

HERITAGE IMPACT STATEMENT

Fernhill estate, Mulgoa Road, Mulgoa NSW

Proposed Works



For

Simon & Brenda Tripp

June 2013

EXECUTIVE SUMMARY

Fernhill is a rare colonial estate in that it 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 land and setting.

The early estate was expanded by the 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 the local 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 heritage listed by Penrith Council as "Fernhill curtilage" in relation to its heritage value to Fernhill, and 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 retains and protects all of the significant landscape areas and several environmental protection mechanisms are in place or being investigated to ensure their future protection.

The present DA is for sub-division of peripheral parts of the Fernhill estate holding, consolidation of the remaining Fernhill estate into one allotment of land to protect it from future subdivision, and the use of parts of the consolidated site.

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

- the realisation of sufficient development potential from subdivisions outside the original Fernhill estate lands to secure the estate from receivership (related to the previous owners); and
- the securing of the original Fernhill estate grant lands without excision or subdivision, and with sufficient income from a range of new and expanded uses on the land to maintain the estate and buildings.

The three key aspects of the DA that achieve significant heritage outcomes are:

- 1 Locating potential development from subdivisions outside the original grant land and outside areas that have a heritage impact on Fernhill or the surrounding area.
- 2 Consolidating numerous lots to create one lot over the entire balance of the remaining Fernhill lands which includes an expanded curtilage for Fernhill.
- 3 Creating uses that are capable of generating ongoing funding for the management of the place and its conservation and maintenance, and proposing 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 severely threatened unless there is a way to resolve the current receivership issues over the property, and that this DA not only retains the estate by allowing peripheral development and consolidation of the core areas, but provides a way to ensure that it is conserved into the future.

It is our opinion that Fernhill is unlikely to survive as an estate if this proposal does not proceed.

The HIS considers lands that are both on the State Heritage Register (SHR) and Local heritage schedule, lands that are only on the Local Council heritage schedule and land that is not under heritage protection. The sub-division proposals only occur on land that is not within the SHR boundary. Consequently this work is not subject to a section 60 approval, however the input of the NSW Heritage Council has been sought in preparing the application, and the Heritage Council has been briefed on the whole development proposal.

The proposed consolidation of the Fernhill lands does not require consent, however this is also linked to the DA outcomes as the consolidation is offered as a way of ensuring that the Fernhill lands of heritage significance are on a single title in the future that will provide both Penrith Council and the NSW Heritage Council a high level of certainty and control over any future works that may be proposed.

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 activities that are found on the property and add a range of small and larger 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.

The usual pattern for development of large estates 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 alienate the land that once formed the setting. That approach to development inevitably results in a significant compromise of heritage values.

This proposal, in contrast, sets out a development model where the Fernhill house and 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 the 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 and events such as Tough Mudder, have already been tested on the site, and have been accommodated with ease through good management and planning. The site can accommodate parking and events without impacting on the house and central garden areas and events can be undertaken without adversely affecting heritage values. The EIS 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. It is noted that the new owners of the estate have already committed around \$750,000 to urgent works to the buildings and site to ensure that the place is both stabilised and returning to good condition.

This Heritage Impact Statement has been written to support the proposed works to the Fernhill estate, Mulgoa, which are:

- 1) Large lot rural residential subdivision in the south-western section of the Fernhill estate lands (outside the Fernhill SHR curtilage). This subdivision is to contain 38 residential lots each of an average 2 hectares in area. The subdivision is proposed on sparsely wooded land with a frontage to Fairlight Road, the land originally having been part of the Fairlight estate. The land is not heritage listed, however part of the land adjoins the site of the SHR listed Fairlight Homestead and Barn.
- 2) Residential subdivision in the south-eastern section of the Fernhill estate lands (outside the Fernhill SHR curtilage). This subdivision is proposed to contain 54 residential lots of an average of 1000 square metres each in area, plus parkland setting on the northern lot with an existing home. The land forms part of the LEP-heritage listed Fernhill curtilage, and is also in the vicinity of the SHR Listed St Thomas Church & burial ground, and the LEP-listed St Thomas Road (original alignment of Mulgoa Road) and the LEP-listed Mulgoa Public School.
- 3) Consolidation of all the other land comprising the Fernhill estate, including the northern LEP-listed Fernhill curtilage area, in order to ensure future protection of the Fernhill estate as a large rural estate.
- 4) Permission for a range of uses on the Fernhill estate including equestrian events (continuing a long history of equestrian uses on the estate), 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 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.

The objectives behind the proposal are:

- To ensure the Fernhill estate remains a large rural estate without further subdivision into the future (by consolidation of the remaining land onto one land title).
- To enhance the economic viability of the estate, ensuring funds for ongoing conservation and maintenance works to the estate. A Heritage Agreement will be made with the NSW Heritage 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.

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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 affecting 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 May 2013.

1.3 LIMITATIONS

The site was visited by Paul Davies of Paul Davies Pty Ltd in early 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 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 |
| Northern Fernhill curtilage area | Lots 1-4, DP260373 Lot 2, DP 211795 | 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 |

| Name of area | Lot and DP Nos. | Heritage Listing Status | Description and road frontage (if any) |
|--------------|----------------------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Lot 12, DP610186 | | 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 |

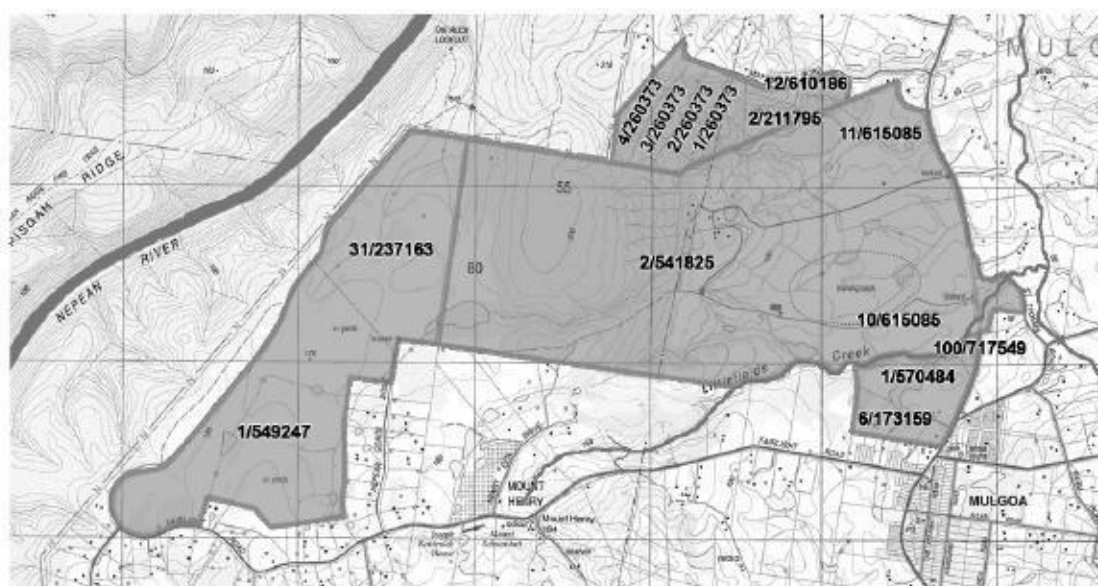


Figure 2: site plan showing the Fernhill estate land, including Lot and DP numbers for allotments

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.

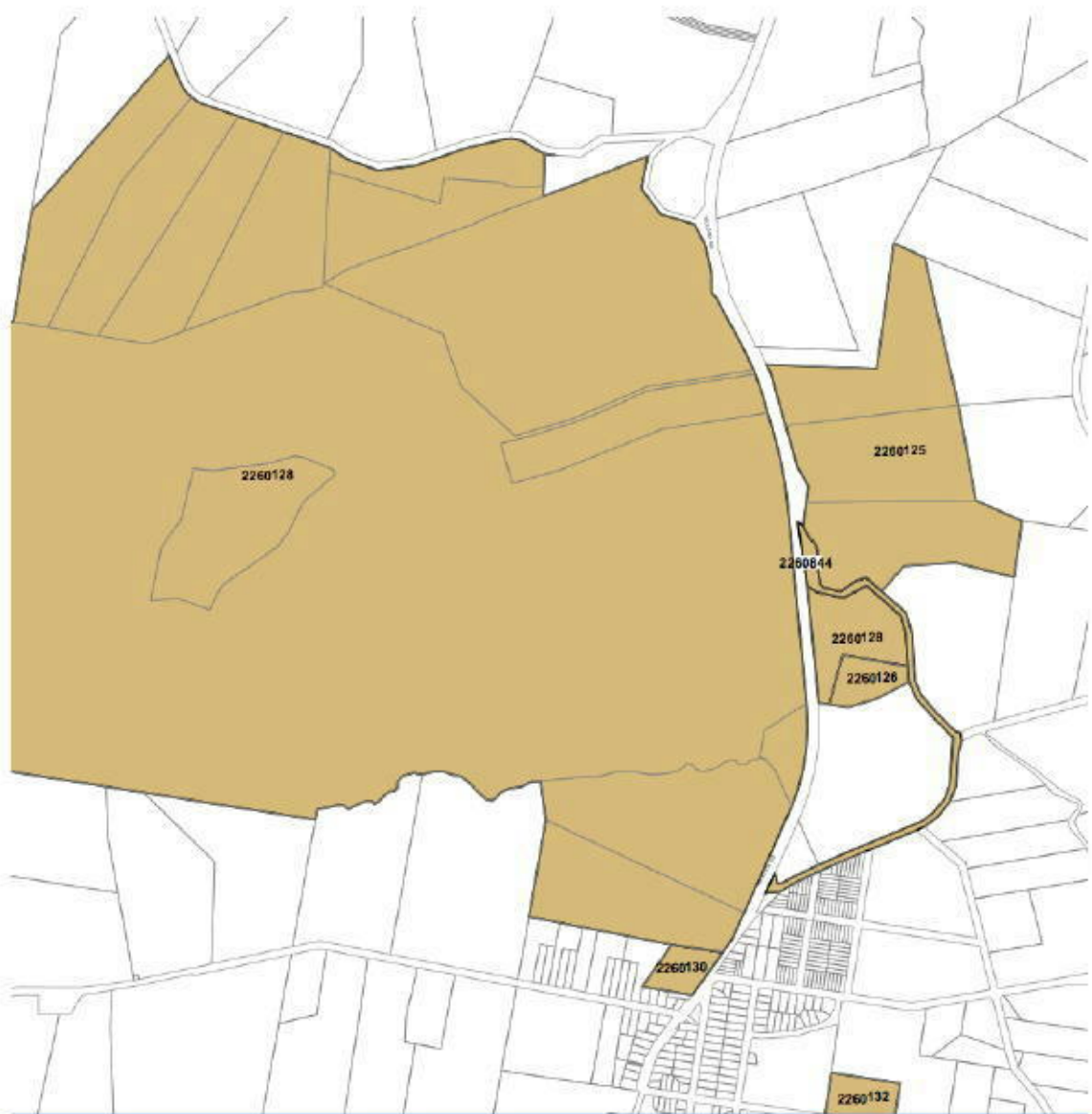


Figure 4: Extract: Penrith LEP 2010 Heritage Map 007, showing part of the Fernhill site at left (coloured, Heritage Item No. 2260128). This also shows the locations of adjacent heritage items, numbered (see Table 2 for detail).

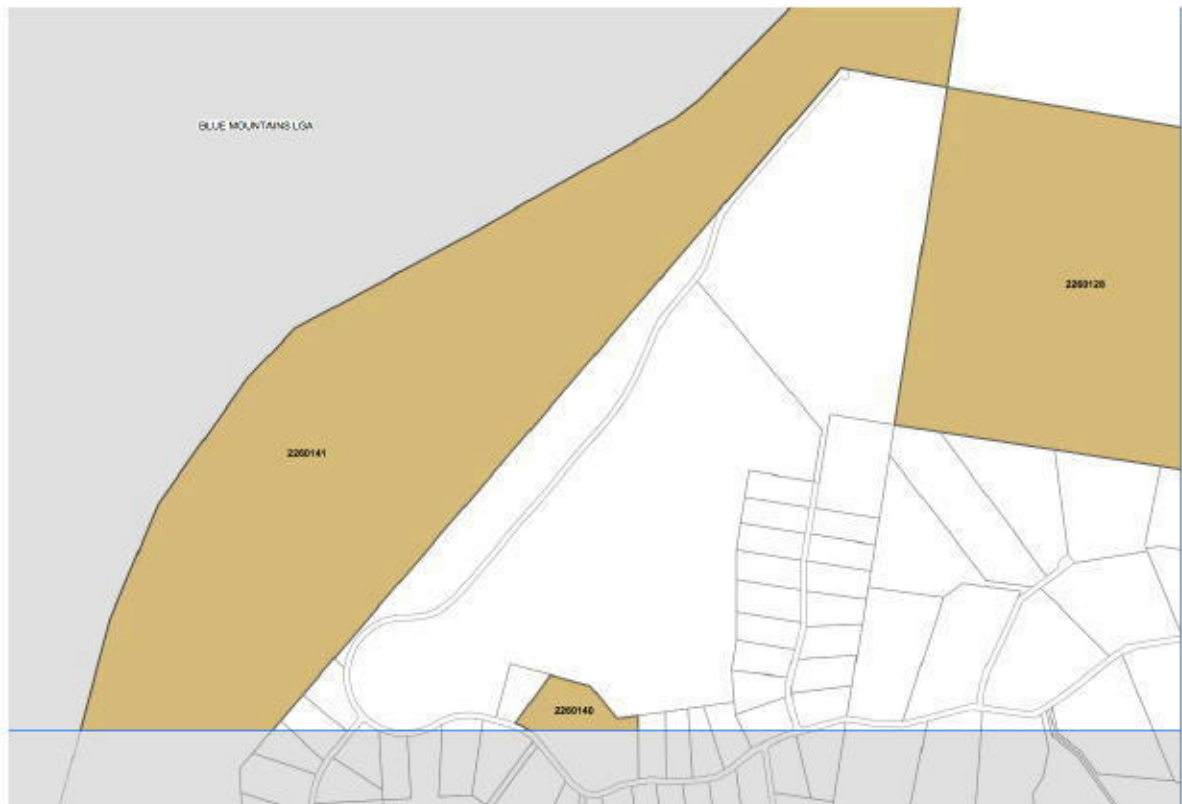


Figure 5: Extract: Penrith LEP 2010 Heritage Map 001, showing the western part of the Fernhill estate under the LEP heritage listing (coloured) at right. The nearby separately listed sites are Fairlight (Heritage Item No. 2260140 to the south), which adjoins Fernhill estate lands which are not heritage-listed, 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 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.

3.0 PHYSICAL DESCRIPTION

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). The core area 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

3.2 FERNHILL ESTATE NORTHERN CURTILAGE AREA

This area (shown in Figure 7 below), which is part of the "Curtilage of Fernhill", Penrith LEP 2010 heritage item No. 2260873 (but excluded from the SHR area) contains:

- Lots 1-4, DP260373, being four forested lots fronting Mayfair Road
- Lot 2, DP 211795, being a forested lot with no road frontage, lot east of Lot 1, DP 260373; and
- Lot 12, DP610186, a forested lot with a long frontage to Mayfair Road to the north.

This area is identified as Precinct 9 in the revised CMP and described in the CMP as follows (pages 63-64):

This land forms part of the crown grant of 640 acres made to Thomas Hobby in June 1810, and acquired by George Cox in 1815. Henry Cox acquired the land in 1825, adding to his estate centred on Glenmore some distance away to the north. The Glenmore estate remained intact until the commencement of subdivision in the 1920s. An aerial photograph of 1947 shows Mayfair Road was unformed at this time. The land was mostly cleared with scattered tree cover. By 1961 an aerial photograph shows that the tree cover had significantly increased. By 1970 some subdivision had occurred with a new house (to the north) being completed, some clearing on the lower slopes is also evident. Mayfair Road however at this time was still an unsealed road. By 1986 Mayfair Road had been sealed and extended west. The lower slopes of the lots are still cleared, with increased tree cover elsewhere along its length.

The 2000 bushfires removed a significant amount of vegetation along the southern edge of Mayfair Road providing a more open vista to and from the Fernhill site, but over the last 13 years there has been significant regrowth across the upper slopes. There are cleared areas extending along the edge of Mayfair Road and in the lots at the eastern end of the group.

While these lots are separate from Fernhill they are now heritage listed in the 2010 LEP for their contribution to Fernhill. Part of the land is also zoned for environmental conservation.

This area is not in the vicinity of any heritage items other than Fernhill itself.



Figure 7: Northern Fernhill estate lots Source: NSW Land & Property Information Six Maps

3.3 FERNHILL ESTATE EASTERN CURTILAGE AREA

This area, which is part of the "Curtilage of Fernhill", Penrith LEP 2010 heritage item No. 2260873, contains Lot 100, DP717549, Lot 1, DP 570484, and Lot 6, DP173159 (shown in Figures 8, 9 and 10 below), which comprise the area of the Fernhill estate north of Mulgoa village, on the western side of Mulgoa Road, with both lots having frontage to Mulgoa Road. This area is largely cleared along Mulgoa Road, with forest along its northern edge, and the western end of Lot 6, DP 173159, and contains a watercourse, with Lot 1, DP570484 containing a modern residence and garden in the south-eastern section near Mulgoa Road.

This area comprises Precinct 8 in the revised Fernhill CMP and is described in the CMP as follows (pages 66-67):

Precinct 8 comprises land to the south-east of the historic boundary of Fernhill on the far side of Littlefields Creek. The area of the precinct is defined by Lot 1 in DP 570484 and Lot 6 in DP 173159. This land forms part of the crown grant of 820 acres made to William Cox in October 1816. The property was later acquired by George Cox and added to his estate centred on Winbourne situated some distance away to the south. This area was part of George Henry Cox's land affected by the Mulgoa Irrigation Scheme of 1890, and neighbouring land to the east across Mulgoa Road was subdivided into residential lots as part of the Littlefields Estate. The land adjoins Mulgoa township. The aerial photograph of 1947 shows this area as substantially cleared grazing land with some tree cover near Littlefields Creek, a

chain of ponds forming a tributary of this creek, and a number of small paddocks under cultivation. A cottage (destroyed by fire) is shown at the south-east corner of property with frontage to Mulgoa Road. The Heritage Study of Penrith (1987) identifies this property as Woodlands (item no. MV-5), attributed to c1870, and possibly was the post office between 1883 and 1893. The former slab cottage however may have been no older than the Mulgoa Irrigation Scheme.

By the time of the 1961 aerial photograph, the tributary creek had been dammed to hold a large pool of water, and extensive reforestation resulted in extensive tree cover along Littlefields Creek. This dam pre-dates its inclusion into the Fernhill holding. The cleared areas were also under cultivation. This pattern of land use is shown in aerial photographs of 1970 and 1986, and continues into the present with gradual woodland regrowth extending along the creek lines.

The 1947 photograph shows that the landscape through this area was largely open with some views between Fernhill and Mulgoa Village available. These are now largely lost and only one overview from the road towards Fernhill House remains.

Two residences have been erected following subdivision into semi-rural lots, one in the open pasture land and one within the band of trees to the north. Neither of these developments are of any significance within the historic development of Fernhill.

These lots are heritage listed in the 2010 LEP as "Fernhill curtilage" for their contribution to Fernhill. This clearly does not relate to the buildings or built elements that currently are on the land but rather the extension of the Fernhill landscape.

There is considerable potential for new uses and development within this precinct provided that any significant vistas are maintained and the development does not affect the visual setting of Fernhill. As this precinct is outside the original grant lands and is visually separate from Fernhill it also has higher potential for new uses that support the conservation of the core estate.

Aboriginal archaeological sites have been identified in the eastern area of Fernhill in a report currently being drafted by Austral Archaeology.

This area is in the vicinity of the following heritage items:

- Fernhill (SHR and LEP heritage listed)
- Mulgoa Public School (LEP heritage Listed). The heritage listing notes the 1883 school building and former teacher's residence as being among a small number of 19th century buildings remaining within the Mulgoa village. Camphor Laurel and paper bark trees within the school grounds are also mentioned within the heritage listing. The closest school building to the Fernhill estate eastern area is the former Teacher's residence, and this is separated from the southern boundary of the Fernhill estate eastern area by a driveway within the school grounds. The site is shown in Figure 11 below.
- Former Mulgoa Road Alignment, St Thomas Road, which is the LEP Listed Item No. 2260844 to the east of this land, on the opposite side of Mulgoa Road
- St Thomas Anglican Church and cemetery, 43–57 St Thomas Road, Lot 1, DP 996994 and Lot 1, DP 1035490, being SHR and LEP listed (LEP heritage Item No. 2260126), to the north-east of this land, on the opposite side of Mulgoa Road.



Figure 8: Lot 100, DP 717549, frontage to Mulgoa Road. This lot contains a modern residence. Source: NSW Land & Property Information Six Maps



Figure 9: Lot 1, DP 570484, the northern lot within the Fernhill estate eastern area. This lot is largely cleared, with some natural forest along its northern boundary, and contains a watercourse, and a modern residence with outbuildings and garden. This lot is opposite St Thomas Road, a local heritage item. Source: NSW Land & Property Information Six Maps



Figure 10: Lot 6, DP 173159, the southern lot within the Fernhill eastern area. This lot is largely cleared at its eastern end, however with a watercourse and forest at its western end. This lot is adjacent to the Mulgoa Public School. Source: NSW Land & Property Information Six Maps



Figure 11: Site of Mulgoa Public School, adjacent to the southern lot of the eastern area

3.4 FERNHILL ESTATE WESTERN AREA

The Fernhill estate western area (identified as Precinct 10 in the revised CMP) consists of Lot 31, DP 237163 and Lot 1, DP 549247, shown in Figures 12 and 13 below. This area is not heritage listed. The CMP describes the area as follows:

Precinct 10 comprises land to the west of the historic boundary of Fernhill. The area of the precinct is defined by Lot 1 in DP 549247 and Lot 31 in DP237163. This area forms a not inconsiderable part of Nathaniel Norton's former Fairlight estate. The area forms part of the crown grant of 870 acres to James Norton made in April 1821, and 800 acres made to Nathaniel Norton in April 1821. James' grant was named Northend, while Nathaniel's land was named Fairlight. Both grants together with their father's (John) grant of 800 acres, named Grovers, of April 1821, were consolidated under one large land holding owned by Nathaniel, known as Fairlight. The original homestead of Fairlight was erected c1821. The estate was acquired by William Helleyer in 1863. The current Fairlight house (situated on a small holding adjoining the western precinct) was built at the time of William Jarrett's purchase in 1876.

This precinct is on two lots and has two zonings, the northern portion being affected by an environmental conservation overlay. The area has regularly changed in character both prior to and after its incorporation into the Fernhill estate. It has been cleared for much of its late twentieth century history being used for pastureland. The land was extensively cleared in the 1980's and accommodated cattle. More recently it has been subject to some regrowth that is considered in detail in other reports.

The earliest available aerial photograph of this area is the 1955 Lands Department Liverpool Series. This photograph shows that the northern two-thirds of the precinct was heavily wooded. The southern third of the area was characterised by cleared paddocks around Fairlight. The property of Fairlight at this time had not been subdivided, and the grounds of the house included an area now south of Fairlight Road. Fairlight Road at this time did not continue as a public road west of present day Nepean Gorge Road. By the time of the 1961 aerial photograph, Nepean Gorge Road had been formed. By the 1970 photograph, Fairlight had been subdivided and Fairlight Road put through to the west of the house. The wooded land to the north and west of the house was being cleared at this time, but the paddocks to the north of the house remained. By 1986 the aerial photographs show that all of the wooded land shown in the 1955 photograph had been cleared, and the sense of paddocks around Fairlight removed. Within the cleared lands, a number of small agricultural dams had been formed.

The southern end of Nepean Gorge Road is now characterised by semi-rural residential development.

Within the constraints of environmental and planning controls this portion of the estate is capable of more intense development as it is not of particular heritage value (particularly in relation to Fernhill), is not heritage listed and does not form part of the core heritage precinct. With regard to the heritage values of Fernhill, this part of the estate is in many respects ideal for consideration of future uses, as it would remove the need for development from much of the core heritage listed original grant land. (It is noted that the archaeological report has identified several Aboriginal archaeological sites in this precinct).

There are no particular heritage constraints on future use or development of this area apart from consideration of the setting of Fairlight House, which adjoins the site at its southern edge.

Aboriginal archaeological sites have been identified by Austral Archaeology in the western area of Fernhill.



Figure 12: Lot 31, DP 237163, the northern lot within the western area. Source: NSW Land & Property Information Six Maps



Figure 13: Lot 1, DP 549247, the southern lot within the western area Source: NSW Land & Property Information Six Maps

This area adjoins the site of the SHR and LEP-Listed Fairlight (Lot 22, DP 625510), shown in Figure 14 below.



Figure 14: The site of Fairlight fronting Fairlight Road, which adjoins the southern lot of the western area of the current Fernhill estate. Source: NSW Land & Property Information Six Maps

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, 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 SIGNIFICANCE OF NORTHERN CURTILAGE AREA

These lots are heritage listed in the 2010 Penrith LEP as part of the "Fernhill curtilage" for their contribution to the setting of Fernhill, this is not defined in the LEP. Part of the land is also zoned for environmental conservation. These lots are heavily forested.

Heritage issues relating to this land are:

- Visual impacts from the use (or development) of the land as part of the setting of Fernhill
- Environmental conservation considerations.

4.4 SIGNIFICANCE OF EASTERN CURTILAGE AREA

These lots are heritage listed in the 2010 Penrith LEP as part of the "Fernhill curtilage" for their contribution to the setting of Fernhill. This is not defined in the LEP.

The area contains one European archaeological site, being the remains of a slab hut burnt out in the 2000 bushfires, and Aboriginal archaeological sites have been identified in this area by Austral Archaeology in a 2010 report.

The two modern houses in this area and their associated outbuildings and structures within the area are of no heritage significance.

The area is in the vicinity of the locally listed Mulgoa Public School, located to the south, the LEP-listed St Thomas road alignment on the opposite side of Mulgoa Road and the SHR and LEP-listed St Thomas Anglican Church and cemetery on the opposite side of Mulgoa Road. Heritage Issues relating to this area are:

- Potential impact on the heritage items in the vicinity,
- Potential impact on views of Fernhill from Mulgoa Road,
- Environmental conservation considerations
- Management of the European archaeological site on the land (remains of a slab hut).
- Management of the Aboriginal archaeological sites on the land.

4.5 SIGNIFICANCE OF THE WESTERN AREA

This area has no heritage listing, however the southern part of the area is adjacent to the SHR and LEP-listed Fairlight.

The area contains a number of Aboriginal archaeological sites identified in a report prepared by Austral Archaeology.

Heritage issues relating to this area are:

- Management of the Aboriginal archaeological sites on the land
- Potential impact on the heritage significance of Fairlight
- Environmental conservation considerations.

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 |
| 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 |

| Structure, Space or Element | Grading/Grading No | Notes |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------------------------------------------|
| 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

For the purpose of analysis in the CMP, the Fernhill Estate is divided and discussed as 10 landscape precincts. The proposal that has been developed for this DA is informed by the research within the CMP, however adopts different precincts that relate to the activities set out in the DA.

The proposal essentially divides the Fernhill Estate into 3 areas, as follows:

- The **core Fernhill estate area**, that is the original land grant, with additional lands to the north, south and east to form an expanded core estate. Some of the expanded land is locally heritage listed and some (to the west) is not heritage listed).
- The **eastern lots**, referred to in the proposal as the **Eastern Precinct**. This area includes land just north of Mulgoa village with a frontage to Mulgoa Road and Littlefields Creek.
- The **western lots of Fernhill estate**, referred to in the proposal as the **Western Precinct**. This area is not heritage listed and once formed part of the Fairlight Estate.

The proposed development, that is the subject of this DA and which comprises the above three precincts, is subject to a development application 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 proposal 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.

This 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:

- 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
- conserves the house and landscape
- establishes a long-term and viable funding option to ensure the place does not again go through difficulty
- protects the environmental values of the broader estate to a high level.

The DA proposal is for the following works to each of the three precincts described above:

Central (or core) Precinct

- Consolidate the remainder of the Fernhill Estate lands into a single land title, for the purpose of protecting the core Fernhill estate lands with a substantial curtilage.
- The use of the land and of existing structures and temporary structures for the purposes of Events, Functions, (Function Centre land use under Penrith LEP 2010), etc., as set out in the proposal.
- The use of land, existing structures and temporary structures for an Equestrian Centre comprising agistment, riding training and riding events. (Note: An equestrian Centre forms part of Recreation Centre (outdoor) under Penrith LEP 2010).

- The use of land and temporary structures for sporting activities. (Note: permanent use of land for this activity forms part of Recreation Centre (outdoor) under Penrith LEP 2010).
- The temporary use of land and existing structures for the purpose of outdoor entertainment.
- The use of land, existing structures and temporary structures for the purpose of a camping ground ancillary to the above uses.
- The use of land, existing structures and temporary structures for the purpose of a market ancillary to the above uses.

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

- Regular Events of up to 250 - 300 people, 1-2 times per week. Several of these will be charity/community events such as fund-raising dinners where the venue is provided as a donation to the charity
- Medium sized events of over 250 people, with the upper limit on attendance numbers to accord with advice of GTA traffic modelling to determine the largest size of event where special traffic management measures are not required. Frequency of such events is envisaged to be 1(delete -2) per month. Such events would include: Easter Egg Hunt day; smaller concerts such as Penrith Symphony Orchestra; Melbourne Cup display and open day – 1 day plus 5 days of school group visits prior to the open day
- Medium sized events over 2,500 people up to 10,000 people such as concerts, Carols by Candlelight, (possibly 1 a month) and Moonlight cinema events in summer – up to 6 evenings
- Signature/Large events (subject to future DAs) for 20,000 to 30,000 people requiring special traffic management arrangements, envisaged to be held 6-8 times per year maximum over 9 days. These events would include Tough Mudder (to be held twice over 4 days); race picnic days (2 days); 3 music concerts over 3 days, for events such as Symphony under the Stars.

Eastern Precinct

Undertake subdivision for low density housing on a portion of the land just north of Mulgoa village with a frontage to Mulgoa Road and backing onto the elongated dam. This area is adjacent to the locally heritage listed Mulgoa Public School site, the historic teacher's residence being the closest building to the boundary, noting it is separated from the proposed subdivision by an existing driveway.

The subdivision is proposed to contain 54 Torrens Title residential lots accessed from Mulgoa Road with an average area of 1000 square metres (ranging in size upwards from 900 square metres), plus parkland setting on northern lot with existing home. The subdivision proposal incorporates the construction of associated road and infrastructure services to service the allotments in accordance with relevant standards.

New housing north of the intersection of St Thomas Road and Mulgoa Road is to be set back 100m from Mulgoa Road behind the proposed parkland setting, to give consideration to the rural context and the approach to Mulgoa Village. While this does not specifically relate to any heritage issues in Mulgoa Village (again noting that Mulgoa is actually not a heritage village, but rather a location that contains several unrelated and scattered heritage elements), it was considered important to define the village edge which has undergone

considerable 'creep' over time with larger lot development falling between rural and village characters.

This area is gently undulating, rising to a low ridge and grassed, and partially obscured by dense tree cover along the verge of Mulgoa Road. It is proposed to use rural type fencing to Mulgoa Road. Much of the area faces Mulgoa Park to the east across Mulgoa Road.

It has been observed from site inspection that a distant view of the garden of Fernhill House is available from Mulgoa Road across a portion of this land. With sub-division and development, this view will be altered. The CMP addresses views and has determined that this is not a significant view, rather it is a glimpse across trees and paddocks to the hill on which Fernhill is located. It is not a planned, historical or intended view and has limited significance.

Western Precinct

Subdivision for low-density rural residential development is proposed with the subdivision containing 38 Torrens title lots of 2 and 3 hectares in area, arranged in clusters around environmental conservation areas. These lots will be accessed via an extension of Nepean Gorge Drive and from a new internal road linking to Fairlight Road. The subdivision design gives consideration to the adjoining Fairlight House, environmental values and the presence of Aboriginal archaeological sites on parts of the land.

The subdivision proposal incorporates the construction of associated road and infrastructure services to service the allotments in accordance with relevant standards, including on-site sewer disposal and stormwater management.

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 whole 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 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 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Clause 5.10 (1) (a) to conserve the environmental heritage of Penrith | The proposal is predicated on conserving 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 proposal conserves the environmental significance of the place. 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. 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. |
| Clause 5.10 (1) (c) to conserve archaeological sites; | There are no works within the proposed consolidated estate that affect any known archaeological site. Aboriginal archaeological sites in the western precinct have been identified and remain within regrowth areas that are not subject to the sub-division proposal. Some archaeological investigation may be required in the eastern precinct for the former slab hut site and Aboriginal archaeological sites. |
| 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 is provided with the application along with this HIS and schedules of works. The CMP is submitted for endorsement and the documents satisfy the LEP requirement. |

| LEP Clause | Discussion and Response |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>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).</p> | <p>The application is both referred to the NSW Heritage Council and in part consent is sought for activities within the State Heritage listed area.</p> |
| <p>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.</p> | <p>An archaeological report is submitted with this application that addresses the requirements of this clause and the Act.</p> |
| <p>Clause 5.10(10) regarding development in the vicinity of heritage items applies to the proposal.</p> | <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 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.</p> <p>Mulgoa school is directly adjacent to an area of sub-division and will experience a visual change with sub-division occurring. There is no direct impact on the heritage buildings within the school or their setting. The setbacks from Mulgoa Road will provide views to the school from the road. The development of the school site itself has affected the heritage setting of the school buildings, however they remain discernible and part of the Mulgoa heritage. We conclude that there is no adverse impact on the heritage values of the school.</p> <p>The sub-division of land in the western precinct adjoins the Fairlight land which is heritage listed. The large lot sub-division is consistent with the lots already adjoining Fairlight and the outlook from Fairlight will allow longer views across the landscape into the distant hills. There will be some minor impact on Fairlight as there will be sub-division within an area that has been used for pastoral uses in the past, however it must be considered that the subject land once belonged to Fairlight and was sold and excised from the holding. While this does not suggest that appropriate development should take place, it is clear that the land is no longer part of Fairlight and is capable of development in a reasonable way.</p> <p>We conclude that the sub-division proposal in this area is reasonable and responds to the setting of Fairlight as well as other environmental issues on the site.</p> |

| 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. The proposal seeks Councils' consent to vary several development standards to achieve the conservation of Fernhill. It is being argued that without the use of this clause Fernhill is unlikely to survive as an intact historic estate and that this loss would be a major heritage loss within the Penrith Area.</p> <p>It is also submitted that the proposals are not excessive in that they seek to recover funds from the site to remove the receiver and then look to establish an ongoing funding base to conserve the consolidated estate.</p> <p>Reference to past applications reinforces the scale of this proposal as it is significantly less than has previously been put forward for the site. This does not in itself justify this proposal, but it provides a reference point to allow a determination of what is an appropriate level of development.</p> <p>It is also important that all of the sub-division proposals are outside the State heritage listed site.</p> <p>The other factors to support the use of the clause are:</p> <ul style="list-style-type: none"> - the consolidation of the remaining Fernhill land into one lot - the proposal to establish a heritage agreement to provide for the future conservation and maintenance of the Fernhill estate with an estimated annual expenditure of approximately \$300,000 - establishment of a maintenance regime that is linked to the heritage agreement <p>The matters to be considered in detail 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. |
| b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority | The CMP is submitted for endorsement, the Heritage Council has the opportunity to review it as part of this proposal. |
| (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out | This is provided for in the proposal as set out in the various schedules. |
| (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, even though some of the land to be developed is outside the state heritage listed land.</p> <p>With regard to the eastern precinct, as this is heritage listed in relation to Fernhill it is the potential impact on Fernhill that needs to be considered rather than any impact on the land proposed for sub-division.</p> <p>The exception to this is the site of the former slab cottage, which should be investigated prior to works taking place.</p> <p>The sub-division has no impact on the western precinct in terms of heritage values as the land is not presently heritage listed and the archaeological sites have been carefully worked around to avoid any impact.</p> <p>The introduction of new uses and expanded uses onto Fernhill estate could have some potential to create heritage impacts on the estate.</p> |

| LEP Clause | Discussion and Response |
|--------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>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. Recent large events have demonstrated that the site management of uses is properly undertaken and capable of managing the place without adverse impacts.</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> |
| (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>The sub-division proposals are modest in relation to the size of the Fernhill site and carefully designed to reduce or remove any potential impacts on adjacent lands.</p> <p>While this is dealt with in more detail in planning assessments there are two adjoining boundaries to existing development that need to be considered. The proposals are designed to be consistent with those developments in scale, lot size etc and have included building footprints and setbacks to ensure a good contextual fit of future development.</p> <p>There appear to be no adverse amenity impacts on neighbours however, that does not mean there will not be some change in the setting as the proposal involves sub-division of land that is presently not developed.</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.

In summary the proposal protects Fernhill as:

- The proposal will ensure the continued maintenance and conservation of the historical Fernhill estate.
- The CMP concludes (Section 5.3.7) that there is no particular constraint on the retention of lands outside the core Fernhill site (which contains 3 lots) in relation to heritage value. Most of the larger estate lands do not make any contribution to the direct heritage values of Fernhill, although a number of adjoining lots have viewsheds across parts of the Fernhill property.
- It is considered there is no adverse impact on the heritage items in the vicinity of the proposed subdivisions, for the following reasons:
 - The subdivision in the eastern area has been carefully designed so as to incorporate a parkland setting, which will protect the vicinity of St Thomas Road and the St Thomas Church and Cemetery. The school buildings on the Mulgoa Public School site including the historical teacher's residence are separated from the boundary of the proposed subdivision by a driveway within the school site. The subdivision is a low-density residential subdivision which reflects the existing subdivision pattern within the Mulgoa village, and which essentially will form a small northern extension to Mulgoa village.
 - The proposed subdivision in the western area is a large lot rural subdivision, which reflects the existing subdivision pattern in this area. The western area

is removed from the vicinity of Fernhill house and garden and historical land grant area. The design and large lot form of the proposed subdivision ensures no adverse heritage impact will occur with regard to the adjacent heritage item Fairlight. The buildings on the 2-hectare Fairlight site are set well away from the boundary with the proposed subdivision.

- The impacts of the proposal on views and vistas are minimal, as various changes to Fernhill over time have impacted on former significant views and vistas. In particular, views from Mulgoa Road are now minimal and insignificant, and historic views from Mulgoa Road are now not capable of reinstatement due to environmentally significant Cumberland Plain Woodland, which has regenerated since the mid 20th century.
- The archaeological site (remains of a slab hut destroyed in bushfires in 2000) in the eastern area of Fernhill (proposed for subdivision) will be managed in compliance with the recommendations of an Austral Archaeology report. A condition of consent is recommended to ensure this.
- The Aboriginal archaeological sites identified by Austral Archaeology in the eastern area of the Fernhill estate lands (proposed for subdivision) will be managed in compliance with the recommendations of the Austral Archaeology report. A condition of consent is recommended to ensure this.
- The Aboriginal archaeological sites identified by Austral Archaeology in the western area of the Fernhill estate lands (proposed for subdivision) are not affected by the proposed subdivision, as they lie within environmental conservation areas of the proposed subdivision and will not be affected by development.

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. The proposed subdivisions have been carefully designed and sited so as to maintain the significant landscape elements and landscape setting of the Fernhill Estate and do not impact on heritage items in the vicinity. The proposal ensures that ongoing conservation works will be undertaken to the significant elements of the Fernhill Estate.

Control 7.1.3 C. Controls 1 a)

Response: The development application maintains the heritage significance of the item. Impact has been minimised due to the careful design and siting of the proposed subdivisions. The proposal conserves the heritage significance of the Fernhill Estate by:

- Ensuring ongoing income for conservation of the estate
- Proposing events, such as equestrian events, which are appropriate to the existing facilities and past uses on the estate.
- Not impacting on significant view lines
- Not impacting on the core of the Fernhill Estate
- 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. The subdivisions are both located outside the historical Fernhill land

grant of 1810, the western subdivision of land which was once part of the historical lands of Fairlight, and the design and form of the subdivisions are designed to prevent adverse heritage impacts on heritage items in the vicinity through lot size, incorporation of parkland setting, setbacks and retention of Cumberland Plain Woodland.

Control 7.1.8 Archaeological site

Response: The archaeological sites affected by the proposal are the site of the remains of a slab hut, and several Aboriginal archaeological sites in the proposed eastern subdivision area. These archaeological sites will be managed in accordance with the recommendations of an Austral Archaeology report, and a condition of consent is recommended in this regard.

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

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

The proposed consolidation of lots to incorporate the core Fernhill estate lands and the northern area will protect the Fernhill estate and its curtilage from future unsympathetic subdivision.

The proposed works, including the proposed subdivisions, comply with the recommendations of the revised CMP for Fernhill.

The granting of consent for the proposal will ensure that all necessary conservation work identified in the CMP will be carried out.

The CMP includes a detailed long-term maintenance plan for the Fernhill Estate.

A Heritage Agreement will be made to ensure that funds from the various uses on the consolidated Fernhill estate lands will be put to conservation of the estate buildings and land.

The proposed uses within the estate will not adversely affect the heritage significance of the estate, or the amenity of the surrounding area.

The proposed subdivisions have been carefully located and designed so as to have no heritage impact on either the estate itself or the surrounding heritage items.

7.2 Aboriginal Culture and Heritage

Response: The proposed western and eastern subdivision areas have a number of Aboriginal archaeological sites identified by an Austral Archaeology. These Aboriginal archaeological sites will be managed in accordance with the recommendations of the Austral Archaeology report, and a condition of consent is recommended in this regard. Note that the Aboriginal archaeological sites in the western area will not be affected by the proposed subdivision.

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 for subdivision of the eastern and western areas is considered to have minimal impact on the heritage significance of the historical Fernhill estate area and the careful design of the subdivision proposals minimises impact on heritage items in the vicinity, including on Fernhill itself.

Both eastern and western subdivisions, and the allowance of uses for varied events on the remaining Fernhill estate, are considered crucial to provide funding for the future maintenance and conservation of the historical Fernhill estate. In addition, the consolidation of the remaining Fernhill estate land into one allotment will ensure the continuation of the Fernhill estate as a large rural holding, protecting the Fernhill estate from unsympathetic future subdivision, such as that which has occurred at other rural colonial estates in Sydney including Varroville, Campbelltown (listed on the SHR and the LEP, where the house and garden are now irrevocably separated from the original wider estate land setting, the original drive and the 19th century outbuildings) and the Mount Gilead farm at Appin Road, Gilead (an 1820s colonial farm of 180 hectares now threatened with residential subdivision).

As Fernhill estate already includes subdivided land on a number of different lots, as illustrated in this report, and the lot containing the house and garden (Lot 2, DP541825) is relatively small part of the estate, there is a real possibility that if the current proposal is not approved, future owners may sell off existing separate allotments which form part of the Fernhill estate, leaving only the small house and garden allotment without a larger rural setting.



Figure 15: Lot 2, DP 541825 of the Fernhill estate (shaded yellow, outlined in red), which contains the house and garden (but not all of the outbuildings) and is a relatively small part of the existing Fernhill estate landholding. Note: racecourse and Mulgoa Road at right. Source: NSW Land & Property Information Six Maps

For these reasons, the current proposal is considered necessary and appropriate for the conservation of Fernhill, and fulfils Clause 5.10(10)(a) of the 2010 LEP heritage provisions.

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.

A maintenance plan for Fernhill estate forms part of the application, and a condition of consent can be imposed requiring that all works specified in the Maintenance Plan and the CMP will be carried out within a reasonable time period. In addition, a Heritage Agreement is proposed to ensure the ongoing maintenance and conservation of the Fernhill estate. The proposal therefore fulfils Clause 5.10(10)(c) of the 2010 LEP provisions, in that all necessary conservation work will be carried out to the Fernhill estate.

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 reasons, thus complying with Clause 5.10(10)(d) of the 2010 LEP:

- The consolidation of the remaining Fernhill lands (including the northern area), the CMP, Maintenance Plan and Heritage Agreement will ensure the maintenance and conservation of the Fernhill estate into the future, and will protect the setting of the core historical Fernhill land as a large rural estate
- 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 proposed subdivisions of the eastern and western areas do not adversely affect the heritage significance of the Fernhill estate or of heritage items in the vicinity due to the location and careful design of the proposed subdivisions
- Aboriginal artefacts identified in the western area proposed for subdivision will be managed in accordance with the recommendations of the Austral Archaeology report prepared in relation to this land.

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

- The proposed subdivisions are appropriate for their locations in their design and form, the eastern subdivision reflecting the residential subdivision form of the Mulgoa village and essentially forming a north-eastern extension of the Mulgoa village. The careful design of the subdivisions, incorporating extensive parkland and including retention of environmentally significant Cumberland Plain Woodland ensures the subdivisions will have no adverse effect on the amenity of the area.
- 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 and 20,000 spectators over the course of the two-day event (according to the TheTelegraph.com.au). Traffic management and parking arrangements during the event ensured clear traffic signage and safe traffic arrangements for entry and exit from the estate.

The proposal is therefore 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.

Views of Fernhill from Mulgoa Road across the eastern area are minimal and incidental views. Historical views are not recoverable (due to regenerated Cumberland Plain Woodland now under environmental protection controls); therefore the impact of the subdivision of the eastern area on the heritage significance of Fernhill is minimal.

The careful design of the subdivision, with parkland setting in the northern section fronting Mulgoa Road, minimises heritage impact on the heritage items in the vicinity on the eastern side of Mulgoa Road, being the St Thomas Road alignment, and St Thomas Anglican Church and cemetery.

The low-density residential nature of the proposed eastern subdivision is considered to have minimal heritage impact on the significance of the adjacent heritage item to the south, Mulgoa Public School. The Former teacher's residence and school buildings are separated from the southern boundary of the proposed eastern subdivision of Fernhill estate by a

driveway on the school's site. The design of the subdivision is to set back houses from Mulgoa Road to match the existing setback of the Former teacher's residence on the school site.

The form and design of the proposed western subdivision reflects the existing rural residential lots in this location. The proposed subdivision is well removed from the Fernhill estate core area (separated from it by a heavily wooded western section of the core lands) and will have no adverse impact on the SHR listed Fairlight which sits on an extensive rural allotment, where the Fairlight buildings are located well away from the boundary with the proposed western subdivision.

NORTHERN AREA

Heritage issues relating to this land are:

- Impact on the role of the land as part of the setting of Fernhill
- environmental conservation considerations.

Response: The proposal is to consolidate the northern area and the core Fernhill area into a single allotment of land, thus ensuring that:

- the northern area will remain as an undeveloped part of the curtilage of Fernhill
- the Cumberland Plain Woodland in the northern area will remain
- Views of Fernhill house and garden (which were historically never intended from this direction) will remain obscured by vegetation.

This proposal for the northern area and for Fernhill is a positive heritage outcome, which will protect the Fernhill estate and its wider curtilage including the northern area from any future unsympathetic subdivision.

EASTERN AREA

Heritage Issues relating to this area are:

- impact on the heritage items in the vicinity,
- impact on views of Fernhill from Mulgoa Road,
- environmental conservation considerations and
- management of the European archaeological site on the land (remains of a slab hut).
- management of the identified Aboriginal archaeological sites on the land

Response: The careful design of the proposed eastern subdivision allows for a parkland setting in the north-eastern section of the subdivision, thus setting back housing in this area, and ensuring there will no adverse impacts on the heritage items St Thomas Anglican Church & Cemetery and the St Thomas Road alignment. The proposed subdivision is adjacent to the heritage item Mulgoa Public School, however the school buildings are separated from the boundary with the subdivision via a driveway on the school site, and proposed houses within the subdivision in the vicinity of the school will be set back from Mulgoa Road to reflect the setback of the school buildings. The subdivision is essentially a low-density residential subdivision, which extends the existing Mulgoa Village, and which is considered to have no adverse heritage impacts on heritage items in the vicinity.

Current views of Fernhill (roof of Fernhill house, part of the garden) from Mulgoa Road are incidental, and historical views of Fernhill from Mulgoa Road are not recoverable due to the existence of environmentally significant Cumberland Plain Woodland regrowth. The impact on views of Fernhill from Mulgoa Road is therefore not considered substantial or of heritage concern.

The proposed subdivision retains some existing Cumberland Plain Woodland as part of the subdivision design, thus addressing environmental conservation considerations.

The European archaeological site in the Eastern area (remains of slab hut) will be managed in accordance with archaeological advice, and a condition of consent is recommended in this regard.

The Aboriginal archaeological sites within the area will be managed in accordance with the recommendations of an Austral Archaeology report currently in preparation.

WESTERN AREA

Heritage issues relating to this area are:

- management of identified Aboriginal archaeological sites
- impact on the heritage significance of Fairlight
- environmental conservation considerations.

Response: The Aboriginal archaeological sites identified on the land by Austral Archaeology will not be affected by the proposed subdivision, as the sites lie within proposed environmental conservation land, which is part of the subdivision.

The proposed subdivision has no adverse impact on the 2-hectare Fairlight, which sits on a 2-hectare piece of land, where the Fairlight buildings are located well away from the boundary with the proposed subdivision. The proposed subdivision is a large-lot rural residential subdivision, which reflects the existing rural residential nature of this area.

The proposed subdivision includes a substantial portion of retained Cumberland Plain Woodland, addressing the environmental conservation considerations with regard to this land.

8.0 CONCLUSION

The subdivisions, the consolidation of allotments, and 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 proposed subdivisions have no adverse impact on the Fernhill Estate or on heritage items in the vicinity, the western area being well removed from the core of the Fernhill estate, and having no adverse impact on the adjacent heritage item Fairlight (which sits on 2 hectares), and the careful design of the eastern subdivision ensures no adverse impact on the Fernhill estate or on heritage items in the vicinity including Mulgoa Public School. Due to the careful design of the eastern subdivision, including setback of houses in the northern section of the subdivision from Mulgoa Road by 100 metres behind a parkland setting, it is considered there are no adverse heritage impacts arising from this subdivision.

The granting of consent for the proposal will ensure that the majority of the various uses identified in the Heritage Agreement (such as function centre, recreation and equestrian facility and entertainment facility) necessary to generate income to achieve conservation work identified in the CMP will be carried out. Note that separate development applications are required by Council for Major events and areas under future investigation in the proposal. The proposed uses within the estate will not adversely affect the heritage significance of the estate, or the amenity of the surrounding area.

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.
- A detailed landscaping plan is to be prepared by an experienced heritage landscape consultant, which is to include implementation of the relevant CMP policies.
- A Heritage Agreement is to be made with the NSW Heritage Council to ensure ongoing maintenance and conservation of the Fernhill estate.
- The European archaeological site within the proposed eastern subdivision area (remains of slab hut) is to be managed in accordance with the recommendations of an archaeologist
- The Aboriginal archaeological sites within the proposed western and eastern subdivision areas are to be managed in accordance with the recommendations of the Austral Archaeology reports.