the last 6 months to stabilise and repair the place. This extends to the setting which is also set out in detail in the work schedules.
Clause 5.10 (1) (c) to conserve archaeological sites;	There are no works that affect any known archaeological site.
Clause 5.10 (1) (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.	Refer to comment above.
Clause 5.10(4) requires the consent authority (in this case Penrith City Council) to "consider the effect of the proposed development on the heritage significance of the item or area concerned" prior to granting consent.	The development application and section 60 application process provide for both Penrith City Council and the Heritage Council to consider any effects of development on the heritage values of the place.
Clauses 5.10(5) and (6) enables the consent authority to require the submission of a CMP and/or a Heritage Impact Statement in relation to any development proposal affecting a heritage item.	A CMP has been prepared and provided along with this HIS and the documents satisfy this LEP requirement.
Clause 5.10(7) requires referral to the NSW Heritage Council in the event that the proposed development affects an archaeological site on land other than land listed on the SHR (i.e. this clause does not apply to the SHR listed portion of the Fernhill estate).	The application is both referred to the NSW Heritage Council and consent sought for activities within the State Heritage listed area.
Clause 5.10(8) requires the consent authority to consider the affect of development on an Aboriginal place of heritage significance, before granting consent, and requires the consent authority to notify the local Aboriginal community about the proposal and to	No places of Aboriginal significance are affected by the proposed event.



LEP Clause	Discussion and Response
take into account any response received within 28 days.	
Clause 5.10(10) regarding development in the vicinity of heritage items applies to the proposal.	<p>This clause applies to heritage items that are not subject to this application. These sites are set out in the earlier section of this report.</p> <p>There are no adverse heritage impacts from this proposed event – which involves only temporary arrangements on the site - on the St Thomas Church and "The Cottage" sites. While these sites share boundaries with Fernhill they are separate and directly connected to the proposed for the holding of the proposed event. It is possible that there may be some impacts related to intensified use of Fernhill, but these would be amenity issues that are addressed in the other reports and not heritage issues.</p>
<p>Clause 5.10(10) <i>Heritage Incentives</i> of the Penrith LEP 2010 for approval states:</p> <p>(10) Conservation incentives</p> <p>The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:</p>	<p>The DA is submitted on the basis that this clause applies to the site. The proposal seeks Councils' consent for the holding of a one-off event on the site. Such events seek to establish on-going funding to support the conservation of the Fernhill Estate.</p> <p>The matters to be considered in detail in relation to this clause are as follows:</p>
(a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent,	Refer to earlier comments. No Aboriginal places of significance are affected.
b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority	The CMP has been submitted for endorsement, and the Heritage Council has the opportunity to review the proposal in relation to it.
(c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out	The owners are committed to a schedule of conservation works which have been agreed with the Heritage Council of NSW.
(d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance,	<p>In this case the heritage item is Fernhill.</p> <p>The introduction of new uses onto Fernhill estate could have some potential to create heritage impacts on the estate. These could be through damage to areas of the estate, over use of land, inadequate maintenance and restoration of the landscape, overuse of the house, etc.</p> <p>A key to uses such as the proposed Symphony concert is their management to ensure that any adverse impacts are avoided. Recent large events have demonstrated that the site management of uses can be properly undertaken and the owners are capable of managing the place without adverse impacts.</p> <p>This proposal also responds to the CMP, which requires the key</p>



LEP Clause	Discussion and Response
	landscape areas of the site to be maintained in an open park-like form.
(e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.	<p>Fernhill is a very large estate that is capable of a range of uses and developments without impacts on neighbours.</p> <p>Providing the event is appropriately managed, there would be no adverse amenity impacts on neighbours.</p>

The proposal is considered to comply with the Clause 5.10 of the Penrith LEP 2010,

The proposed Symphony Concert event on the core Fernhill estate lands will be carefully managed, and will continue the careful management which has already occurred in relation to previous large events on the land such as Tough Mudder (April 2013) and the Picnic races (November 2013). The numbers for the Picnic Races were about 5,000 people attending and there have been no long-term adverse impacts on the property as a result of the arrangements for that recent event, which had more patronage than the proposed Symphony concert (which is envisaged to attract 3,000 attendees). Traffic management and parking arrangements during the event ensured clear traffic signage and safe traffic arrangements for entry and exit from the estate.

## 8.0 CONCLUSION

The proposed Symphony Concert is considered to have no adverse heritage impact on the Fernhill estate as the arrangements are temporary.

It is noted that previous consent for the recent Picnic Races involved heritage conditions including monitoring of the event, imposed by the NSW Heritage Council. The proponents are prepared to again comply with any such conditions on the event.