

# HERITAGE IMPACT STATEMENT

Fernhill Estate, Mulgoa Road, Mulgoa NSW

Proposed Works In Eastern and Central Precincts



for

Simon & Brenda Tripp

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## EXECUTIVE SUMMARY

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

The early estate was expanded by a previous owner to include land to the north, south and west extending the size of the holding considerably. The core site that is the original grant land, while protected by both Penrith Council and the NSW Heritage Council in their heritage registers, has been sub-divided in the past into a number of lots. The land to the north and south has been recently heritage listed by Penrith Council (LEP 2010) as "Fernhill curtilage" in relation to its heritage value to Fernhill. The land to the west is not heritage listed but is adjacent to the State heritage listed property Fairlight.

Much of the expanded holding has been subject to forest re-growth establishing significant natural landscapes and resulting in large areas of the site having environmental protection in addition to heritage listing. This Integrated Development Application retains and protects the significant landscape areas within the central and eastern precincts and several environmental protection mechanisms are in place to ensure their future protection.

This application is one of two concurrent IDA's for the eastern and central precinct and one for the western precinct. The two separate applications have been made at the specific request of Penrith Council.

This IDA is for:

- sub-division of a section of the Eastern Precinct of the Fernhill Estate holding,
- consolidation of most of the balance of the Eastern Precinct with the larger part of the Central Precinct of the Fernhill Estate into one allotment of land to protect it from future subdivision,
- establishment of a conservation and maintenance fund and program to provide for the future conservation and maintenance of the heritage aspects of the place.
- a voluntary planning agreement that will include this IDA and the IDA for the western precinct to bring the whole site under one agreement.

The background to the application is set out more fully in the other reports with the IDA, 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 balance of the estate as a single entity, that is to retain the core holding and expanded lands around it as a single property; and
- the securing of the original Fernhill estate grant lands without excision or subdivision, with the ability to derive income from the land to maintain the estate and buildings into the future.

The four key aspects of the IDA that achieve significant heritage outcomes are:

- 1 Locating potential development in the form of limited subdivision outside the original grant land and outside areas that have a direct heritage impact on Fernhill or the surrounding area. This retains the original grant lands as the setting for Fernhill.
- 2 Consolidating some of the lots within the original grant land and some additional areas to create one lot that provides 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
- 4 Proposing and funding a schedule of annual works that will conserve and maintain the house and landscape derived from the sub-divisions and from site uses.

The IDA is submitted under the heritage provision of the LEP (Clause 5.10 (10)) that allows Council to consider and 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 facilitate the conservation of the heritage place in approving the works. Clause 5.10.10 is being used only for the development of the eastern land as the western lands are not heritage listed and the development proposed is complying. The use of clause 5.10.10 on the eastern heritage listed lands has the added benefit of removing the need to sub-divide the core estate which is land of very high heritage landscape value.

An important aspect of the IDA is a Voluntary Planning Agreement. The VPA sets out clearly:

- The program for consolidation of the estate after the approved sub-division of peripheral lands
- The funds that will be set aside from development in the eastern and western precincts for the conservation and maintenance program
- The extent, nature and operation of the maintenance works program
- An audited schedule of works to address conservation and maintenance needs
- A Trust Fund to provide a level of certainty related to undertaking conservation works
- The role of bio-banking within the overall management of the property
- Review and auditing requirements
- The various obligations and responsibilities of the parties within the agreement.

The conclusion of this HIS is that this IDA not only retains the estate by allowing peripheral development and consolidation of the core areas, but provides a way to ensure that it can be conserved into the future without having adverse heritage impacts on the property or its broader setting.

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 on both the State Heritage Register (SHR) and Local heritage schedule and lands that are only on the Local Council heritage schedule. 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 IDA outcomes as the consolidation is offered as a way of ensuring that the Fernhill lands of heritage significance are secured in the future to 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 IDA proposes that the core uses of the Fernhill Estate after sub-division will be private residence, agriculture and equestrian use.

A separate DA has been lodged to provide for one event a year, the Picnic Race Day, as the only event that will take place on the property. This is closely linked to the equestrian activities that are being developed. That IDA is not discussed in this report.

This IDA replaces an earlier application that involved sub-division in the eastern precinct and a series of annual events on the property. A separate application for development of the western precinct was also lodged that formed part of the overall proposal. Following review and extensive discussion with Council and having considered some of the issues that were raised in the more considered submissions made to Council, a different approach has been taken to the property. This approach has also been informed by the trial running of events that has taken place over the recent year.

Apart from submissions not wanting any change within the Mulgoa Valley, which is not consistent with Penrith LEP and DCP, issues raised and which have been considered include:

- the volume of traffic and changes to Mulgoa Road arising from events use including the new entry and turning lane
- impacts on amenity from events
- impacts on the property from parking related to events
- change of rural character
- loss of views onto the property
- extension of the edge of the village arising from the proposed sub-division
- increased traffic in Fairlight Road
- development outside the current site zoning
- the use of the heritage incentive clause to provide for development.

These matters are discussed as part of the assessment of the current application.

A common pattern for development of large heritage estates in Australia is to excise land for development from the core 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 significant estate lands are secured as an entity, the house remains in residential use and managed uses take place on the estate that provide some of 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. 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 the Picnic Races (as noted this annual use will be subject to a separate DA). A range of uses have already been tested on the site and, with the various operating constraints in place, it has been determined that they do not provide an income source that can support the property and its conservation. Consequently this IDA relies on existing agricultural and equestrian uses as the core activity of the estate.



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 in the Conservation Management Plan.

It is noted that the new owners of the estate have already committed significant funds to conservation and maintenance works to the buildings and site to ensure that the place is both stabilised and returning to good condition. A considerably larger amount has been spent on the property more generally to ensure its future.

It is important to understand that in recent years, while the property's future has been uncertain, that conservation and maintenance works have not taken place and there has been considerable catch-up work. Earlier, the work of the previous two owners, firstly secured the estate and buildings from loss and then saw extensive repair and new works carried out with the estate perhaps reaching its peak of condition in the 1990s. However even small periods of non-occupation and neglect result in considerable deterioration taking place and recent work has had to be undertaken to allow the house and site to function.

This Heritage Impact Statement has been written to support the proposed works to the Central and Eastern Precincts of the Fernhill Estate, Mulgoa, which are:

- 1) Residential subdivision in the south-eastern section of the Fernhill estate lands (outside the Fernhill SHR curtilage).  
This subdivision is proposed to contain 50 residential lots with a minimum of 750 square metres in area, plus a central and Mulgoa Road parkland setting. This 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.
- 2) Consolidation of the balance of the Eastern and a large part of the Central Precinct lands in order to ensure future protection of the core Fernhill Estate as a large rural estate.

The objectives behind the proposal are:

- To ensure the Fernhill estate remains a large rural estate without further subdivision into the future.
- To enhance the economic viability of the estate, ensuring funds for ongoing conservation and maintenance works to the estate. A Voluntary Planning Agreement will be made with Penrith Council and a Maintenance Plan has been prepared in relation to ongoing maintenance and conservation works to Fernhill estate.

This report accompanies a Conservation Management Plan (CMP) for the Fernhill estate recently prepared by Paul Davies Pty Ltd. The CMP divides the Fernhill estate into ten (10) separate landscape precincts for the purpose of significance analysis.

This HIS supports the IDA 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 (the owners) to accompany an integrated 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 dated May 2014 .

### 1.3 LIMITATIONS

The site was visited by Paul Davies of Paul Davies Pty Ltd on a number of occasions through 2013 and 2014. The Fernhill site was inspected and thoroughly photographed at those times.

The historical outline provides a brief summary only of material covered extensively in the 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	LEP listed as part of Fernhill curtilage area	Four forested lots fronting Mayfair Road to the north

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

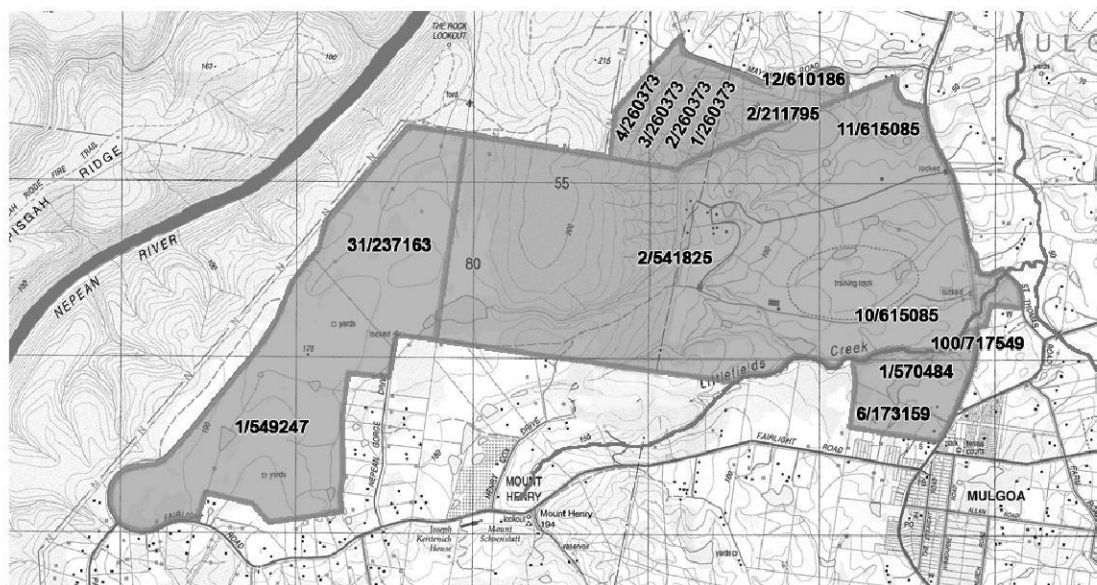


Figure 2: Site plan showing the Fernhill estate land, including Lot and DP numbers for allotments

## 1.8 STATUTORY LISTINGS AND CONTROLS

### NSW Heritage Act 1977

Fernhill is included on the State Heritage Register (SHR) as item no 00054 gazetted 2 April 1999. Earlier a Permanent Conservation Order was placed on the property in 1981. The SHR boundary is outlined on Figure 3 below. Note that the area under the SHR listing does not include the whole Fernhill estate. At the time of listing the core estate comprised 2 lots, since then there has been further sub-division.



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 area is outside the SHR listed boundary, the subdivision does not require NSW Heritage Council consent.



Figure 3: Fernhill SHR listing boundary, which includes Lot 2, DP 541825, Lot 10, DP 615085 (including small parcel of land on the eastern side of Mulgoa Road) and Lot 11, DP 615085. The site has been further sub-divided since the listing was gazetted. 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.

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.

#### 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.

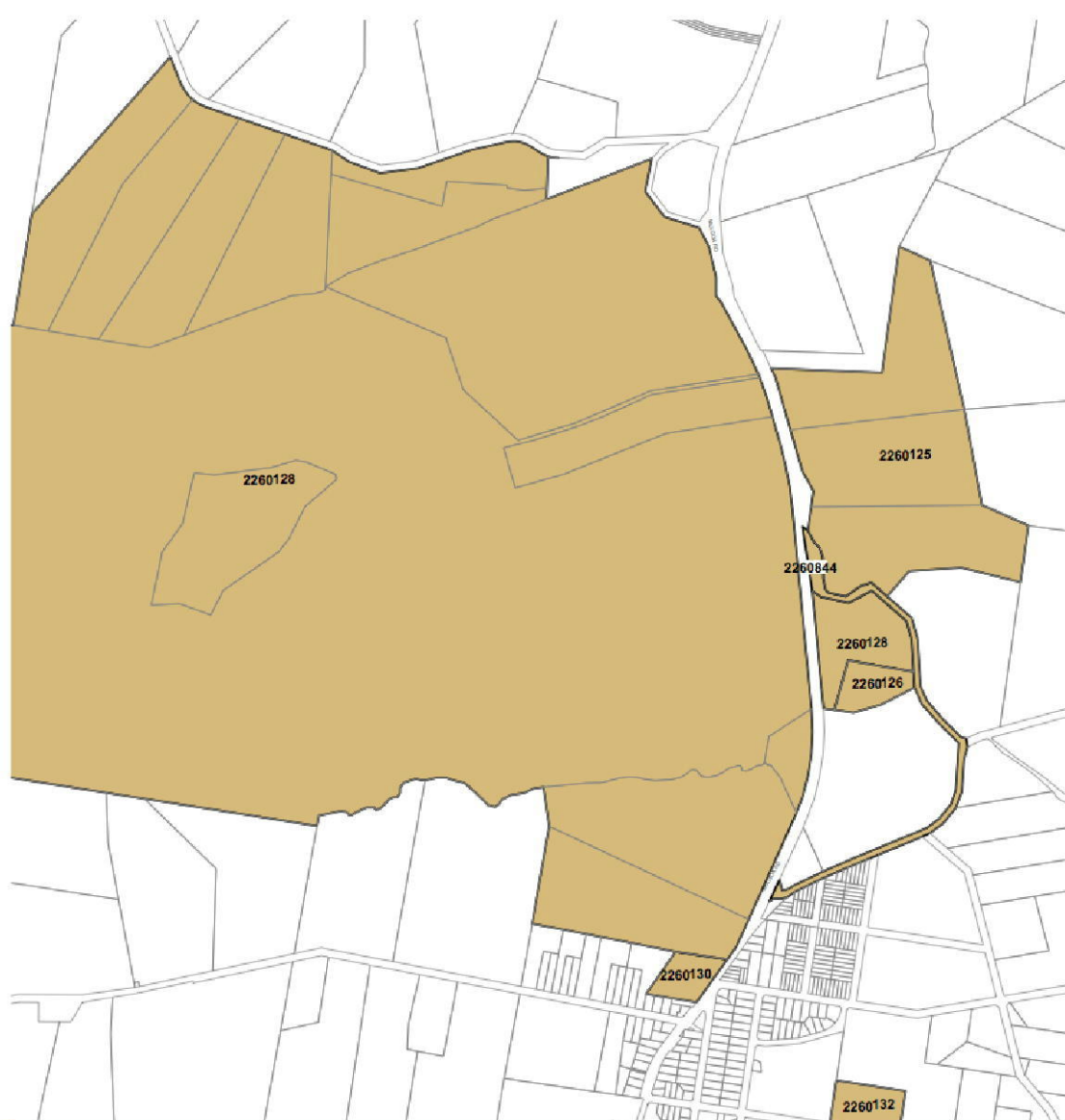


Figure 4: Extract: Penrith LEP 2010 Heritage Map 007, showing part of the Fernhill site at left (coloured, Heritage Item No.

2260128). This also shows the locations of adjacent heritage items, numbered (see Table 2 for detail). Inexplicably Penrith City Council selectively listed the lands of heritage value in the area leaving key parts of the Cottage lands and St Thomas Rectory site unlisted in the 2010 LEP where they had been previously listed.

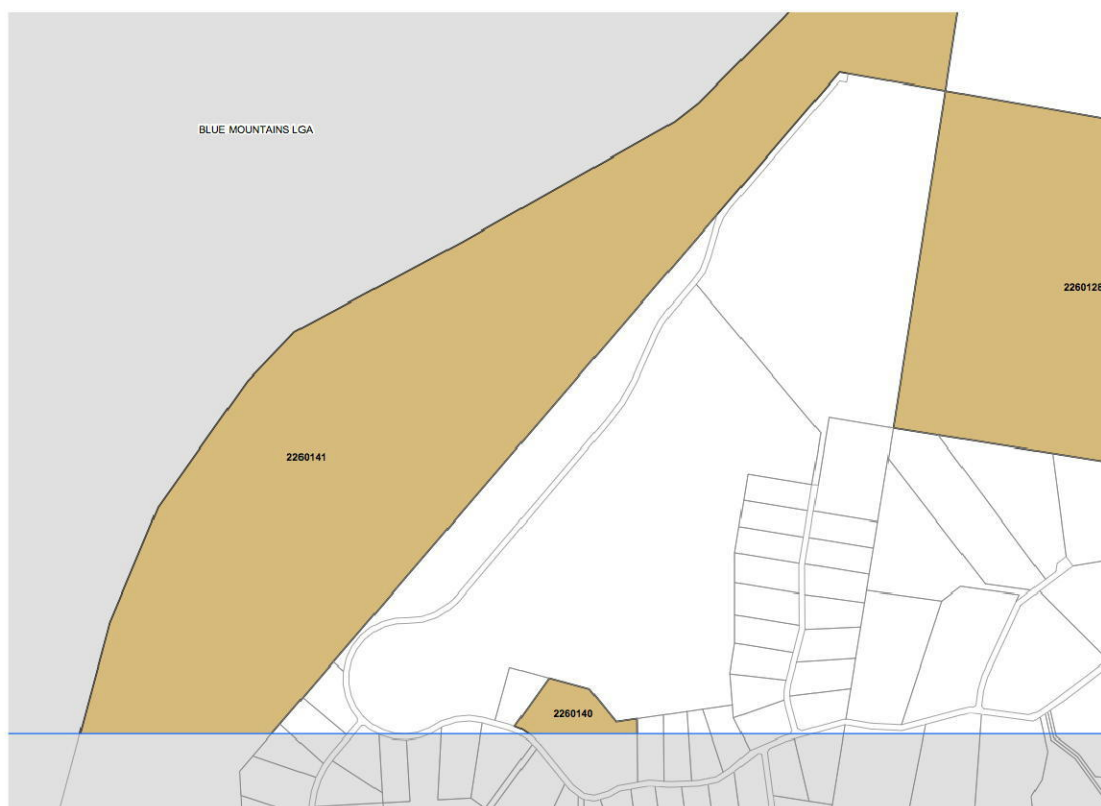


Figure 5: Extract: Penrith LEP 2010 Heritage Map 001, showing the western part of the Fernhill estate under the LEP heritage listing (coloured) at right. The nearby separately listed sites are Fairlight (Heritage Item No. 2260140 to the south), which adjoins Fernhill estate lands which are not heritage-listed,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

The various DCP provisions are set out in the assessment section with comment where the clauses are relevant to the application.

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	If potentially impacted by proposal.
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 Rd properties are impacted, Mayfair Rd properties are not impacted.

Item name	Address	Lot & DP Nos.	Heritage Status	Heritage Item No. in LEP 2010	If potentially impacted by proposal.
Mulgoa Public School building, hall, residence and trees	1189–1193 Mulgoa Road	Lot 1, DP 853475	Local	2260130	Adjacent to eastern development
St Thomas Anglican Church and cemetery	43–57 St Thomas Road	Lot 1, DP 996994 and Lot 1, DP 1035490	State	2260126	Not affected.
The Cottage	1012–1046 Mulgoa Road and 2–24 St Thomas Road	Lots 2–4, DP 241971	State	2260125	Not affected.
Former Mulgoa Road Alignment	St Thomas Road		Local	2260844	Not affected.
Fairlight (house, outbuilding and gardens)	377–429 Fairlight Road	Lot 22, DP 625510	State	2260140	Not affected
Table Rock Lookout	716–782 Fairlight Road	Lot A, DP 164835	Local	2260141	Not affected.

## 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 major 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– CENTRAL PRECINCT

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 PRECINCT

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*



*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.*

### 3.3 FERNHILL ESTATE EASTERN PRECINCT

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:

*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 and lot 10 DP615085. 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 and in particular the local school.*

*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 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. The building was destroyed in the 2000 bushfire.*

*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. It should be noted that in 1947 Mulgoa comprised very few buildings and the outlook from Fernhill towards Mulgoa would have been unlikely to revealed many if any buildings in the light tree cover.*

*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 items in the 2010 LEP 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 onto those lands. There is considerable potential for new uses and development within this precinct provided that any heritage significant vistas are maintained and the development does not affect the visual setting of Fernhill.*

Aboriginal archaeological sites have been identified in the eastern area of Fernhill in a report prepared 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 19<sup>th</sup> 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 precinct. 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 precinct. 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 precinct

## 4.0 SIGNIFICANCE

### 4.1 STATEMENT OF SIGNIFICANCE (FROM CMP 2014) 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 Sydney 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. The property has significant views and vistas within the property, such as the winding carriage drive to the house through retained apple gums (*Angophora floribunda* and *A. subvelutina*)*

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

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

*Fernhill had an important historical and visual relationship with St. Thomas' Church and Cox's Cottage but these visual links are now obscured. 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 close and important historical relationship.*

*The Cox family have a particular association with the 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 exceptional 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 CENTRAL PRECINCT

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
- consideration of impacts of proposed uses on the heritage significance of the core Fernhill estate

#### 4.3 SIGNIFICANCE OF NORTHERN PRECINCT

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

#### 4.4 SIGNIFICANCE OF EASTERN PRECINCT

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 parts of the Fernhill Estate 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.

#### 4.6 GRADINGS OF SIGNIFICANCE

The gradings of significance for the Fernhill Estate are outlined in Section 4.3 of the CMP.

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 lined 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
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

Structure, Space or Element	Grading/Grading No	Notes
Tennis court, 1920s	Moderate (3)	South-west of the house
Timber pergola with Doric order sandstone columns (designed by Sorensen in the 1970s)	Moderate (3)	North of the house
Rose garden, sandstone stairs and stone sundial (designed by Sorensen in the 1970s)	Moderate (3)	North of the house
Dammed lake and island (designed by Sorensen in 1970s) with timber bridge and summer house added by Andersons (1980s)	Moderate (3)	East of the house
Littlefields Creek (area of Cumberland Plain Woodland regrowth; creek and its tributaries are original alignments)	Moderate (3)	Southern property boundary
Areas of Cumberland Plain Woodland regrowth	Moderate (3)	Located in CMP precincts 3 and 7
Areas of Alluvial Woodland regrowth	Moderate (3)	Located in CMP precincts 3 and 5

## 5.0 THE PROPOSAL

The proposal essentially divides the areas covered by this application into 2 precincts, as follows:

- The core **Fernhill estate** area, that is the original land grant that will be consolidated into a single lot as part of this proposal.
- The proposed sub-divided part of the **Eastern Precinct** to create residential lots. This area includes land just north of Mulgoa village with a frontage to Mulgoa Road and Littlefields Creek.

The proposal has two major components:

- Sub-division and consolidation of lands
- The continued use of the consolidated land for private residential, rural and equestrian uses

The proposed development, that is the subject of this IDA and which comprises the above two precincts, is subject to a development application submitted under *Clause 5.10 Heritage Conservation (10) Conservation incentives* of Penrith Local Environmental Plan 2010 and as complying development for the balance of the application.

Clause 5.10.10 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:

- the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- 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 SEE.

The proposal for ongoing use of the central precinct and the complying sub-division of the western precinct do not require the use of heritage incentive provisions within the LEP, are existing uses and are complying under the land zoning.

For the eastern precinct, 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 for the very significant Fernhill Estate lands. Consequently the application seeks the use of clause 5.10.10.

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 is not likely to survive as an entity. 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 proposal for development is 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
- conserve the house and landscape
- establish a long-term and viable funding option to ensure the place does not again go through difficulty
- protect the environmental values of the broader estate to a high level.

The IDA involves in detail:

- 1 Undertake a 54 lot residential sub-division in the Eastern Precinct.
- 2 Consolidate the balance of the eastern precinct and lots of the Central Precinct into a central precinct with a total area of approximately 400 hectares.
- 3 Establish a maintenance and conservation program for the estate using proceeds from sub-divisions, funds derived from bio-banking arrangements and funds derived from the equestrian activities proposed in the application to fund the property into the future.

## 5.1 DETAILS OF THE PROPOSAL AND DISCUSSION OF POTENTIAL HERITAGE IMPACTS

### Eastern Precinct

The subdivision is proposed to include:

- 50 Torrens Title residential lots accessed from Mulgoa Road ranging in size upwards from 750 square metres.
- A central parkland adjacent provides both open space and views through the development towards Fernhill. This extends to the lake to the west.

- An existing group of large trees are retained with a viewline from Mulgoa Road to Fernhill beyond.
- The buildings are set back from approximately 65-90 metres retaining paddocks between the new road and the Mulgoa Road.
- The subdivision proposal incorporates the construction of associated road and infrastructure services to service the allotments in accordance with relevant standards.
- There is a single road entry point which is flanked by paddocks. The proposed road intersection is located at the current junction of St Thomas Road and Mulgoa Road to minimise the number of new road access points along Mulgoa Road and to maintain the rural character of the junction.
- The rural character of the Mulgoa Road frontage will be retained up to the boundary of Mulgoa Public School. Trees are to be planted along the edge of Mulgoa Road (within the property) and along the alignment of the new roads to provide a filtered view across the site.
- The sub-division design and road layout has been softened to follow the alignment of contours to better integrate the construction into the setting using swales rather than kerb and guttering.
- Fencing will remain rural in character with farm fencing to the paddocks and timber fencing to the property frontages.
- All lots fronting Mulgoa Road are oriented to Mulgoa Road as their principal elevation.
- A new entry driveway with flanking stone walls that links the design to the two Mulgoa Road Fernhill entries is proposed to identify the location with the Fernhill Estate.
- The retention basin at the entry is designed as a water feature similar to others on the estate.
- Carefully designed and located rural planting is proposed for the road edges to create a filtered outlook to the sub-division while retaining the views through the site as focal points.
- The proposed road entry is located at the junction of St Thomas Road to retain the existing road junction without the addition of new road infrastructure.

The central open area is designed to retain the view across the land, to retain the trees that edge it and to provide a grassed open area that retains links to the rural character. This area and the rural land to the front and the lake behind will remain as part of the Fernhill holding.

This land is gently undulating, rising to a low grassed ridge with a house and outbuildings set along the ridge line, and is partially obscured by dense tree cover along parts of the verge of Mulgoa Road, both adjacent to the village and further north towards Littlefields Creek.

The area around this precinct is currently mixed in character with a range of rural/residential lots and housing developments on both sides of Mulgoa Road and along the southern edge of St Thomas Road. A house also sits on the northern intersection of Mulgoa and St Thomas Roads. There are currently two houses in the eastern precinct, one located on the ridge and within sight of Mulgoa Road, the second within the heavier tree cover to the north.

A park is located directly opposite the proposal that has limited outlook towards the Eastern Precinct lands as it has filtered outlook through trees and is mostly accessed from the southern side. There are no footpaths or pedestrian access along this part of Mulgoa Road and little potential for cars to stop along the frontage of the eastern precinct on either side of Mulgoa Road due to the narrow verges, vegetation and level changes.



It has been observed from site inspection that a distant view towards the garden of Fernhill House is available from Mulgoa Road across a portion of this land. Views have been mapped in detail from Mulgoa Road across the land and have formed the basis of the current design. The view is also mapped in Penrith LEP 2010, however the mapping is not accurate in that it covers an area that extends beyond the available viewscape.

The CMP addresses views and has assessed that the mapped view over the eastern precinct is not a significant heritage view, that is, it is not a view that has any particular heritage value. Rather it is a glimpse across trees and paddocks towards the hill on which Fernhill house is located. It is not a planned, historical or intended view and has limited if any heritage significance. However, the view exists and is one of the few locations that there are any distant views to Fernhill (others exist from the hills to the east) of Mulgoa Creek. In recognition that the view is included in the LEP and is available the sub-division has been designed to retain aspects of the view and to break up the lots into smaller groups.

The proposal for sub-division in this area is predicated on several heritage factors.

The concept of undertaking some development within the estate outside of the state heritage listed lands is sound and allows other heritage outcomes. These include the offer to consolidate the central (and part of the eastern) precinct to effectively prevent the breaking up of the estate. This by itself is a very significant heritage outcome and, subject to amenity considerations related to the proposal (that are not addressed in this report), there are no adverse heritage outcomes from undertaking sub-division in the area proposed.

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. The combination of physical separation from the eastern precinct and the lack of visual connection through both topography and dense and protected tree growth between the sites means that there will be no potential for impacts.

It would appear that the main item to consider, external to the site, is the potential visual impact of sub-division on the setting of Mulgoa Public School.

The School and its site is a heritage item that contains two heritage buildings and a range of later and some quite recent structures. The rear of the site is open and used for recreation. The school have developed in part by locating new buildings (somewhat randomly) along the northern boundary, these include a small school hall building that is oriented away from Fernhill. The rear part of the school site looks into the Fernhill land and the outlook is of largely wattle regrowth. There are no long views available from the rear of the site, however the view is of bushland and was once of farmland.

The proposal sets development well back from Mulgoa Road and well behind the heritage buildings of the school retaining the paddock edge and the setting of the older buildings.

A number of residential lots back onto the rear portion of the school lands and will change the character of that section of the outlook from the school. There will be a minor adverse impact on the outlook and setting of the rear of the school but this is minor and reflects the pattern of development of the school lands where buildings have been located along the northern boundary gradually removing the visual connection to the adjacent land.

Technically undertaking sub-division has no visual impact, however the development that will take place from sub-division may have a visual impact and can involve a considerable change in the appearance of an area. To mitigate the impacts of development and it is noted that development will be seen on this land, the following has been proposed:

- The immediate Mulgoa Road frontage will retain an open rural character due to the setbacks.
- Screen planting will be introduced to filter views to the new buildings.
- An open park area is to be created through the centre of the development to retain views from Mulgoa Road and to provide views from the public domain across the Fernhill lands.
- A second break in the lots has been created to allow another cross view over the area.
- The sub-division is set back so that the relationship of the heritage buildings of Mulgoa School to the paddocks is retained.
- A substantial financial contribution is to be made from each lot towards the conservation fund for Fernhill
- The rural and parklands will remain in the ownership and management of Fernhill to provide ongoing links to the development.
- Site specific guidelines will be developed to control housing development on the new eastern lots.

The two questions that have to be determined, as the most significant or visible part of the view across the land is being retained, are whether the view from the road across this land is sufficiently important to result in a refusal of the proposal and following from that are there other options for sub-division that could achieve the heritage outcomes for Fernhill and retain this area as rural land.

Fernhill has a range of cultural and natural values that overlap and place very severe restrictions on what may take place on the estate. These include:

- the heritage values that seek to conserve the core estate without sub-division or inappropriate development in the future
- environmental values that are seeing large parts of the core and broader estate set aside for bio-banking and environmental conservation
- the rural uses of the property that are to be continued and which require rural land

When these values are overlaid there are two areas of the broader estate that could accommodate some form of development: the eastern and western precincts (noting that the northern precinct is already in separate lots). However, they are also constrained by environmental and archaeological considerations that limit potential areas for development to quite small footprints.

The proposed sub-division of the eastern precinct is in an area that is defined by applying the various values to the estate and then by looking to create a development that relates to and adds to the township of Mulgoa in a meaningful way.

The proposal achieves this.

A further consideration is the one of views over the land and the CMP has discussed views and while this is not a heritage view or a view of specific heritage value it is a view that has been identified as having some public value.

LEP 2010 within the heritage clauses sets an objective as

*(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, **settings** and **views**,*

The LEP provides no further assistance in defining a setting or view, but it does require detailed assessments through conservation management plans or similar to determine the value of the heritage attributes of a place. The CMP considers views in some detail.

Clearly the LEP uses the term 'view' as something that is identifiable in terms of heritage value, that is, it has to be definable, it cannot simply be something that can be seen or every view onto a heritage property would be significant.

To further explore this it is necessary to understand what makes a view significant and what is a 'view'.

The Oxford English Dictionary interestingly, does not give a particular value to the concept of 'a view', except as a way of defining what can be seen from a particular position. This equates to the 'field of view' concept. It is descriptive but does not attach any value to seeing something. The various definitions within the OED address concepts such as forming a view, a visual examination being a view etc., but do not include a definition that sets out a value that is attributable to seeing something.

This is important and contrasts to say a 'lookout' that has one meaning of a 'prospect', which does involve placing a value on what is seen. The term 'prospect' is perhaps a more useful one in understanding a site such as Fernhill as the site (in its broadest as well as detailed sense) was laid out to achieve a 'prospect' towards the valley, the church, the hills etc. and the concept places a value on what can be seen.

Conversely there was once a prospect from St Thomas Church towards the house and grounds across the park-like landscape, however this has been obscured by changes to the site and extensive re-growth.

The OED provides definitions of the term 'prospect' including (that are relevant to this discussion):

*Looking out towards a distant object etc.*

*Facing in a specified direction*

*An outlook or aspect of a building*

*A place providing an extensive view*

*A lookout*

*An extensive or commanding view of a landscape etc.*

*Provide an outlook in a specified direction.*

English Heritage provide a definition and discussion of views that is of assistance:

*The contribution of setting to the significance of a heritage asset is often expressed by reference to views – a view being a purely visual impression of an asset or place, obtained from, or by moving through, a particular viewing point or place.....*

*Some views may contribute more to understanding the significance of a heritage asset than others. This may be because the relationships between the asset and other historic assets or places or natural features are particularly relevant: because of historical associations; or because the composition within the view was a fundamental aspect of the design of the heritage asset.*

The importance of the English Heritage understanding is that they clearly set out that not all views are equally important and that there has to be a sound connection between view and historical association, intent, planned composition etc., for it to be considered important.

These definitions, collectively and separately require something of value to be able to be seen from a defined position and for that view to be also of value. It is more than a casual or fleeting glance and more than simply being able to see something.

It is also noted that the LEP does not define the term view.

If there were a definable or identifiable value in what could be seen from Mulgoa Road looking west across the eastern precinct of Fernhill (as a 'prospect' for example) towards the central part of the estate then heritage value could then be considered as part of that value.

The 2010 inclusion of the viewshed over this land in the LEP fails to achieve that recognition. There is no reason for inclusion provided, no identification of values and no appreciation of how the view achieves significance.

However the CMP has set out a detailed analysis of the view that is available to assist in defining what should be retained if development takes place.

In reality the view is only available to a viewer in a car moving along Mulgoa Road to the north who can fleetingly see across the foreground paddocks to trees and landscape beyond. The view is not available when travelling south as the viewer is moving away from the view and it is not available to pedestrians as there is no provision for pedestrian access in the vicinity of the view.

A further consideration is whether development of the eastern land affects the identified heritage value of the land as listed in the LEP.

To consider this, the actual listing is important as it nominates the reason for inclusion, which is titled 'Curtilage of Fernhill'.

To understand this, the concept of curtilage has to be properly understood.

Curtilage is an archaic concept and interestingly, its definitions do not shed any light on the reasons for heritage listing. The definitions include:

OED:

*A small court or kitchen garden*

*A Small courtyard or piece of ground attached to a house and forming one enclosure with it*  
Collins Australian Dictionary:

*No definition*

Or looking back to a period when the term was in more common usage: Imperial Dictionary of 1883:

*A Courtyard*

*In law, a courtyard, backside or piece of ground, lying near and belonging to a dwelling house, the limit of the premises in which house-breaking can be committed.*

The BURRA Charter 2013:

*Curtilage is not used or defined however; the term 'setting' is used but is not defined.*

English Heritage

English Heritage define curtilage as:

*A legal term describing an area around a building, the boundary of which is defined by matters including past and present ownership and functional association and interdependency. The setting of an historic asset will include, but generally be more extensive than, its curtilage (if it has one).*

This is perhaps the most useful definition as it includes the dictionary definition and places it within a context of setting. If this definition is applied to the eastern precinct, the precinct does not form part of the curtilage but does form part of the broader setting.

The LEP heritage nomination appears to be incorrect in providing a reason for including the land in relation to Fernhill. It is most likely that the listing should have been to provide a 'setting' for the Fernhill Estate rather than a curtilage.

The Burra Charter refers to 'setting' in terms of establishing an appropriate setting for a place that includes the visual and sensory concepts of setting. The Charter sets out that works that adversely affect the setting of a place should be avoided.

The setting of Fernhill is the original land grant area on which the house and planned landscape are situated. This equates to the State heritage listed area. The additional lands that are locally listed for their contribution to the 'curtilage' of Fernhill, in essence, provide a buffer zone around the property so that new and possibly inappropriate development does not take place within the important visual outlook from the house. The eastern (and northern lands) have, for a long time, been identified as having some contribution to the setting of Fernhill and any proposals for development or use need to be carefully considered.

An important consideration is the ability to undertake some development on these more peripheral and less heritage sensitive areas of the estate rather than on the core heritage listed land. This achieves the Burra Charter requirement of not undertaking development that has an adverse heritage impact on the 'setting' of the place. This applies in the following way.

The original grant land or Central Precinct is the 'setting' of Fernhill, this is recognised by the State heritage listing. The eastern and northern added lands make a contribution to that setting and provide buffering against development but are not in themselves part of the core estate. Also these lands do not have heritage value in their own right, that is they are only listed and have significance in relation to Fernhill. Or to express it in a different way, the eastern and northern lands would not be heritage listed if Fernhill did not exist as the adjacent property.

Consequently there can be no adverse heritage impacts on the land itself from sub-division or development however, any proposed development needs to be visually sensitive to Fernhill and Mulgoa School.

With regard to views from Fernhill, there is a view over the eastern precinct as the present farm house and sheds can be seen in the distance from Fernhill house, however it is a minor part of the broad 'prospect' from the house and garden and some further development in the area will not adversely affect views from the house. The view across the eastern precinct is a very small view within a very broad 'prospect' and the addition of some additional building along with considered landscape will not have an impact on the outlook from Fernhill.

The consolidation of a large part of the eastern lands into the central precinct as a result of this application will allow a long-term integrated management of the estate across Littlefields Creek to take place and will also allow the management of the significant vegetation in the creek corridor that would not be possible if the eastern precinct were excised and under different management.

It is also important to understand the change in the landscape over time with the major increase in vegetation and revegetation, particularly along Littlefields Creek and around the edges of the eastern precinct. What would have been a quite open landscape, seen across the boundary to the adjacent property, is now a closed landscape with limited viewing into the surrounding lands possible.

The view from Fernhill is a broad 'prospect' across the Mulgoa Valley and takes in distant hills and an extensive landscaped area. It does not focus on the eastern precinct, even though a small section can be seen and a managed change to that precinct will not adversely affect Fernhill.

A final consideration is the relationship of development in the eastern precinct to adjacent heritage items. There are two heritage items nearby, St Thomas Church and Mulgoa School. There is also the consideration of the proposal on the setting of Mulgoa Road.

There is no impact on the church which is visually separate from the eastern precinct and separated by dense Cumberland Plain woodland as well as the re-aligned Mulgoa Road.

There is minor impact on the school as part of the current open paddock will contain new development that will be seen when looking out from the school grounds. The grounds are quite open and the northern edge of the site contains the heritage buildings that are set square to Mulgoa Road and obliquely to the boundary. There is a driveway and parking that are immediately to the north of the school building that fills the area between building and boundary. The school playing fields are to the rear (west and south). A newer school building (hall) is located to the rear of the heritage building. The second heritage building is located further south along Mulgoa Road. Both heritage buildings orient to the street.

The addition of residential development on the north side of the school has no impact on the school itself and minimal impact on the former school residence building that is located closest to the north boundary. This change as noted will be a change in the visual setting of the school as there is development proposed for the rear of the site adjacent to the school land.

#### Central Precinct

The proposal does not change the nature, use or character of the central precinct and provides for a continuation of existing equestrian uses. As the site is large and rural in character agisting horses and training are basic activities that utilise the rural parts of the site.

These items are addressed in the SEE.

## 6.0 ASSESSMENT OF HERITAGE IMPACT

### 6.1 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. It achieves this by proposing appropriate uses for the site and a management system to allow them to take place without adverse impacts and it retains the core estate holding with additional setting on a consolidated parcel of land.  The proposal achieves the objective of this clause.
Clause 5.10 (1) (b) to conserve the environmental significance of heritage items including	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

LEP Clause	Discussion and Response
associated fabric, settings and views;	<p>demonstrated by the works undertaken over the last 18 months to stabilise and repair the place. This extends to the core site and extended setting which is also set out in detail in the work schedules.</p> <p>Significant views have also been carefully considered with the design of the EP subdivision and are to be retained and where feasible recovered as part of the longer term works program for the site.</p>
Clause 5.10 (1) (c) to conserve archaeological sites;	<p>There are no works within the proposed consolidated estate that affect any known archaeological site.</p> <p>Some archaeological investigation may be required in the eastern precinct for the former slab hut site and Aboriginal archaeological sites. Development does not impact this site, however should any disturbance by required archaeological investigation will take place.</p> <p>It is noted that the slab hut site is within the paddock area fronting Mulgoa Road and is not proposed to be disturbed.</p>
Clause 5.10 (1) (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.	Refer to comment above.
Clause 5.10(4) requires the consent authority (in this case Penrith City Council) to <i>"consider the effect of the proposed development on the heritage significance of the item or area concerned"</i> prior to granting consent.	The development application and section 60 application process provide for both Penrith City Council and the Heritage Council to consider any effects of development on the heritage values of the place.
Clauses 5.10(5) and (6) enables the consent authority to require the submission of a CMP and/or a Heritage Impact Statement in relation to any development proposal affecting a heritage item.	<p>A CMP has been prepared and is provided with the application along with this HIS and schedules of works.</p> <p>The CMP is submitted for endorsement and the documents satisfy the LEP requirement.</p> <p>The CMP has undergone a rigorous and detailed review process.</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).	The application is both referred to the NSW Heritage Council and in part consent is sought for activities within the State Heritage listed area.
Clause 5.10(8) requires the consent authority to consider the affect of development on an Aboriginal place of heritage significance, before granting consent, and requires the consent authority to notify the local Aboriginal community about the proposal and to take into account any response received within 28 days.	An archaeological report is submitted with this application that addresses the requirements of this clause and the Act.
Clause 5.10(9) regarding development in the vicinity of heritage items applies to the proposal.	<p>This clause applies to heritage items that are not subject to this application. These sites are set out in the earlier section of this report.</p> <p>There are no adverse 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</p>



LEP Clause	Discussion and Response
	<p>directly connected to the areas that are proposed for sub-division.</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.</p> <p>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. Newer school development has also been located along the common boundary blocking the visual links between much of the school grounds and the Fernhill land. The rear part of the school also looks into recent undergrowth limiting any views across the eastern precinct. We conclude that there is minimal adverse impact on the heritage values of the school.</p>
<p>Clause 5.10(10) <i>Heritage Incentives</i> of the Penrith LEP 2010 for approval states:</p> <p>(10) Conservation incentives</p> <p>The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:</p>	<p>The DA is submitted on the basis that this clause applies to the site. The proposal seeks Councils' consent 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>There is extensive precedent for the break-up of heritage estates that cannot be maintained and for which no viable use can be found. Usually such a break-up is addressed outside Council and there are many properties of equal significance to Fernhill that have been subject to intensive development retaining only relatively small areas around the original house. It is understood that there is a counter argument that the site is already adequately protected from sub-division and inappropriate development as a result of its heritage listing, however, it is our observation that there is nothing to prevent the sale of all the peripheral lands at Fernhill and then making an application for intense development of parts of the core estate as the way to conserve the house and its immediate setting. Looking at precedent for this in the west of Sydney suggests that such an approach is likely to succeed through government.</p> <p>In contrast, this proposal is a moderate, well thought out and responsive one that has considered the various objections and submissions made, has been discussed and negotiated at length with Penrith Council to mitigate perceived impacts and to address community concerns and delivers a very significant heritage outcome for the estate including:</p> <ul style="list-style-type: none"> <li>• Setbacks from Mulgoa Road to preserve rural entrance to village.</li> <li>• Development footprint has provided a visual link to Fernhill that can be accessed by Public</li> <li>• Community Benefit through inclusion of open space</li> </ul> <p>The idealistic notion that Fernhill can remain as a folly without any development or additional uses is a flawed idea. Even apart from conservation and maintenance of the heritage aspects of the place (which is provided for in this proposal) the cost of maintaining and operating the property is high and without the ability to produce income that both sustains the estate and makes a profit, there will be pressure for break-up or uses that may not be appropriate.</p> <p>The owners and receivers, contrary to many of the critical claims made in response to the last application, have taken the heritage values and the retention of the estate as an entity seriously and the proposal that is now submitted is appropriate for the site, facilitates</p>

LEP Clause	Discussion and Response
	<p>conservation and fits without any doubt within the intent of clause 5.10.10.</p> <p>Reference to past applications reinforces the small scale of this proposal as it is significantly less than has previously been put forward for the site (in both the recent application and the much greater development proposals put forward by the Andersons when they owned the property). Comparison with earlier proposals 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"> <li>- the consolidation of State Heritage Listed land into one lot</li> <li>- the proposal to establish a voluntary planning agreement to provide for the future conservation and maintenance of the Fernhill estate with an estimated annual expenditure of approximately \$300,000 and an offer of \$3 million dollars to be established in a Trust Fund</li> <li>- establishment of a maintenance regime that is linked to the heritage agreement</li> </ul> <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	<p>The CMP has been submitted for endorsement by the Heritage Council. The CMP has been reviewed and revised in response to Council and Heritage Office Comments. The CMP also forms part of the IDA submission and presumably will be considered by Penrith City Council as part of the overall project.</p> <p>It is noted that the current CMP has been extended and edited in response to feedback from both Council and the Heritage Council to specifically address in more detail some of the landscape issues and the view issues.</p>
(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 impact on just the land proposed for sub-division.</p> <p>The exception to this is the site of the former slab cottage, which should be investigated if works take place in its vicinity.</p> <p>This proposal also responds to the CMP, which requires the key landscape areas of the site to be maintained in an open park-like form and looks to locate any future elements outside the key areas of the estate.</p> <p>With regard to the eastern precinct lands, in addition to considerations about impacts on Fernhill from development, as the</p>

LEP Clause	Discussion and Response
	<p>land is locally heritage listed (even though it is specifically listed in relation to Fernhill) there needs to be consideration of impacts that may occur to the land itself.</p> <p>Apart from the site of the former slab cottage (considered above) the Planning Controls that cover the site within the LEP are the appropriate level of control for new works. The offer to prepare a site specific DCP extends this level of control to assist in fitting development into the setting. The Penrith DCP provides guidance on any aspects of rural development, the proposed DCP controls will go further. Matters to be addressed include:</p> <ul style="list-style-type: none"> <li>- siting of buildings</li> <li>- orientation of buildings</li> <li>- single and double storey forms and their suitable locations</li> <li>- building and roof forms</li> <li>- specific set backs</li> <li>- fence requirements</li> <li>- landscape requirements</li> <li>- materials that are suitable</li> <li>- colour palettes</li> <li>- location of garaging and carports</li> <li>- road construction that is suitable for the setting</li> <li>- public domain works</li> <li>- management of infrastructure</li> </ul>
(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 undue impacts on neighbours.</p> <p>The sub-division proposal is modest in relation to the size of the Fernhill site and carefully designed to reduce or remove 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 that there is no particular constraint on the retention of lands outside the core Fernhill site 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 impacts of the proposal on views and vistas are minimal, as various changes to Fernhill and the surrounding area over time have impacted on former significant views and vistas. In particular, views from Mulgoa Road although minimal have been retained and other former historic views from Mulgoa Road are now not capable of reinstatement due to environmentally significant Cumberland Plain Woodland, which has regenerated since the mid 20<sup>th</sup> 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.

## DCP CONTROLS – SECTION C7 of the Penrith DCP 2010

<p><b>C7 Culture and Heritage</b></p> <p><b>General Objectives</b></p> <p><i>The objectives of this section are to:</i></p>	
<p>a) <i>Promote the wise management, development and conservation of the heritage assets of Penrith;</i></p>	<p>This application seeks to conserve the Fernhill Estate and provide for a small amount of development outside the core estate areas in order to provide for the conservation and maintenance of the property into the future and to secure an expanded central estate from future subdivision.</p>
<p>b) <i>Conserve the environmental heritage of Penrith;</i></p>	<p>This proposal conserves the very significant Fernhill Estate.</p>
<p>c) <i>Conserve the heritage significance of the existing fabric, relics, settings and views associated with heritage items and heritage conservation areas;</i></p>	<p>The significance, views, fabric and relics are conserved in this proposal.</p>
<p>d) <i>Ensure that alterations, additions and infill development are sympathetic and respectful of the values of the heritage place;</i></p>	<p>There is no infill, alterations or additions, however proposed development has been designed with controls to be respectful to the setting and place.</p>
<p>e) <i>Promote the protection of places which have the potential to have heritage significance but are not identified as heritage items, places or heritage conservation areas</i></p>	<p>Not applicable.</p>
<p>f) <i>Ensure that the heritage conservation areas throughout Penrith retain their heritage significance;</i></p>	<p>Not applicable.</p>
<p>g) <i>Provide guidance on the range and application of</i></p>	<p>This is set out in the proposal and this HIS,</p>

available conservation incentives;	in particular the use of clause 5.10.10.
h) <i>Control the demolition of heritage items and archivally record a heritage place in circumstances of demolition;</i>	There is no demolition of heritage items proposed.
i) <i>Ensure archival records of heritage items and potential heritage places are undertaken in certain circumstances to a prescribed standard; and</i>	Not required.
j) <i>Ensure that proposals for development of environmental heritage are undertaken in a sustainable and appropriate way that conserves its values.</i>	The proposal is sustainable and developed to conserve heritage values.
<b>Determining the Impact on Heritage Significance</b>	
a) <i>Where a proposed development could affect the heritage significance of a heritage item, heritage conservation area or place of potential heritage significance (see Section 7.1.2 below), the applicant is required to lodge a Heritage Impact Statement or Conservation Management Plan (as required).</i>	Both of these documents are provided.
b) <i>A proposed development could affect the heritage significance of a heritage item, heritage conservation area or place of potential heritage significance if it is either in that item, place or conservation area or it is in the vicinity of that item, place or conservation area.</i>	The CMP and assessment consider both the heritage items that are affected by the development and the adjacent heritage items.
c) <i>Impact on a heritage item, place or conservation area can include, but is not limited to:</i> <ul style="list-style-type: none"> <li><i>Affecting the item, place or area itself;</i></li> <li><i>Affecting a significant view to or from the item;</i></li> <li><i>Affecting the setting or heritage curtilage, including any landscape or horticultural features of the item;</i></li> <li><i>Overshadowing of the item;</i></li> <li><i>Affecting the form of any historic subdivision pattern;</i></li> <li><i>Undermining or otherwise causing physical damage to the item; or</i></li> <li><i>Otherwise having an adverse impact on its heritage significance.</i></li> </ul>	<p>The following dot points are considered as set out:</p> <p>There is no actual impact on Fernhill</p> <p>Views to and from have been considered.</p> <p>The setting and landscape has been considered in detail. The proposal does not propose landscape works within the core estate.</p> <p>Not applicable</p> <p>The sub-division pattern of Fernhill and the surrounding area has been altered from large estates to rural residential, while there is some sub-division proposed in areas that are already sub-divided, a key element of the proposal is the consolidation of the main estate, its expansion and the creation of a VPA to secure the property as an entity. This is a very significant heritage outcome for the place.</p> <p>All known potential heritage impacts have been considered and addressed in the proposal.</p>
d) <i>A Heritage Impact Statement or Conservation</i>	This has been prepared, it accompanies the



<i>Management Plan must be prepared by a qualified Heritage Consultant.</i>	application and has been submitted to the NSW Heritage council for endorsement after review and adjustment.
<i>e) A Heritage Impact Statement must address the issues set out in this section of the DCP and the Submission Requirements for applications in Appendix F3 of this DCP.</i>	This HIS addresses these matters.
<b>Heritage Items - Objectives</b> <i>The objectives of this section are to:</i>	
<i>a) Encourage the retention of existing heritage items and their significant elements;</i>	The key heritage item is Fernhill and its original estate. It is retained and conserved in its entirety in the application and implementation of VPA. One of the major reasons for the proposal in the form it is in is to allow the conservation of Fernhill without affecting the buildings or the original site.  The other heritage listed land does not contain significant built structures and is listed for its contribution to the Fernhill setting. These lands retain that contribution in this proposal.
<i>b) Ensure development is based on the understanding and conservation of the heritage significance of the item;</i>	The history and significance of the whole place is clearly understood and set out in the CMP.
<i>c) Encourage heritage items to be used for purposes that are appropriate to their heritage significance;</i>	Fernhill will remain as a house and rural/equestrian use in this application. These are appropriate uses.
<i>d) Maintain the setting of the heritage item including the relationship between the item and its surroundings;</i>	Fernhill house is retained within its overall setting. The minor changes to the eastern and western precincts do not affect the setting of Fernhill.
<i>e) Encourage the removal of inappropriate alterations and additions, and the reinstatement of significant missing details and building elements; and</i>	A conservation and maintenance program sets out works to ensure the place is maintained. There are no inappropriate additions or alterations to the heritage buildings.
<i>f) Protect and conserve built heritage in accordance with the principles of the Burra Charter.</i>	The Burra Charter underpins the CMP.
<b>Section C Controls</b>	
<b>1. Site Planning</b> <i>Any new development should be positioned to ensure that the visual prominence, context and significance of the existing heritage item and its setting are maintained.</i> <i>Front and side boundary setbacks are a major contributor to the character and significance of a heritage item or heritage conservation area. Existing</i>	The new development in this application is sub-division.  The development does not take place within the setting of the heritage item, although a small amount of new building will be seen from the grounds of Fernhill.

<i>patterns should be maintained in new development to continue the established rhythm of buildings and spaces.</i>	
<i>a) Development should conform to the predominant front setbacks in the streetscape.</i>	The eastern sub-division adopts an 65-90m minimum setback from Mulgoa Rd which matches the existing building on the site.
<i>b) Development should respect side setbacks and rear alignments or setbacks of surrounding development.</i>	Some of the proposed lots back onto existing development including a heritage item. The setting of the adjacent heritage item has been carefully considered in setting out the lot arrangement to ensure it retains its setting. The setting of the school has been retained by the 65-90m setback and the retention of paddocks to the frontage of the heritage buildings.  The building pads are compliant with Penrith DCP.
<i>c) Front and rear setbacks should be adequate to ensure the retention of the existing landscape character of the heritage item or conservation area and important landscape features.</i>	The landscape setting of the heritage item is not affected.
<i>d) Any significant historical pattern of subdivision and lot sizes is to be retained. Subdivision or site amalgamation involving heritage items or contributory buildings should not compromise the setting or curtilage of buildings on or adjoining the site.</i>	The historical pattern of sub-division has been severely compromised throughout the Mulgoa Valley as the historical pattern was large estates which have mostly been sub-divided in some form. The enlargement and retention of the Fernhill setting has a very positive heritage outcome, creating smaller lot developments on the edge of the village extends the lot pattern of the village in a limited way.
<b>2. Alterations and Additions</b> <i>This section includes general provisions for alterations and additions to heritage items.</i>	Not applicable as no additions are proposed to the buildings
<b>3. Subdivision and Site Analysis</b> <i>The subdivision of land upon which a heritage building is located has the potential to isolate the building from its setting thereby reducing its cultural or historical significance.</i>  <i>The setting of a heritage building is often referred to as the curtilage and may include the immediate garden, mature trees, original allotment boundaries, paddocks, fencing, outbuildings, archaeological sites, views/vistas or any other feature or space which allows a greater understanding of its historical context. The curtilage is therefore essential for retaining and interpreting the heritage significance of that building.</i>	The land on which Fernhill is located is not to be sub-divided. The curtilage (or more correctly setting) of Fernhill is fully retained, enlarged and protected against future reduction. The setting is well understood and a key outcome of the proposal is the securing of the setting.
<i>a) Proposals for subdivision should define an</i>	The setting is defined as the original estate

appropriate setting or 'curtilage' for the heritage building as part of the heritage impact statement or conservation management plan.	with extended land as identified in the proposal.
<p>b) In determining the curtilage of a heritage building, consideration is to be given to the following:</p> <p>i) The original form and function of the heritage building: The type of structure that constitutes the heritage building should be reflected in the curtilage. For example, it may be appropriate that a larger curtilage be maintained around a former rural homestead than that of a suburban building;</p> <p>ii) Outbuildings: A heritage building and its associated outbuildings should be retained on the same allotment; and</p> <p>iii) Gardens, trees, fencing, gates and archaeological sites: Features that are considered valuable in interpreting the history and in maintaining the setting of a building should be identified and, where possible, retained within the curtilage.</p>	This has been done.
<p>c) New development shall be of a scale and form that does not detract from the historical significance, appearance and setting of the heritage item. In this way, the following elements require specific consideration:</p> <p>i) The height of new development near heritage items shall be less than the subject item. Increases in height shall be proportional to increased distance from the items and will be considered on merit;</p> <p>ii) Views and vistas to the heritage item from roads and other prominent areas are key elements in the landscape and shall be retained;</p> <p>iii) If the development site can be viewed from a heritage item(s), any new development will need to be designed and sited so that it is not obtrusive when it is viewed from the heritage item(s); and</p> <p>iv) Curtilages shall be retained around all listed items sufficient to ensure that views to them and their relationship with adjacent settings are maintained.</p>	<p>The scale and form of new buildings within the sub-division is subject to site specific controls as set out in this application. The controls address:</p> <ul style="list-style-type: none"> <li>- height and form</li> <li>- roof form</li> <li>- materials</li> <li>- fences</li> <li>- landscaping</li> <li>- orientation of buildings</li> </ul> <p>Views across the eastern precinct towards Fernhill (noting that the house cannot be seen) have been retained.</p> <p>The siting of new lots has been determined to reduce visibility for heritage items.</p> <p>Settings have been retained in relation to Fernhill and the adjoining heritage items.</p>
<p><b>4. Gardens, Landscaping and Fencing</b></p> <p><i>In many circumstances it is important to protect, not only the heritage item or conservation area itself, but also the land around it which contributes to its setting, therefore enhancing its heritage significance.</i></p> <p><i>Curtilages shall be established by evaluating the components of a site relative to the building. Key</i></p>	<p>The proposal protects the whole of the Fernhill core lands. The setting is defined and protected.</p>

<p>aspects of a property's curtilage include any gardens, entrances, fencing and outbuildings.</p> <p>The curtilage shall maintain the relationship between these elements so as to allow the heritage item and its site to be understood. As a result, these elements shall be used in determining a suitable curtilage and shall be retained where suitable.</p>	
<p>a) In order to preserve and maintain an appropriate scale and the visual prominence of a heritage item, the building height of new development shall generally not exceed that of the original heritage item. New development or large additions or alterations must provide a transition in height from the heritage item.</p>	Not applicable.
<p>b) Development proposals, which involve large scale redevelopment and alteration to the original character of the heritage item and will negatively impact on the heritage significance of the curtilage, will not be permitted.</p>	Not applicable.
<p>c) The colours and materials used in a new development (whether an extension or addition) should complement the colours and materials of the heritage item. New development within the curtilage must not adversely impact upon the significant fabric of a heritage item.</p>	Not applicable.
<p>d) Where possible, existing fences that have been identified as significant or that contribute to the overall setting or character of a heritage item are to be retained or repaired, rather than replaced.</p>	This is being done.
<p>e) New fences should either match as closely as possible the original fencing, or if the original fence type is not known, specifically relate to the architectural character and period of the existing heritage item with respect to design, materials, colour and height. Old photographs or careful inspection of remaining fabric can often reveal the original fence type.</p>	This is not possible for the rural estate as it requires working rural fences.
<p>f) New development shall not be sited in front of the front building line of the existing heritage item nor shall it extend beyond the established side building lines of the heritage item.</p>	Not applicable.
<p>g) New development within the same curtilage as a heritage item shall generally not be larger in scale than the heritage item. Reference shall be made to the building height of the heritage item as the maximum permissible building height of alterations or additions.</p>	Not applicable.
<p>h) Vegetation around a heritage item shall be assessed for its value to the item and retained</p>	This has been undertaken as part of the CMP but does not form part of the

where required.	application.
<p><b>E2 - Mulgoa Valley</b></p> <p><b>Background</b></p> <p>The Mulgoa Valley Precinct plays an important role in providing:</p> <ul style="list-style-type: none"> <li>• A nature and heritage conservation area on the fringe of the Sydney metropolitan area;</li> <li>• A rural, recreation and tourism centre for Penrith and suburbs in the surrounding region;</li> <li>• An area of limited rural living opportunities in sympathy with its landscape and heritage values; and</li> <li>• A landscape buffer between the Blue Mountains National Park and the suburbs of Western Sydney.</li> </ul> <p>In addition to the general objectives for Mulgoa Valley, the objectives of this section are to:</p>	
a) Protect the surviving early colonial rural landscape from any further degradation;	The securing of the core estate with additional lands achieves this.
b) Ensure development does not prejudice the remaining evidence of the Cox family's associations with the Valley, its houses and gardens;	Nearly all developments within the valley affect land once owned by the Cox family. The evidence at Fernhill is not affected by the proposals.
c) Preserve and enhance the visual relationship between the sites of Cox's Cottage, St Thomas's Church and Fernhill;	The visual relationship between St Thomas and Fernhill was lost about 50 years ago. The proposal does not increase that impact and in the future there will be thinning of some areas of landscape to recover remnants of the former view.  There is no connection between The Cottage and views related to this application.
d) Conserve the surviving structures, features and gardens at the major historic and archaeological sites;	This is achieved.
e) Protect the visual catchments of heritage items by appropriately siting development having regard to the significance of the setting;	This is achieved.
f) Prevent development within the historic landscapes and curtilages of heritage items which may detract from the significance of those sites; and	This is achieved. Development is proposed in an adjoining landscape to Fernhill that is sufficiently removed from the Fernhill setting that it does not adversely impact.  Development has been sited to preserve the setting of the School and Fairlight as adjoining heritage properties.
g) Prevent any activity which could destroy the potential archaeological resources of any heritage items	The only European archaeology is the site of the former slab cottage. This is to be investigated and assessed. As it appears



	the cottage was relocated to this site it is not anticipated that the archaeological resource will be significant.
<b><i>Heritage Items and Vistas Background</i></b> <i>In addition to the general objectives for Mulgoa Valley, the objectives of this section are to:</i>	
<i>a) Protect the surviving early colonial rural landscape from any further degradation;</i>	The colonial landscape remnant is the Fernhill core estate, this is fully protected.
<i>b) Ensure development does not prejudice the remaining evidence of the Cox family's associations with the Valley, its houses and gardens;</i>	This is achieved.
<i>c) Preserve and enhance the visual relationship between the sites of Cox's Cottage, St Thomas's Church and Fernhill;</i>	Refer to comments above.
<i>d) Conserve the surviving structures, features and gardens at the major historic and archaeological sites;</i>	This is achieved. A conservation fund is to be established to undertake this.
<i>e) Protect the visual catchments of heritage items by appropriately siting development having regard to the significance of the setting</i>	This has been considered and achieved.
<i>f) Prevent development within the historic landscapes and curtilages of heritage items which may detract from the significance of those sites; and</i>	This has been achieved.
<i>g) Prevent any activity which could destroy the potential archaeological resources of any heritage items</i>	This has been achieved.
<b><i>C Controls</i></b>	
<i>a) No structures are to be located in the view corridors linking the heritage items of Cox's Cottage, St Thomas's Church and Fernhill.</i>	This has been achieved.
<i>b) Figures E2.1 and E2.2 show the extent of the historic landscapes and curtilages in Mulgoa Valley and should be used in assessing the impact development may have on them. Buildings are to be screened from view from heritage items and their curtilages. (Figures E2.1 and E2.2 are located at the end of Section 2.2).</i>	This is noted and the maps have been remapped to gain clarity from the inaccuracies of the sketches and have been overlaid on current proposals. The final layouts reflect a response to the mapping. It is noted that the eastern lands do not require detailed design controls as defined in this map.
<i>c) Penrith LEP 2010 Scenic and Landscape Values Map. No development is permitted in the vistas of these heritage items unless they are for the purpose of restoring, rehabilitating or preserving elements of the heritage items, such as fences, outbuildings, gates, roadways or plantings. Such structures should be designed and sited so as not</i>	This has been addressed in the discussion about the mapping and the layout of the proposed sub-division.

<i>to detract from the vistas.</i>	
<i>d) Landscaping, including trees, should be sensitively sited to complement rather than interfere with the vistas.</i>	Landscaping is proposed around the sub-divisions to extend the rural character and to filter views to development while retaining open vistas across the land towards Fernhill.
<b>Siting</b> <b>Objectives</b> <i>In addition to the general objectives for Mulgoa Valley, the objective of this section is to ensure that buildings are sited to protect and enhance the rural and natural landscape of the Valley, particularly when viewed from roads and other public places.</i> <b>C. Controls</b>	
<i>a) Buildings are to be located on mid-slopes to avoid visual impact on ridges and to avoid the banks of watercourses.</i>	The siting of the lots has been developed to achieve setbacks from roads, to open vistas across the site and to keep way from water courses.
<i>b) Buildings are to be setback at least 30 metres from public roads and at least 100 metres from Mulgoa Road. This control may be varied depending on the topography of the site.</i>	The buildings are set back 100m from Mulgoa Road
<i>c) Buildings are to minimise excavation, filling and high foundations by avoiding slopes greater than 1 in 6.</i>	Noted and subject to later applications.
<i>d) The longest façade of a building is to be parallel to the contours of the land.</i>	Noted and the sub-division is designed to achieve this and also to have principal frontages to Mulgoa Road for the eastern precinct.
<i>e) Buildings are to be grouped to minimise the visual impact of buildings in an open rural landscape.</i>	This is achieved.
<b>Planting</b> <b>Objectives</b> <i>In addition to the general objectives for Mulgoa Valley, the objective of this section is to protect and enhance existing indigenous vegetation and historic introduced vegetation that contributes to the Valley's rural and natural landscape and its heritage values.</i> <b>C. Controls</b>	
<i>a) Existing stands of indigenous vegetation and key individual indigenous trees that contribute to the landscape character shall be retained.</i>	The whole of the Fernhill site has been assessed and areas of high native growth potential have or are in the process of being bio-banked for their natural values. This ensures they are retained and properly managed.
<i>b) Historic plantings of introduced trees and shrubs shall be retained where they have been identified</i>	This is achieved but is also outside the scope of the current application. It is

as significant, or form a positive visual feature in the landscape, or complement a place of historic or cultural significance. For example, the entrance drive of <i>Pinus pinea</i> (Stone pines) at Winbourne, the <i>Araucaria bidwillii</i> (Bunya pines) at Glenmore, the <i>Ficus rubiginosa</i> (Port Jackson Fig) at Fairlight, and <i>Cinnamomum camphora</i> (Camphor Laurel) at Glenleigh.	however addressed in the conservation and maintenance plan.  The examples stated are not relevant to Fernhill.
c) Regrowth vegetation in the view corridors linking Cox's Cottage/St Thomas's Church/Fernhill may be selectively thinned to restore the landscape to an historic park-like character. However, the rough barked angophora species ( <i>A. subvelutina</i> and <i>A. floribunda</i> ) and their hybrids must be retained. For screening or to enhance this landscape character, clumps of three or four of these angophoras should be planted in appropriate locations. Naturally occurring seedlings or those specially propagated from specimens in the locality (provenance stock) for the purpose should be used.	This is proposed but is also subject to environmental controls that protect much of this landscape.
d) Where possible, indigenous species shall be a guide for use for revegetation	This is achieved.
<b>Access, Parking and Services</b> <b>Objectives</b> <i>In addition to the general objectives for Mulgoa Valley, the objective of this section is to ensure the visual impact of access roads, parking areas and services is minimised.</i> <b>C. Controls</b>	
a) If practicable, avoid fences on road frontage boundaries.	This is achieved. Fence lines are set back from Mulgoa Road. A rural fence will be retained around the perimeter of the property to allow rural uses to continue.
b) Fences should be simple and unpretentious, and in keeping with traditional forms; e.g. unpainted timber post and rail, timber post and wire, or steel post and wire. Masonry fences, such as brick, blockwork or stone, should be avoided	Fence types are to be determined in detail but will be simple rural style fences using timber posts, wire and timber rails.
c) Gates and entrances should also be simple, and in keeping with traditional forms. Examples are: i) Rendered and pointed brickwork, blockwork, sandstone, painted timber or post and rail; ii) Decorated gateposts with the property name carved or painted onto the gatepost or painted onto a wide timber top rail; and iii) Decorated iron, steel or timber gates.	This is noted and will be provided.
d) Gates and entrances should relate to the materials	Noted.

<i>and colours of the building to which they belong.</i>	
<p><b>Signage</b></p> <p><i>Objectives</i></p> <p><i>In addition to the general objectives for Mulgoa Valley, the objective of this section is to ensure signage is in harmony with the existing landscape and character of the Mulgoa Valley Precinct.</i></p>	Not applicable.
<p><b>Mulgoa Road</b></p> <p><i>Objectives</i></p> <p><i>In addition to the general objectives for Mulgoa Valley, the objectives of this section are to:</i></p>	
a) <i>Protect the present rural character and function of Mulgoa Road; and</i>	Mulgoa Road is not proposed for upgrade with the exception of the intersection to the eastern precinct development. This change will have little impact on the rural character of the road as the road has changed character at this point as it enters the Mulgoa township area.
b) <i>Ensure any new development does not impact on the safety and efficiency of Mulgoa Road.</i>	This has been achieved.
<b>C. Controls</b>	
a) <i>Mulgoa Road shall be maintained as a rural road and shall not be improved to the level of a major regional thoroughfare.</i>	This has been achieved.
b) <i>Consent shall not be granted to development in the Mulgoa Valley Precinct if:</i> <ul style="list-style-type: none"> <li>i) <i>The safety and efficiency of Mulgoa Road will be adversely affected by the design and siting of the proposed access and by the nature, volume and frequency of vehicles using Mulgoa Road to gain access to the development; and</i></li> <li>ii) <i>Any upgrading or strengthening of Mulgoa Road required to maintain its safety and efficiency detracts from the present rural character and function of Mulgoa Road.</i></li> </ul>	Noted.

### **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 Voluntary Planning 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.

## 6.2 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 area 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.

The eastern (and western) subdivisions 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 19<sup>th</sup> 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 12: 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

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 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 and are largely retained. 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.

## 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 Plan 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.

## 7.0 CONCLUSION

The subdivision, the consolidation of allotments, and the ongoing equestrian use 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 subdivision has minimal impact on the Fernhill Estate or on heritage items in the vicinity 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 65-90 metres behind a parkland setting, it is considered there are no adverse heritage impacts arising from this subdivision.

The proposal is considered to have minimal 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 Voluntary Planning Agreement is to be made with Penrith 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 eastern subdivision area is to be managed in accordance with the recommendations of the Austral Archaeology reports.