

HERITAGE IMPACT STATEMENT

Fernhill estate, Mulgoa Road, Mulgoa NSW

Proposed Use of the Estate for Events



for

Simon & Brenda Tripp

October 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 early estate was expanded by a previous owner to include land to the north, south and west extending the size of the holding considerably. The core site that is the original grant land, while protected by both Penrith Council and the NSW Heritage Council in their heritage registers has been sub-divided in the past into a number of lots. The land to the north and south has been recently heritage listed by Penrith Council as “Fernhill curtilage” in relation to its heritage value to Fernhill. The land to the west is not heritage listed.

Much of the expanded holding has been subject to forest re-growth establishing significant landscapes and resulting in large areas of the site having environmental protection in addition to heritage listing. This DA is an interim application for the use of the site for small events under Clause 5.10.10 of the Penrith LEP 2010. The use is limited to the Central Precinct which is the land area that forms the current SHR listing boundary.

A separate DA for sub-division of parts of the broader estate and a broader range of uses will be submitted at a later date and when that DA is approved (assuming that council do approve the application), this approval would lapse as it would be incorporated within the more comprehensive DA.

The reason for a separate DA is to facilitate the use of the site to avoid the need for separate applications for individual events.

The background to the application is set out more fully in the other reports with the DA, however in relation to heritage issues, the major outcome sought from this application is:

- the provision of income to undertake the conservation and maintenance works to the property.

This DA creates uses that are capable of generating ongoing funding for the management of the place and its conservation and maintenance, and proposes a schedule of annual works that will conserve and maintain the house and landscape.

The DA is submitted under the heritage provision of the LEP (Clause 5.10 (10)) that allows Council to approve works and uses that are usually outside the LEP controls for the various zonings that cover parts of the estate. This provision only applies where Council is satisfied that there is a substantive and necessary benefit to the conservation of the heritage place in approving the works.

The conclusion of this HIS is that the future of Fernhill as an historic estate is threatened and this DA is a first stage in securing the estate and undertaking conservation work.

It is our opinion that Fernhill is unlikely to survive as an estate if this and the ensuing proposals do not proceed.

The HIS considers lands that are on the State Heritage Register (SHR) and Local heritage schedule. The input of the NSW Heritage Council has been sought in preparing the application, and the Heritage Council has been briefed on the broader development proposal.

The range of uses that are proposed is part of a ‘working business plan’ for the estate that will allow the place to be self-funding into the future, while providing high levels of public access. This has not occurred before, as the estate has largely been a private estate.

The uses extend the present equestrian-related and other rural activities that are found on the property and add a range of small events that suit the property and which are capable of generating income. Event-type uses have been developed, as there is only a small range of options available for a property such as Fernhill to become self-supporting. This pattern of use of large country estates has been extensively used in Britain and Europe with success in both conserving the estates and providing a sound financial basis for preservation.

The usual pattern for development of large estates in Australia is to excise land for development from the historic estate, retain the house on a smaller holding, develop new uses for the house complex that are not based on residential occupation of the buildings and, as a result, alienate the land that once formed the setting. That approach to development inevitably results in a significant compromise of heritage values.

This proposal (as part of the broader proposal for the whole estate), in contrast, sets out a development model where Fernhill House and significant estate lands are secured as an entity, the house remains in residential use and a select and managed range of uses and events take place on the estate that provide the ongoing funding necessary for conservation.

The heritage benefits from this approach, apart from the retention of Fernhill Estate as a large landholding, are that there are options available in the future for how the place is used that can only exist if the property remains intact.

A key aspect in developing this approach has been the examination of the sustainability of the property and its ability to accommodate the uses that are proposed. Fernhill is a large estate that has extensive facilities that are well suited to the uses proposed. The racetrack, stabling and paddock facilities that currently exist provide for the equestrian activities that are presently undertaken. The site can accommodate parking and a range of small events (that is events of up to 300 people but with a typical usage of less than 300) without impacting on the house and central garden areas and events can be undertaken without adversely affecting heritage values. The SEE considers other potential impacts.

To assist in understanding the scope of work required to Fernhill in the longer term to achieve its conservation - that is after the property has been secured - a schedule of works has been set out and is attached to the CMP that has been lodged with Penrith Council and provided to the NSW Heritage Council for endorsement (after review). It is noted that the new owners of the estate have already committed around \$2,000,000 to conservation works to the buildings and site to ensure that the place is both stabilised and returning to good condition. A considerably larger amount has been spent on the property more generally to ensure its future.

This Heritage Impact Statement has been written to support a range of small uses on the Fernhill estate including conferences, functions, recreation and entertainment uses.

No new buildings are proposed for these uses in this DA, however permission is sought for the installation of temporary marquees, portable toilets and kitchen and temporary car parking, and traffic management arrangements. Entry and exit points for events are discrete and traffic management will ensure safe entry and exit to and from the estate.

To provide a context for this interim application the objectives behind the broader proposal are:

- To ensure the Fernhill estate remains a large rural estate without further subdivision into the future (by consolidation of the remaining land, that is the land after approved sub-division of some peripheral lands to the estate, onto one land title).
- To enhance the economic viability of the estate, ensuring funds for ongoing conservation and maintenance works to the estate. A Voluntary Planning Agreement

will be made with Penrith Council and a Maintenance Plan will be prepared in relation to ongoing maintenance and conservation works to Fernhill estate.

- To open up the estate for public events, thus providing a public benefit from the management of the estate.

This report accompanies a revised (draft) Conservation Management Plan (CMP) for the Fernhill estate recently prepared by Paul Davies Pty Ltd. The revised CMP divided the Fernhill estate into ten (10) separate landscape precincts for the purpose of significance analysis, however the current development proposal, while referring to the CMP analysis of the estate, has identified “use precincts” within the estate which are distinct from the CMP landscape precincts.

This HIS supports the DA as a creative and sound way of conserving one of the major early Colonial period estates of Sydney.

CONTENTS

1.0	INTRODUCTION.....	1
1.1	THE BRIEF.....	1
1.2	APPROACH AND METHODOLOGY	1
1.3	LIMITATIONS.....	1
1.4	AUTHOR IDENTIFICATION.....	1
1.5	OWNERSHIP	1
1.6	DEFINITIONS.....	2
1.7	SITE LOCATION	3
1.8	STATUTORY LISTINGS AND CONTROLS.....	4
1.9	NON-STATUTORY LISTINGS	8
2.0	HISTORICAL SUMMARY.....	9
2.1	COX FAMILY.....	9
2.2	FERNHILL ESTATE	10
3.0	PHYSICAL DESCRIPTION.....	13
3.1	FERNHILL ESTATE – CENTRAL OR CORE AREA.....	13
4.0	SIGNIFICANCE.....	14
4.1	STATEMENT OF SIGNIFICANCE (FROM REVISED CMP 2013) FOR FERNHILL ...	14
4.2	SIGNIFICANCE OF THE CORE FERNHILL ESTATE AREA.....	15
4.6	GRADINGS OF SIGNIFICANCE.....	15
5.0	THE PROPOSAL	18
6.0	HERITAGE PLANNING CONTROLS.....	20
6.1	NSW HERITAGE ACT 1977 (AS AMENDED).....	20
6.2	LEP HERITAGE CONTROLS	20
6.3	DCP HERITAGE CONTROLS	21
7.0	ASSESSMENT OF HERITAGE IMPACT	22
7.1	DISCUSSION	22
7.2	ASSESSMENT AGAINST LEP AND DCP HERITAGE PLANNING CONTROLS	24
7.2	ASSESSMENT OF IMPACT IN RELATION TO HERITAGE ISSUES	27
8.0	CONCLUSION	29

FIGURES

Cover: Satellite image of Fernhill Estate lands, with the current Fernhill estate boundary outlined in red. Overlay prepared by Paul Davies Pty Ltd utilising satellite image from NSW Land & Property Information Six Maps

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.....3

Figure 2: site plan showing the Fernhill estate land, including Lot and DP numbers for allotments.....4

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. The SHR boundary aligns with the boundary of the Central Precinct. Source: SHR listing form, NSW Heritage Branch, OEH.....5

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).....6

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).....7

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..... 13

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 for the use of the State Heritage listed and locally heritage-listed Fernhill 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, 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 October 2013.

1.3 LIMITATIONS

The site has visited on many occasions by Paul Davies of Paul Davies Pty Ltd between 2005 and 2013. The Fernhill site was inspected and thoroughly photographed at that time.

The historical outline 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.

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 are used in this report and are from the Australian ICOMOS Charter for the Conservation of Places of Cultural Significance (The Burra Charter).

Fabric means all the physical material of the place.

Conservation means all the processes of looking after a place so as to retain its cultural significance. It includes maintenance and may, according to circumstance, include preservation, restoration and adaptation and will be commonly a combination of more than one of these.

Maintenance means the continuous protective care of the fabric, contents and setting of a place, and is distinguished from repair. Repair involves restoration or reconstruction and should be retreated accordingly.

Preservation means maintaining the fabric of a place in its existing state and retarding deterioration.

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

Reconstruction means returning a place as nearly as possible to a known earlier state and is distinguished by the introduction of materials (new or old) into the fabric. This is not to be confused with either re-creation or conjectural reconstruction, which are outside the scope of the charter.

Adaptation means modifying a place to suit proposed compatible uses.

Compatible use means a use involving no change to the culturally significant fabric, changes, which are substantially reversible, or changes requiring minimal impact.

1.7 SITE LOCATION

The current Fernhill estate land encompasses approximately 653 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.

This DA is for land within the Central Precinct.



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)
Central or 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
Northern Area	Lots 1-4, DP260373	LEP listed as part of	Four forested lots fronting Mayfair Road

Name of area	Lot and DP Nos.	Heritage Listing Status	Description and road frontage (if any)
	Lot 2, DP 211795 Lot 12, DP610186	Fernhill curtilage area (Item No. 2260873)	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

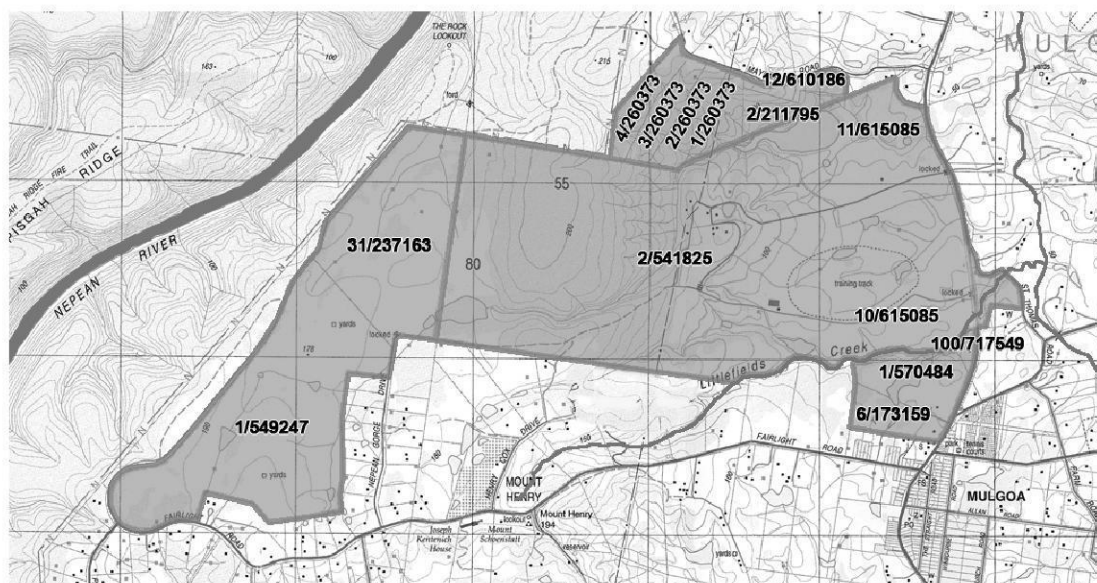


Figure 2: site plan showing the Fernhill estate land, including Lot and DP numbers for allotments

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. The SHR boundary aligns with the boundary of the Central Precinct. 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.

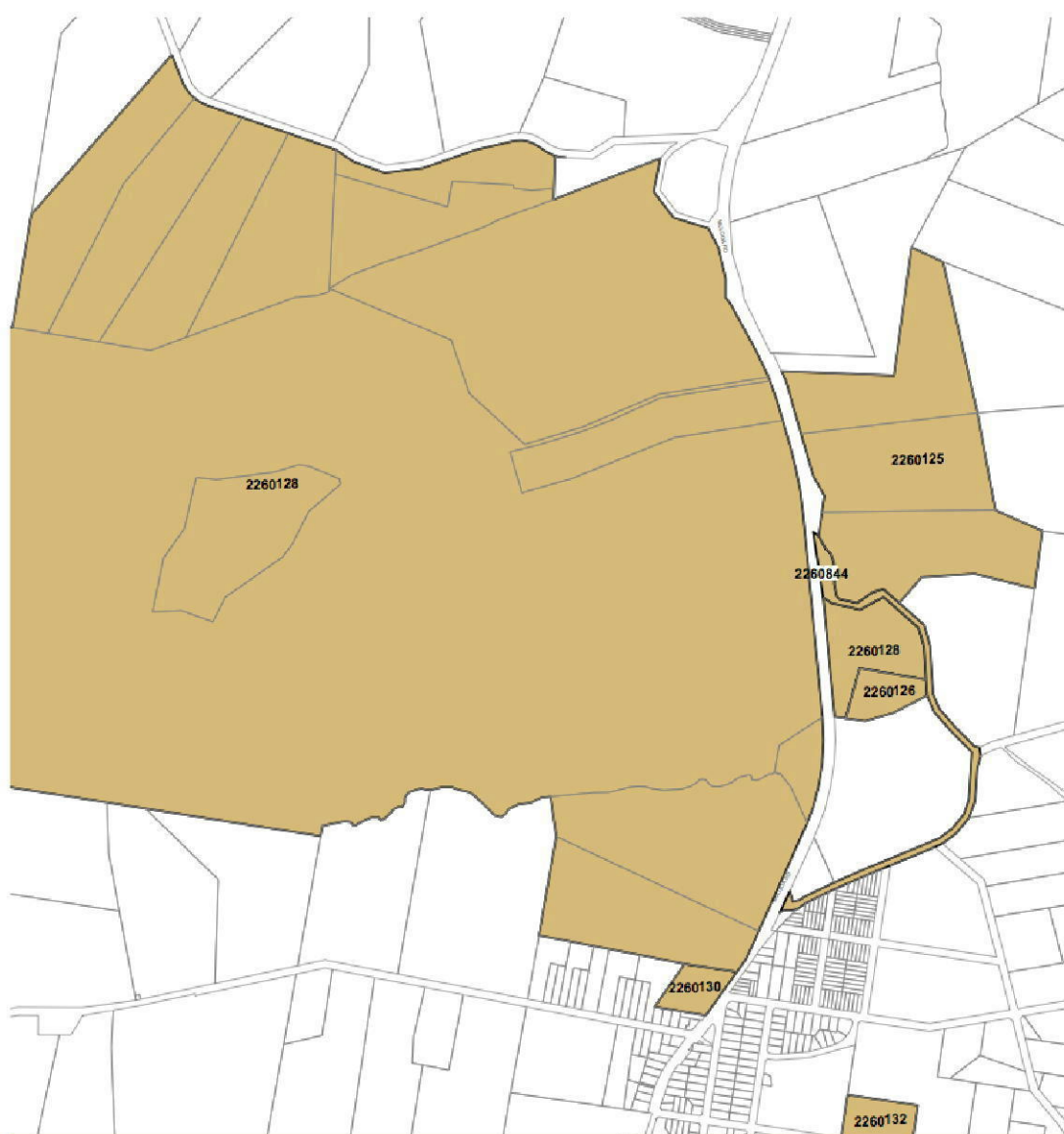


Figure 4: Extract: Penrith LEP 2010 Heritage Map 007, showing part of the Fernhill site at left (coloured, Heritage Item No. 2260128). This also shows the locations of adjacent heritage items, numbered (see Table 2 for detail).

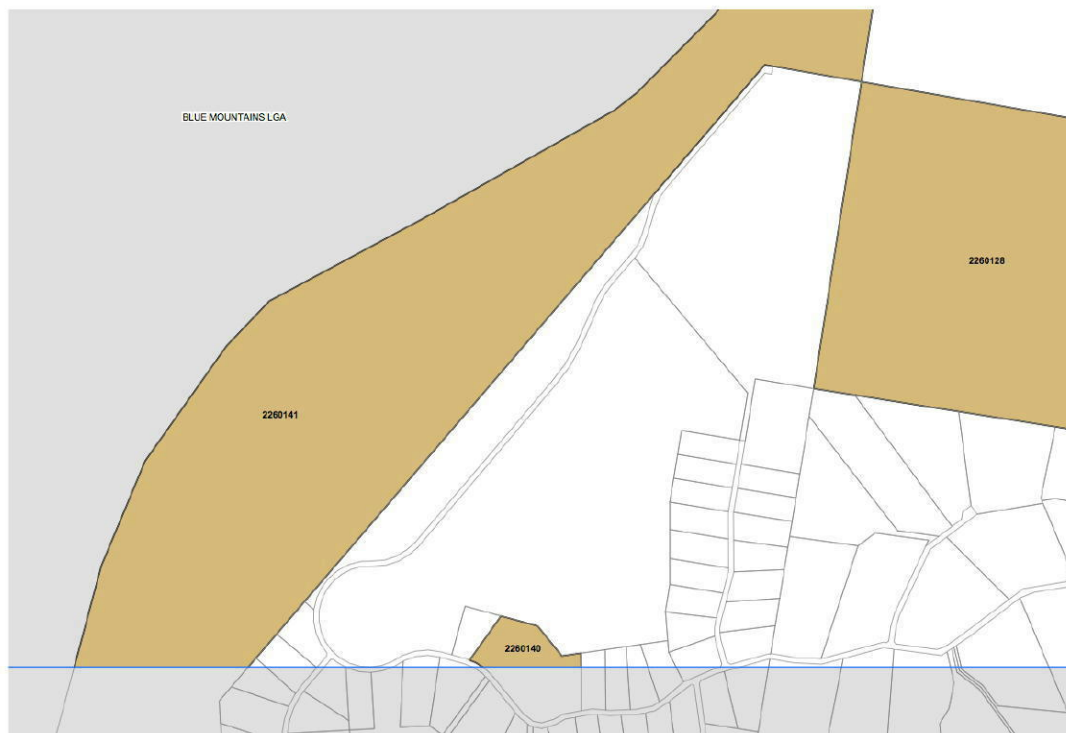


Figure 5: Extract: Penrith LEP 2010 Heritage Map 001, showing the western part of the Fernhill estate under the LEP heritage listing (coloured) at right. The nearby separately listed sites are Fairlight (Heritage Item No. 2260140 to the south), which adjoins Fernhill estate lands which are not heritage-listed, 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. The below list covers the whole of the site however, a number of sites such as Fairlight and Table Rock lookout are remote from this DA and most adjoining heritage items have no direct link to the two locations that are proposed for use under the application.

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
The Cottage	1012-1046 Mulgoa Road and 2-24 St Thomas Road	Lots 2-4, DP 241971	State	2260125

Item name	Address	Lot & DP Nos.	Heritage Status	Heritage Item No. in LEP 2010
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 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 has been cleared extensively since 1810 by members of the Cox family along with their other landholdings to establish pastoral land. The first building constructed on the current Fernhill 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 on the current Fernhill 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 County 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 were connected.
- 3 July 1981 whole 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 property 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.

4.0 SIGNIFICANCE

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

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 20th century, which has reduced its integrity and changed the relationship of the house with its landscape. Remnant trees from the 19th 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 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 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 may also have Aboriginal archaeological potential on the western portion of the Estate.

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, significant garden features and the 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 as proposed in the broader DA's)
- the need to provide funds for ongoing conservation works, and
- impact of proposed uses on the heritage significance of the core Fernhill estate

4.6 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 in areas affected by the proposal

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

Structure, Space or Element	Grading/Grading No	Notes
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 driveway alignment (historical design element)	Exceptional (1)	Located in the landscape and along the southern driveway to house
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

Structure, Space or Element	Grading/Grading No	Notes
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 for use of the site for events in this application covers the core or central precinct for a period of 3 years. This means that the majority of proposed uses are within established use areas of the site.

Events in this application are:

Small events for up to 300 people that require minimal infrastructure, traffic or other controls.

The current infrastructure of the site, with some temporary and modest amplification, can accommodate small uses.

The development application is submitted under *Clause 5.10 Heritage Conservation (10) Conservation incentives* of Penrith Local Environmental Plan 2010.

This clause provides the opportunity for the consent authority to grant consent to development for any purpose (of a building that is a heritage item or on the land on which it is located), or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by the LEP, provided 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.

The overall proposal for Fernhill is described in detail in the Fernhill Working Heritage Masterplan.

The fundamental issue in this application is that the proposal not only satisfies the five criteria above to allow Council to consider it, but it does so in a way that achieves a necessary and potentially outstanding heritage outcome. It is also important that this application is understood as an interim arrangement working towards a broader outcome that secures the key parts of the estate.

The overall proposal is unlike any other project that we have been involved in where a similar clause has been invoked. There appears to be little doubt that without the application of the clause and Council's favourable determination, that Fernhill, as an intact colonial estate will not survive. This does not mean that Council should determine the matter without discernment or proper consideration of all potential impacts and matters. Quite the reverse, we are of the view that provided all other issues that are relevant are addressed and Council is satisfied that the proposals for development are sound, that this proposal can achieve an outstanding heritage outcome that will assist to:

- retain the core property intact through, in part, consolidation of all of the remaining Fernhill lands after the proposed sub-division

- expand the core property to include most of the additional lands that council has identified and land that goes beyond that
- conserve the house and landscape
- establish a long-term and viable funding option to ensure the place does not again go through difficulty
- protect the environmental values of the estate to a high level.

The DA proposal is for:

The use of the land and of existing structures and temporary structures for the purposes of a **Function Centre Venue**, (Function Centre land use under Penrith LEP 2010), etc., as set out in the proposal.

Event uses envisaged in the application include (refer to the SEE for full details of the activities which are summarised here):

FUNCTION CENTRE VENUE

- Private functions in the house garden and ballroom for up to 90 people
- Private functions in the great hall for up to 215 people
- Private functions in the house garden and tennis court area for up to 300 people
- Private functions in the house garden, great hall and western lawn for up to 300 people
- Private functions in the hayshed area for up to 300 people

6.0 HERITAGE PLANNING CONTROLS

6.1 NSW HERITAGE ACT 1977 (AS AMENDED)

The proposal requires, in part, approval from the NSW Heritage Council under Section 60 of the NSW Heritage Act as the proposed uses, while involving no new construction works to the SHR-listed portion of Fernhill, have, without proper consideration, the potential to impact the heritage values of the place.

The proposal for the state heritage listed land is to provide temporary structures (marquees, portable toilets) and new and expanded existing uses on the Fernhill estate lands.

There is also development proposed adjacent to the state listed heritage item and while the Heritage Council is not a consent authority for this part of the application, they have been consulted during the development of the proposal.

A key aspect of the proposal is that a Heritage Agreement will be prepared to ensure that adequate and appropriate funds, derived from the proposed uses on the estate, will be used for the maintenance and conservation of the heritage components of the estate including its landscape.

As the eastern and western areas where subdivision is proposed are outside the SHR listed boundary, these subdivisions do not require NSW Heritage Council consent.

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.

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.

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.

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

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 NSW Heritage Council have been briefed on the development and their input on the broader development has been sought.

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.

There are Aboriginal heritage sites within the broader site and any works that may affect those sites will be referred as required.

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

The applicability of this clause, along with the change in ownership of Fernhill Estate, triggered the recently prepared revised Conservation Management Plan (CMP) for the site.

6.3 DCP HERITAGE 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.

As there are no works proposed the DCP is not particularly relevant to this application.

7.0 ASSESSMENT OF HERITAGE IMPACT

7.1 DISCUSSION

This proposal is for a range of modest uses to be undertaken on the property largely within existing buildings and established areas. The uses range from weddings to small corporate events and small conferences. While a limit of 300 people per event has been established, the actual size of events will vary from 20 people upwards with an expected average of between 100 and 150.

The various events would take place throughout the week with a focus on weekends for private events and weekdays for corporate events. It is possible to hold several events at a time as the locations are quite separate, but holding regular multiple events is not proposed.

As the house is also a private residence the number of events that take place directly around the house will be less than those at the Great Hall and the Hayshed as these locations do not impact directly on the use of the house.

There are no real physical impacts on the fabric of the place from running small events, however, wear and tear always occurs and the house itself needs to be very carefully managed to avoid accidental damage. This would be achieved by limits on usage and using appropriate seating and fitout items.

English Heritage have addressed this issue in a publication on running events in heritage houses with a set of guidelines on how to properly manage events and avoid impacts. We recommend that the guidelines in this document be the basis of holding events in and in close proximity to the house to ensure that management practices are sound.

For events away from the main house, that is in the Great Hall, Hayshed or in external areas around those buildings there are no specific heritage attributes that could be affected by the nature or scale of events proposed. These are relatively recent structures and areas and appropriate good management is sufficient to address events in these locations.

Similarly events within the immediate garden of the main house are unlikely to cause any adverse impacts to heritage values as the gardens are heavily modified from their original form and in their current form, while attractive, do not have high heritage value. Perhaps the most important aspect of holding events in the gardens is to ensure that the grassed areas have sufficient time between events to prevent undue wear and deterioration.

If physical impacts can be adequately managed, and they can, other considerations related to possible heritage impact are parking and access and the suitability of the uses themselves.

Parking is addressed by providing dedicated and managed areas for parking the required number of cars for these events. As the events are relatively small the requirement for vehicles is also relatively low. However the allocated parking areas will be used on a frequent basis and need to be managed for appropriate surface treatment and maintenance. The areas nominated for parking at the house are not areas that are subject to regular rural uses (that is they are not areas of paddocks or locations that are potentially part of the productive farm use of Fernhill) so that issues such as possible compaction of the ground or frequency of use do not affect the rural values of the place.

We note that the parking for the hayshed area is an interim proposal and that while parking is shown on the drawing in a specific location that it will need to rotate within the locality and that this will need to be monitored and managed. It is also likely that for small events that

cars may park along the edge of the driveway on the verge. Further details of parking will be developed with the applications to follow.

It would however be necessary and wise to monitor parking locations and to allow for some formalisation over time perhaps by the use of gravel as a base for parking. This would not be appropriate within established paddock areas.

Servicing of events also needs to be considered in terms of potential impact. Locations of temporary kitchen and toilets are provided in the SEE, these are small facilities that will come and go as required. In time (and not part of this DA) consideration will be given to discrete facilities being located on a more permanent basis.

Servicing vehicles also need to be considered. Each location has capacity to accommodate service vehicles for deliveries and rubbish removal without impact as good road access exists to each location. Servicing already takes place at each location and is accommodated without impact.

In considering whether event type uses, even ones of a small scale, are appropriate to occur on a property such as Fernhill there are three principle considerations:

1 Has this occurred elsewhere and has it been managed successfully?

The answer is yes to both questions. The use of historic properties for events is a world wide practice that has allowed many properties to survive. It is a fundamentally sound and low impact way to provide income and find uses for properties that are often no longer viable.

There is excellent precedent for the range of uses proposed and the scale is of such a modest nature that there are almost no impacts.

A key element of any use on an historic property is good management. This is essential to both protect the place but also to provide a product to users that is attractive and showcases the site with its heritage and other values.

2 Are there viable alternatives that can sustain the property into the future?

The broader project for the estate, of which this DA is a first minor stage, will propose a sustainable future for the core estate. There are basically two ways such a property can survive. One option is that a wealthy owner supports the property and continues the minimal range of rural uses that cannot generate funding to sustain and support the property. This approach is tied to the ability or desire of a particular owner to maintain the place. The second option is to establish a range of uses in conjunction with some selective development of non-core areas that provide an income stream to support the conservation of the place. This is a model that requires council consent as it involves uses that are not allowed under the rural zoning.

We conclude that while a philanthropic owner may provide a short term solution that a long-term solution requires a sustainable business model that can survive a particular owner. Consequently we suggest that developing a range of viable and sustainable uses as one of the few ways that the property can remain as an intact estate into the future.

3 Does it fundamentally affect the heritage values of the place?

We would suggest that introducing event uses, particularly those of the scale proposed in this DA, does not fundamentally affect the heritage values of the place. The estate remains, in fact its retention is largely a result of being able to change the use of the property, the landscape remains, visitors are able to use the landscape and experience the place in ways that has not been possible and the changes required to introduce the use are minor.

It is also important to consider that the conservation is usually active (although there are times when it is passive). That is, to conserve Fernhill both as an entity and in terms of fabric and setting, actions are required. Introducing new uses is in itself an act of conservation as it allows the place to be retained and conserved as an estate. Without an action such as introducing events, conservation is unlikely to take place as the estate is not likely to survive.

There will inevitably be arguments about how the estate came to be in the situation it is now in, but they are not relevant to the matters that have caused this and the following applications to be prepared. This proposal allows uses that are largely benign of very low impact to take place that will generate some funds that will go towards the conservation of the place. This is a sound conservation and management outcome.

It is not suggested that all funds will go directly to conservation. Already the current occupiers have undertaken a large amount of conservation work to allow the place to be used. We note that while there have been various claims about the condition of the place prior to 2013, at the point at which the current occupiers took occupancy the estate and buildings were deteriorating through lack of maintenance and use. Any property that is not actively used falls into disrepair and the approximately 3 years of uncertainty along with any outstanding maintenance works at that time have resulted in a need to undertake a significant amount of work. Previous studies and reports, the last prepared in 2008, identified a range of works that were required that were still required in 2013 with the addition of a further 5 years of deterioration and 3 years of vacancy. Ongoing maintenance is a cornerstone policy of the CMP and regular funds are required to meet that need. This DA goes a small way to establishing the funding necessary to undertake the required maintenance and conservation work to the property.

In summary not only does the proposal not affect core heritage values, it actually is a positive aspect of the conservation of the place.

7.2 ASSESSMENT AGAINST LEP AND DCP HERITAGE PLANNING CONTROLS

LEP HERITAGE CONTROLS

Table 4: Clause 5.10: Assessment of Heritage Impact

LEP Clause	Discussion and Response
<p>Clause 5.10 (1)</p> <p>(a) to conserve the environmental heritage of Penrith</p>	<p>The proposal is predicated on conserving Fernhill and its estate. Fernhill is one of the major heritage items within the Penrith local government area.</p> <p>Use of the site, with appropriate controls, can achieve conservation without undue impacts on heritage values.</p> <p>The proposal achieves the objective of this clause.</p>
<p>Clause 5.10 (1)</p> <p>(b) to conserve the environmental significance of heritage items including associated fabric, settings and views;</p>	<p>The proposal conserves the environmental significance of the place.</p> <p>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 10 months to stabilise and repair the place. This extends to the setting which is also set out in detail in the work schedules.</p> <p>Views have also been carefully considered and are to be retained and where feasible recovered as part of the longer term works program for the site.</p>

LEP Clause	Discussion and Response
Clause 5.10 (1) (c) to conserve archaeological sites;	There are no works within the proposed consolidated estate 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 <i>"consider the effect of the proposed development on the heritage significance of the item or area concerned"</i> 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 is provided with the application along with this HIS and schedules of works. The CMP has been submitted for endorsement and the documents satisfy the 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 in part consent is 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 take into account any response received within 28 days.	NA
Clause 5.10(10) regarding development in the vicinity of heritage items applies to the proposal.	This clause applies to consideration of potential impacts on adjacent heritage items that are not subject to this application. These sites are set out in the earlier section of this report. There are no adverse impacts from this proposal on the St Thomas Church and "The Cottage" sites. While these sites share boundaries with Fernhill they are separate and not visually or directly connected to the areas that are proposed for sub-division. It is possible that there may be some impacts related to intensified uses of Fernhill, but these would be amenity issues that are addressed in the other reports and not heritage issues. Overall the relatively small number of events that are proposed that will actually cause any intensification of use, should not create issues related to these sites. There are no uses proposed that have any direct or indirect impacts on other heritage items in the vicinity.

LEP Clause	Discussion and Response
<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.</p>
<p>(a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent,</p>	<p>Refer to earlier comments.</p>
<p>b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority</p>	<p>The CMP is submitted for endorsement, the Heritage Council has the opportunity to review it as part of this proposal.</p>
<p>(c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out</p>	<p>This is provided for in the proposal as set out in the various schedules.</p>
<p>(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>	<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>The proposal has considered the potential uses that can generate income to sustain the property and sets out a range and extent of uses that are sustainable without adverse impacts on the place. A key to future uses is their management to ensure that any impacts are avoided.</p> <p>This proposal also responds to the CMP, which requires the key landscape areas of the site to be maintained in an open park-like form and looks to locate any future elements outside the key areas of the estate.</p>
<p>(e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.</p>	<p>Fernhill is a very large estate that is capable of a range of uses and developments without undue adverse impacts on neighbours.</p> <p>The two most likely areas of impact on amenity are traffic and possible noise related to an event. Both of these issues are addressed in other reports in detail.</p> <p>Provided that traffic and noise can be managed so that amenity of neighbours is not affected, the uses proposed are appropriate under this clause.</p>

The proposal is considered to comply with the Clause 5.10 of the Penrith LEP 2010, and relies on the operation of Clause 5.10(10) of the LEP.

DCP CONTROLS – SECTION C7 of the Penrith DCP 2010

Control 7.1.3 Heritage Items Objectives

Response: The proposal encourages the conservation of the significant elements of the Fernhill Estate. The revised CMP has provided a thorough understanding of the Fernhill Estate, which has informed the development of the proposal. The proposed event uses of the Fernhill Estate are considered appropriate to the estate's heritage significance.

Control 7.1.3 C. Controls 1 a)

Response: The development application maintains the heritage significance of the item. The proposal conserves the heritage significance of the Fernhill Estate by:

- Ensuring ongoing income for conservation of the estate
- Not impacting on significant view lines
- Not impacting on heritage items in the vicinity

Control 7.1.7 Development in the vicinity of a heritage item

The proposed subdivisions are considered to comply with the objective of this clause as they have been designed to complement the heritage significance of Fernhill and the heritage items in the vicinity.

Control 7.1.8 Archaeological site

Response: NA

Control: 7.1.12 Conservation Incentives C Controls (a) to (f)

Response: It is considered that the conservation of the Fernhill Estate depends (in part) on the granting of consent, as the proposal ensures ongoing income for maintenance and conservation of Fernhill estate.

7.2 Aboriginal Culture and Heritage

Response: NA

7.2 ASSESSMENT OF IMPACT IN RELATION TO HERITAGE ISSUES

HERITAGE ISSUES RELATING TO THE CORE FERNHILL LAND

The heritage issues for this area 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

Response:

The proposal is in accordance with the revised Fernhill CMP submitted to Council with the proposal, so that the proposal fulfils Clause 5.10(10)(b) of the 2010 LEP heritage provisions.

The proposal will not adversely affect the heritage significance of the Fernhill estate, or its setting, or the heritage significance of Aboriginal places of heritage significance, for the following reason, thus complying with Clause 5.10(10)(d) of the 2010 LEP:

- The proposed uses on the Fernhill estate will provide funds for maintenance and conservation and continue existing recent uses such as equestrian uses, and introduce new compatible uses to the estate (conferences, events) which do not require any permanent new buildings (though temporary marquees and portable toilets and signs for traffic arrangements relating to events are envisaged).

The proposal will not have any significant adverse effect on the amenity of the surrounding area for the following reason, thus complying with Clause 5.10(10)(e) of the 2010 LEP:

- The proposed uses on the 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), which attracted 15,000 participants over the course of the two-day event (according to the TheTelegraph.com.au).

The proposal is considered to fulfil the requirements of Clause 5.10(10) of the Penrith 2010 LEP, allowing consent for the proposal under that Clause where the land covered by the proposal falls under the LEP heritage schedule.

POTENTIAL IMPACTS OF NEW USES ON THE CORE ESTATE

The impact of new uses could be varied in that they could arise from physical impacts from a use, wear and tear from the nature or frequency of uses, the need for supporting infrastructure, the long-term change in the character of the place or a range of other possible subtle matters.

The uses for the place can be considered in several groups. A foundational aspect of the proposal for use is small sized functions that operate on a regular basis throughout the year on an average of 1 or 2 per week. They will be varied and range from weddings to corporate events. They will mostly take place around the house and garden and particularly the great hall to the rear and also the hayshed area. There will be limited functions in the ballroom as the house is occupied by the family.

Parking and access for these events is straightforward and will be at the rear of the site with guests walking to the venue.

Apart from the use of the entry road these functions do not affect any other part of the site.

Some activities will use a marquee on the former tennis court area. This is a screened area in the garden that has little impact visually or physically on the house and its setting.

8.0 CONCLUSION

The proposed uses on the Fernhill estate are to ensure ongoing income for maintenance and conservation of Fernhill as a large rural estate, and the proposal is considered to comply with Penrith LEP Clause 5.10(10), and be approvable under this clause.

The proposal is considered to have no adverse heritage impacts providing appropriate conditions of consent are imposed as follows:

- All conservation policies contained in Section 6 of the revised CMP are to be implemented over a period of 5-10 years with ongoing conservation and maintenance of the estate in accordance with the CMP thereafter.