

Lots 54-58 Mamre Road, Kemps Creek

Non-Aboriginal Statement of Heritage
Impact (SoHI)

Report to Mirvac

Penrith Local Government Area

October 2020



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EXECUTIVE SUMMARY

Mirvac are proposing to construct the Aspect Industrial Estate (AIE) on Mamre Road at Kemps Creek. On 12 June 2020, AIE as part of the Greater Mamre Road Precinct was rezoned to formally be included in the WSEA by way of a SEPP amendment. The zoning is predominantly IN1 General Industrial, with environmentally sensitive areas zoned E2 Environmental Conservation. The proposal includes the construction of industrial warehouse and distribution buildings within the project site. The works would also involve bulk earthworks including batter stabilisation and temporary sediment erosion basins, the construction of a stormwater basin in the north-western portion of the site and retaining walls along the southern and eastern boundaries. A stormwater pipe would also be installed on the southern boundary of the site. Three access roads would be constructed, as will two warehouse complexes (WH1 and WH3) with carparking. The inclusions of a café has also been proposed.

Artefact Heritage has been engaged by Mirvac to provide a non-Aboriginal Statement of Heritage Impact (SoHI) for the project. The aim of this SoHI is to identify heritage items and archaeological remains which may be impacted by the proposed works, determine the level of heritage significance of each item, assess the potential impacts of the proposal to those items, recommend mitigation measures to reduce the level of heritage impact and identify other management or statutory obligations. This report is provided in support of the State Significant Development (SSD) application no. SSD-10448.

Overview of findings

This SoHI has made the following conclusions:

- There is one listed heritage item within 300 metres of the proposed site boundary:
 - ‘Bayley Park – House’ (Penrith Local Environment Plan 2010 104)
 - ‘Bayley Park – House’ has been assessed as being significant at a local level and has identified the rural landscape of Bayly Park as a significant element
- The study area has been assessed as demonstrating nil-low potential to contain archaeological relics
- The proposal has been assessed as having the potential to result in:
 - Neutral physical impact to ‘Bayley Park – House’
 - Minor visual impact to ‘Bayley Park – House’
 - Negligible impact on archaeological relics.

Recommendations

The following recommendations will aid in mitigating the impact of the proposed development of the Aspect Industrial Estate on nearby heritage items and the associated cultural landscape:

- This report should be provided to the Department of Planning, Industry and the Environment (DPIE) in their consideration of the SSD Application for the proposed masterplan. This report has only assessed the impacts to potential archaeology as a result of the masterplan,

- Appropriate heritage interpretation media should be considered for inclusion within the proposed café or in other suitable areas throughout the proposal and would satisfy the objectives of the Penrith DCP.
- An unexpected find protocol should be enacted during the construction phase of the project. Should unexpected non-Aboriginal archaeological finds be encountered during works, work should cease in that area and an appropriately qualified archaeologist should be contacted to assess the potential significance of the find. Should archaeological remains be considered significant, further assessment, notification and/or approval from the DPIE may be required prior to works recommencing in that area.

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1.0 INTRODUCTION AND BACKGROUND

1.1 Background

Artefact Heritage has been engaged by Mirvac to provide a non-Aboriginal SoHI for the project. The aim of this SoHI is to identify heritage items and archaeological remains which may be impacted by the proposed works, determine the level of heritage significance of each item, assess the potential impacts to those items, recommend mitigation measures to reduce the level of heritage impact and identify other management or statutory obligations.

1.2 Study area

Aspect Industrial Estate is legally described at Lots 54-58 in DP 259135, with an area of approximately 56.3 hectares (ha). The site is located east of Mamre Road, Kemps Creek within the Penrith Local Government Area (LGA).

The site has approximately 950m of direct frontage to Mamre Road with a proposed intersection providing vehicular access via Mamre Road to the M4 Motorway and Great Western Highway and Elizabeth Drive to the south.

The site is approximately 4km north-west of the future Western Sydney Nancy-Bird Walton Airport, and 13km south-east of the Penrith Central Business District (CBD) and 40km west of the Sydney CBD.

1.3 Limitations

The interiors of heritage items, notably Bayley Park – House (Penrith LEP Item 104) were not inspected in preparation of this report. This heritage item is located 290 m from the project site and would not be affected by the proposed works.

This report provides an assessment of Non-Aboriginal heritage impacts only. A separate report has been prepared to address Aboriginal heritage for the site.

1.4 Authors

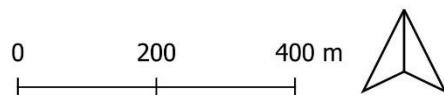
This report was prepared by Sarah Hawkins (Heritage Consultant) with management input and review by Josh Symons (Technical Director), Duncan Jones (Principal) and Jenny Winnett (Principal).

Figure 1. The study area for the AIE project area.



Study Area
19133 Lots 54-58 Mamre
Road, Kemps Creek
LGA: Penrith

Scale: 1:10000
Size: A4
Date: 01-10-2019



2.0 LEGISLATIVE CONTEXT

2.1 Introduction

There are several items of State legislation that are relevant to the current study area. A summary of these Acts and the potential legislative implications follow.

2.2 Environmental Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides a legislative framework for the protection and management of matters of national environmental significance, that is, flora, fauna, ecological communities and heritage places of national and international importance. Heritage items are protected through their inscription on the World Heritage List, Commonwealth Heritage List or the National Heritage List.

The EPBC Act stipulates that a person who has proposed an action that will, or is likely to, have a significant impact on a World, National or Commonwealth Heritage site must refer the action to the Minister for Sustainability, Environment, Water, Population and Communities (hereafter Minister). The Minister will then determine if the action requires approval under the EPBC Act. If approval is required, an environmental assessment would need to be prepared. The Minister would approve or decline the action based on this assessment.

2.2.1 Commonwealth Heritage List

The Commonwealth Heritage List has been established to list heritage places that are either entirely within a Commonwealth area, or outside the Australian jurisdiction and owned or leased by the Commonwealth or a Commonwealth Authority. The Commonwealth Heritage List includes natural, Indigenous and historic heritage places which the Minister for Sustainability, Environment, Water, Population and Communities is satisfied have one or more Commonwealth Heritage values.

No sites within or near the study area are included on the Commonwealth Heritage List.

2.2.2 National Heritage List

The National Heritage List has been established to list places of outstanding heritage significance to Australia. It includes natural, historic and Indigenous places that are of outstanding national heritage value to the Australian nation.

No sites within or near the study area are included on the National Heritage List.

2.3 Heritage Act 1977

The *Heritage Act 1977* (NSW) (Heritage Act) is the primary item of State legislation affording protection to items of environmental heritage in NSW. The Heritage Act is designed to protect both listed heritage items, such as standing structures, and potential archaeological remains or relics. Under the Heritage Act, 'items of environmental heritage' include places, buildings, works, relics, moveable objects and precincts identified as significant based on historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic values. State significant items are listed on the NSW State Heritage Register (SHR) and are given automatic protection under the Heritage Act against any activities that may damage or affect its heritage significance.

2.3.1 State Heritage Register

The SHR was established under Section 22 of the Heritage Act and is a list of places and objects of particular importance to the people of NSW, including archaeological sites. The SHR is administered by the Heritage NSW, DPC of the Office of Environment and Heritage (OEH). This includes a diverse range of over 1,500 items, in both private and public ownership. To be listed, an item must be deemed to be of heritage significance for the whole of NSW.

To carry out activities within the curtilage of an item listed on the SHR, approval must be gained from the Heritage Council by securing a Section 60 permit. In some circumstances, under Section 57(2) of the Heritage Act, a Section 60 permit may not be required if works are undertaken in accordance with the NSW Heritage branch document *Standard Exemptions for Works Requiring Heritage Council Approval*¹ or in accordance with agency specific exemptions. This includes works that are only minor in nature and will have minimal impact on the heritage significance of the place.

There are no SHR listed items within or in the vicinity of the study area.

2.3.2 Section 170 registers

Under the Heritage Act all government agencies are required to identify, conserve and manage heritage items in their ownership or control. Section 170 requires all government agencies to maintain a Heritage and Conservation Register that lists all heritage assets and an assessment of the significance of each asset. They must ensure that all items inscribed on its list are maintained with due diligence in accordance with State Owned Heritage Management Principles approved by the Government on advice of the NSW Heritage Council. These principles serve to protect and conserve the heritage significance of items and are based on NSW heritage legislation and guidelines.

There are no s170 register listed items within or in the vicinity of the study area.

2.3.3 'Relics provisions'

The Heritage Act also provides protection for 'relics', which includes archaeological material or deposits. According to Section 139 (Division 9: Section 139, 140-146):

- (1) A person must not disturb or excavate any land knowingly or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, damaged or destroyed unless the disturbance is carried out in accordance with an excavation permit.
- (2) A person must not disturb or excavate any land on which the person has discovered or exposed a relic except in accordance with an excavation permit.
- (3) This section does not apply to a relic that is subject to an interim heritage order made by the Minister or a listing on the State Heritage Register.
- (4) The Heritage Council may by order published in the Gazette create exceptions to this section, either unconditionally or subject to conditions, in respect of any of the following:
 - a. Any relic of a specified kind or description,
 - b. Any disturbance or excavation of a specified kind or description,
 - c. Any disturbance or excavation of land in a specified location or having specified features or attributes,

¹ Heritage Council of New South Wales 2009

- d. Any disturbance or excavation of land in respect of which an archaeological assessment approved by the Heritage Council indicates that there is little likelihood of there being any relics in the land.

Section 4 (1) of the Heritage Act (as amended in 2009) defines a relic as:

...any deposit, artefact, object or material evidence that:

relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and is of State or local heritage significance

A relic has been further defined as:

Relevant case law and the general principles of statutory interpretation strongly indicate that a 'relic' is properly regarded as an object or chattel. A relic can, in some circumstances, become part of the land be regarded as a fixture (a chattel that becomes permanently affixed to land).²

Excavation permits are issued by the Heritage Council of NSW, or its Delegate, under Section 140 of the Heritage Act. An application for an excavation permit must be supported by an Archaeological Research Design and Archaeological Assessment prepared in accordance with the Heritage NSW, DPC archaeological guidelines. Minor works that will have a minimal impact on archaeological relics may be granted an exception under Section 139 (4) of the Heritage Act.

Works

The Heritage Act places 'works' in a separate category to archaeological 'relics'. 'Works' refer to remnants of historical structures which are not associated with artefactual material that may possess research value. 'Works' may be buried, and therefore archaeological in nature, however, exposure of a 'work' does not require approved archaeological excavation permits under the Act.

The following examples of remnant structures have been considered to be 'works' by the NSW Heritage Council:

- Evidence of former infrastructure, where there are no historical artefacts in association with the item
- Historical building footings where there are no historical artefacts in association with the item.

Where buried remnants of historical structures are located in association with historical artefacts in controlled stratigraphic contexts (such as intact historic glass, ceramic or bone artefacts), which have the potential to inform research questions regarding the history of a site, the above items may not be characterised as 'works' and may be considered to be 'relics'. The classification of archaeological remains as a 'work' therefore is contingent on the predicted remains being associated with historical structures as well as there being no prediction of the recovery of intact artefactual deposits which may be of research interest.

² Assessing Significance for Archaeological Sites and 'Relics', Heritage Branch, Department of Planning, 2009:7.

Section 5.23(1) of the EP&A Act states that archaeological permits and exceptions under the Heritage Act are not required for State significant development projects and would therefore not be required for the project.

2.4 Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act) establishes the framework for cultural heritage values to be formally assessed in the land use planning and development consent process. The EP&A Act requires that environmental impacts are considered prior to land development; this includes impacts on cultural heritage items and places as well as archaeological sites and deposits. The EP&A Act requires that Local Governments prepare planning instruments (such as Local Environmental Plans [LEPs] and Development Control Plans [DCPs]) in accordance with the Act, to provide guidance on the level of environmental assessment required.

The current study area falls within the boundaries of the Penrith LGA and is subject to the Penrith LEP 2010. This includes a schedule of local heritage items and planning controls related to development in the vicinity of heritage items.

2.4.1 State significant development

The proposed development approval is being sought under Section 4.22 of the EP&A Act and would be classified as State Significant Development.

The Secretary's Environmental Assessment Requirements (SEARs) were issued for the project on 30 April 2020. No SEARs conditions were provided that related to non-Aboriginal heritage development for the project.

Under Section 5.23(1) of the EP&A Act, archaeological permits and exceptions under the Heritage Act are not required for State significant development projects and would therefore not be required for the project.

2.4.2 State Environmental Planning Policy (Sydney Region Growth Centres) 2006

The Western Sydney Growth Area SEPP was introduced in 2009 to provide businesses in the region with land for industry and employment, including transport and logistics, warehousing and office space. The current study area is located within land designated in the Western Sydney Employment Area.

There is one item listed on the Western Sydney Employment Area SEPP (2009) located 290 m southwest of the study area, as below and illustrated Figure 2:

- **Bayley Park – House (Penrith LEP I104)**

2.4.3 The Penrith Local Environment Plan 2010

Approximately the northern half of the study area falls within the Penrith LEP 2010, and the southern half is located on land to which the Western Sydney Employment Area SEPP (2009) applies.

The Penrith LEP 2010 aims to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views; and to protect archaeological sites. The LEP stipulates development controls in relation to development proposed on or near heritage listed properties, archaeological sites, or Aboriginal places of heritage significance. The

Penrith Development Control Plan (DCP) 2010 details the standards, policies and guidelines related to construction and development for Penrith and is consistent with the Penrith LEP 2010.

The following clauses apply to places of heritage significance within the Penrith City Council LGA, under Part 5 Clause 5.10 of the Penrith LEP 2010:

(1) Objectives

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Penrith,*
 - (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabrics, settings and views,*
 - (c) to conserve archaeological sites,*
 - (d) to conserve Aboriginal objects and Aboriginal places of heritage significance*
-

Before granting consent under this clause in respect of a heritage item or conservation area, the consent authority, the Penrith City Council, must consider the effect of the proposed development on the heritage significance of the item or area concerned (5.10(5)), notably if the development is on land:

(5) Heritage assessment

The consent authority may, before granting consent to any development;

- (a) on land on which a heritage item is located; or*
 - (b) on land that is within a heritage conservation area;*
 - (c) on land that is within the vicinity of land referred to in paragraph (a) or (b);*
- require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.*
-

The following heritage listed item is located approximately 290m from the study area and is illustrated in Figure 2:

- **Bayley Park – House (LEP Item No. I104)**

Figure 2. The study area and nearby heritage curtilages.



Heritage Items
19133 Lots 54-58 Mamre
Road, Kemps Creek
LGA: Penrith

Scale: 1:12000
Size: A4
Date: 01-10-2019

0 200 400 m



3.0 HISTORICAL CONTEXT

3.1 Early European history

3.1.1 European exploration and settlement in the Nepean Valley

The Nepean River and its surrounds have been significant to Aboriginal people of various language groups of thousands of years. The Nepean, known as the Dyarubbin,³ was an important resource, providing a constant supply of water, creating arable soils that grew edible plants and attracted wildlife and birds, which would have served as food sources. The study area is located near the boundaries of two Aboriginal groups: the Dharawal and Gundungurra. Ethno-historical observations made by early explorers and settlers in the region stated that Aboriginal people wore large skin cloaks and practiced tooth avulsion, however by the mid-1800s some European clothes and items such as blankets were used.⁴

In January 1788, Captain Arthur Phillip arrived at Botany Bay with the First Fleet, but deemed the Bay too shallow for a harbour and unsuitable for habitation on account of poor fresh water supply.⁵ The colony was moved to Port Jackson, now Sydney Harbour,⁶ but inland exploration via the major rivers, notably the Parramatta and Georges Rivers commenced soon after.

In 1789 Watkin Tench, a Marine Lieutenant, led an exploration party west of Parramatta to the base of the Blue Mountains, where he was one of the first Europeans to encounter the Nepean River. Safe harbours and rivers that could be used as routes to explore inland were sought after in the early years of the colony.⁷ The arable soils situated alongside rivers were crucial for agriculture, and as such, many settlements organically formed along major rivers.⁸ In May 1813, Gregory Blaxland, William Charles Wentworth and William Lawson crossed the Blue Mountains in search of pastoral land to the west of the Great Dividing Range. The subsequent construction of the Great Western Highway followed the explorer's route, leading from Sydney to Bathurst. The Great Western Highway enabled the growth of several town centres in the Nepean region, which soon developed into an important agricultural centre.⁹

Early settlers in the Cumberland Plain included all aspects of society at the time, including convicts, military officers and soldiers, missionaries and free settlers.¹⁰ These settlers could be considered the founders of Australia's agricultural and pastoral industries. They were responsible for supplying the colony with meat, grain, vegetables, fruit, and by the 1820s were also producing Australian wool and wine.¹¹

³ Karskens, G., 2009. *The Colony. A History of Early Sydney*, p. 29.

⁴ Koettig, M., 1981. *Erskine Park – South St. Mary's Second Stage Release Area: Archaeological Survey for Aboriginal and Historic Sites*. Report to Penrith Council.

⁵ Butler, M., 2011. 'Botany.' *Dictionary of Sydney*. Accessed online 19/2/2019 at: <https://dictionaryofsydney.org/entry/botany>

⁶ Encyclopaedia Britannica, 2017. 'Botany Bay.' Accessed online 19/2/2019 at: <https://www.britannica.com/place/Botany-Bay>

⁷ Karskens, G., 2009. *The Colony. A History of Early Sydney*, p. 20.

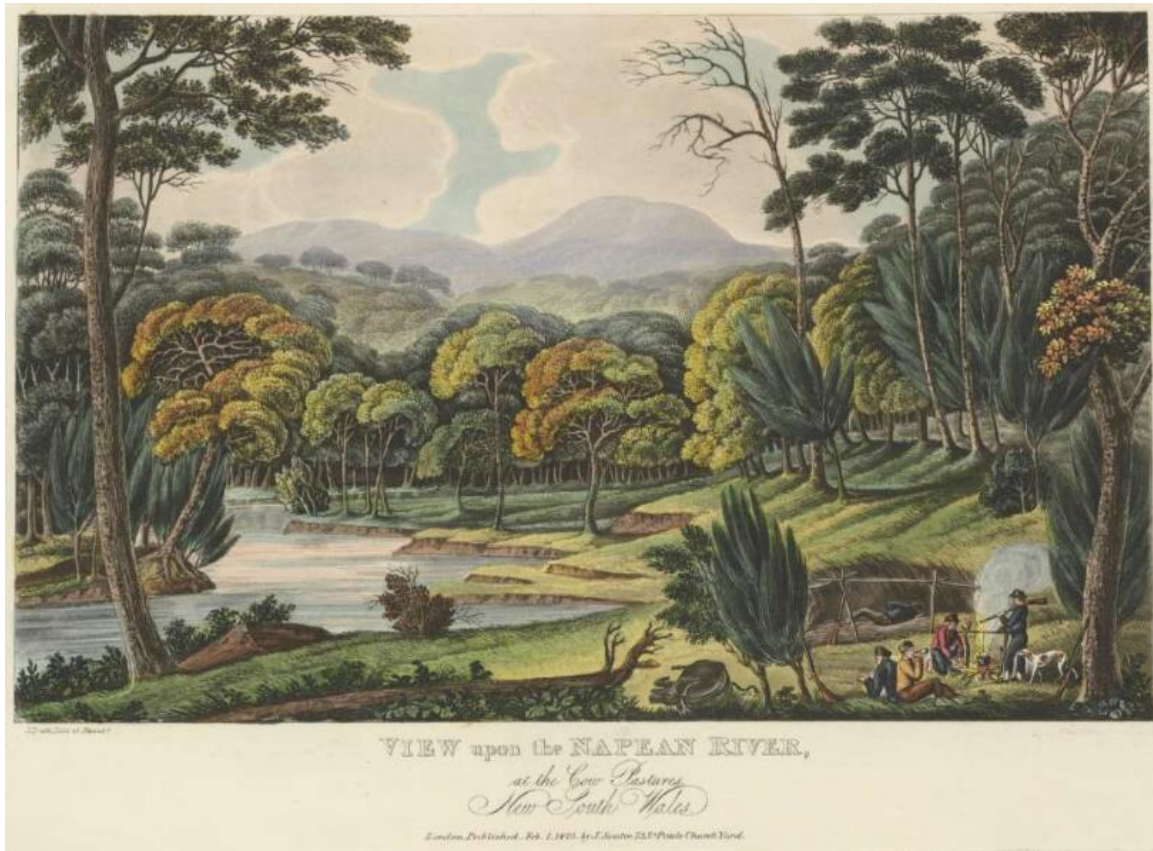
⁸ Karskens, G., 2009. *The Colony. A History of Early Sydney*, p. 20.

⁹ Penrith City Local History, n.d. 'Kemps Creek.'

¹⁰ Karskens, G., 2009. *The Colony. A History of Early Sydney*, p. 101.

¹¹ Karskens, G., 2009. *The Colony. A History of Early Sydney*, p. 101.

Figure 3. The Nepean River at the Cowpastures by Joseph Lycett, 1825. Source: National Library of Australia¹²



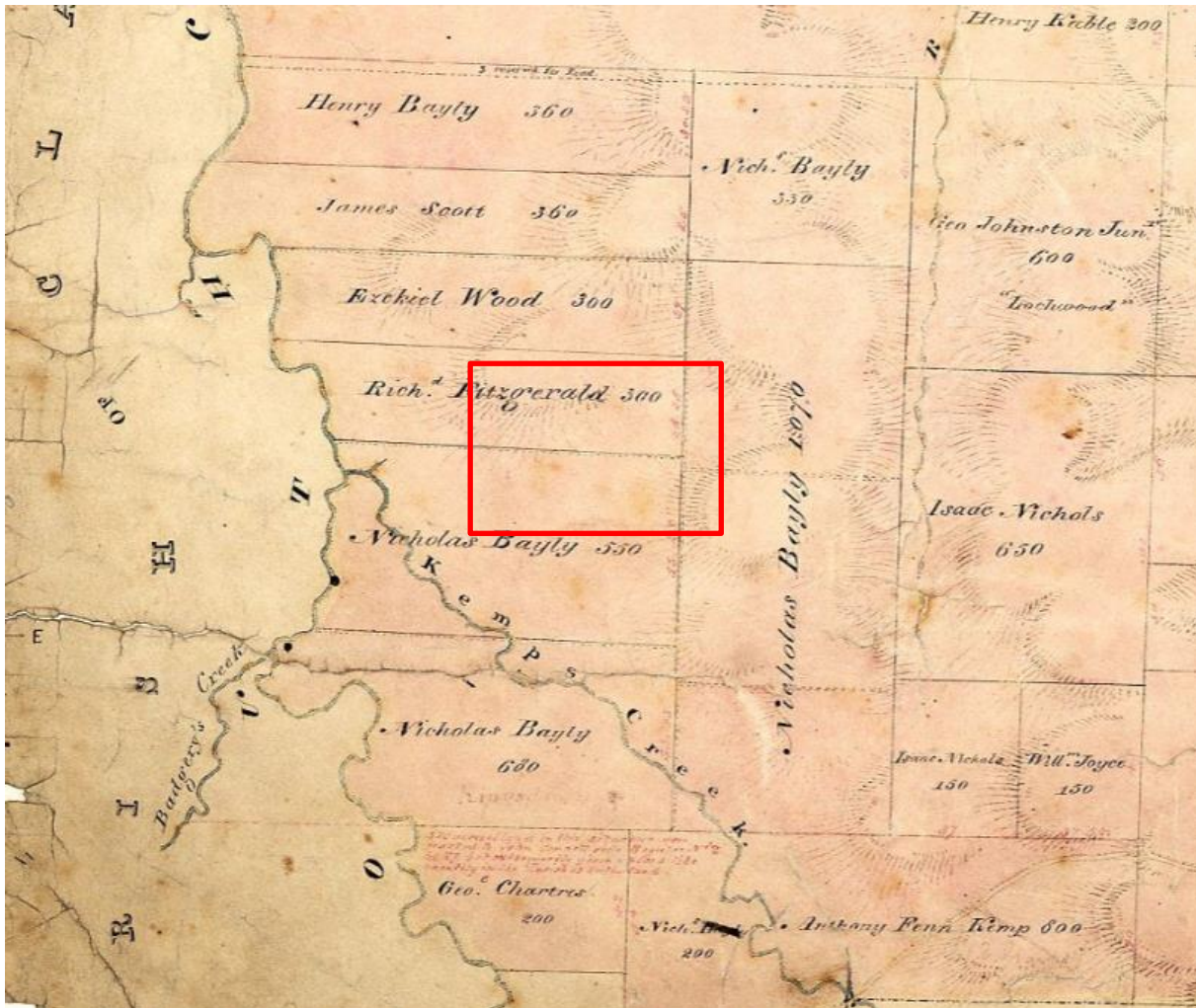
3.1.2 Early Land Grants within the study area

The earliest land grants within the study area were granted to Richard Fitzgerald and Nicholas Bayly. The study area is located within the Parish of Melville, and the first grants were granted from 1805 by Governor Philip Gidley King.¹³

¹² Joseph Lycett, 1825. *View Upon the Nepean River at the Cow Pastures, New South Wales*. Accessed online 26/9/2019 via Trove/National Library of Australia at: <https://nla.gov.au/nla.obj-135702836/view>

¹³ Penrith History, n.d. 'Kemps Creek.' *Penrith City Local History*. Accessed online 26/9/2019 at: <https://penrithhistory.com/suburb-profiles/kemps-creek/>

Figure 4. Detail of Map of the Parish of Melville, County of Cumberland, n.d. Source: HLRV



3.1.2.1 Nicholas Bayly (550 acres)

On 18 December 1805 Nicholas Bayly was granted 680 acres of land in the Parish of Melville, which he named Kings Down. In 1810 he was granted an additional 1070 acres, which he named Macquarie Place.¹⁴ Macquarie Place is located partially within the study area. In 1810 Bayly received an additional 550-acre grant, located within the study area, which was named Bayly Park. Bayly Park became Bayly's main country estate, while there is no record suggesting that Bayly ran or built at Macquarie Place.

Bayly settled in New South Wales in 1797, where he sailed as a commander on the *Barwell*. Following his arrival in the colony he was involved in several controversies, including being court-martialled for illegal possession of liquor and for "undue severity" towards his convict servants. He was then involved in Governor Bligh's disposition, and later had a falling out with John Macarthur.¹⁵ Bayly was granted several land parcels in the Nepean area by William Paterson, which were later confirmed by Governor Macquarie after the end of Paterson's 'rebel' administration.

Throughout the 1810s, Bayly spent much of his time at Bayly Park, and by 1814 a homestead was established. The residence was described as a "noble mansion with gardens and cultivated

¹⁴ Penrith History, n.d. 'Kemps Creek.' *Penrith City Local History*.

¹⁵ MacLaurin, E.C.B., 1966. 'Fitzgerald, Richard (1772-1840).' *Australian Dictionary of Biography*. Accessed online 26/9/2019 at: <http://adb.anu.edu.au/biography/fitzgerald-richard-2048>

grounds.”¹⁶ Bayly was dismissed from public office by Macquarie in 1816 and did not find a colonial appointment again until 1820 when he secured a position as secretary of the Bank of New South Wales. In 1823 Bayly commissioned government road gangs to clear his estate, presumably for agricultural use, and he was assigned several convict mechanics, stonemasons and carpenters.¹⁷ There were at least 19 convicts, and it is assumed that separate dwellings would have been present on the site. The location of the convict dwellings is uncertain, however it is likely that they would have been located nearby the house, at a suitable distance where the quarters could be surveyed by Bayley or his Superintendent without encroaching on the main homestead. At the time, 40 acres had already been cleared for growing wheat, and Bayly owned 34 cattle and 8 sheep.¹⁸ He lived at Bayly Park until his death in 1823, which was then inherited by his son Henry. In 1824, Bayly Park was listed for sale by auction and was described as “comprising a substantial Brick-built Dwelling house, with suitable offices and outhouses, together with about 2500 acres of land... and an orchard stocked with the choicest fruit trees.”¹⁹

3.1.2.2 Richard Fitzgerald (300 acres)

Richard Fitzgerald was granted 300 acres of land on 18 December 1805, which he named Restitution Farm.²⁰ Fitzgerald was a convict and arrived in Port Jackson in August 1791, after travelling in the Third Fleet on the *William and Anne*.²¹ Fitzgerald had experience with agriculture, and upon arrival in the colony held various responsibilities in the public farms. He was later appointed as the superintendent of convicts and his influence grew throughout the 1790s to the extent that he became the Superintendent of convicts and agriculture within the Parramatta and Toongabbie districts.²² Fitzgerald accumulated several land grants throughout the late 1790s in Cabramatta and the Rouse Hill area, including his 300 acres at Restitution Farm. In 1826 *The Monitor* stated that he was living at Windsor, in an advertisement for the sale of livestock. In 1831 he received three grants, one in the parish of Gidley, and two in the parish of Londonderry.²³

Fitzgerald supervised several properties near Wollar, north of Lithgow and Bathurst, however he also served as an agent for Mrs Macquarie, and administered part of the Macarthur Estate at Camden Park.²⁴ Fitzgerald had also become a close friend and colleague of Governor Lachlan Macquarie, who appointed him as the superintendent of agriculture at Emu Plains.²⁵ In 1836 he was promised a one thousand acre land grant by Governor Brisbane at Dabee, and Mrs Macquarie inherited a two thousand acre grant adjoining it in the same year.²⁶ The same gazettal described Fitzgerald as “the legal representative of Mrs Macquarie, in this colony.”

¹⁶ Office of Environment and Heritage, 2005. ‘Bayley Park – House.’ NSW Government Office of Environment and Heritage. Accessed online 1/10/2019 at:

<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2260104>

¹⁷ Office of Environment and Heritage, 2005. ‘Bayley Park – House.’

¹⁸ Office of Environment and Heritage, 2005. ‘Bayley Park – House.’

¹⁹ *The Sydney Gazette and New South Wales Advertiser*, Thu 4 March 1824. ‘Classified Advertising.’ Accessed online via Trove 1/10/2019 at:

<https://trove.nla.gov.au/newspaper/article/2182695?searchTerm=%22bayly%20park%22%20%22noble%22&searchLimits=l-decade=182>

²⁰ Penrith History, n.d. ‘Kemps Creek.’ *Penrith City Local History*.

²¹ MacLaurin, E.C.B., 1966. ‘Fitzgerald, Richard (1772-1840).’ *Australian Dictionary of Biography*.

²² MacLaurin, E.C.B., 1966. ‘Fitzgerald, Richard (1772-1840).’ *Australian Dictionary of Biography*.

²³ *The Sydney Gazette and New South Wales Advertiser*, Thu 6 October 1831. ‘Government Notices. Colonial Secretary’s Office, Sydney, 30th September 1831. Deeds of Grant.’ Accessed online 1/10/2019 via Trove at:

<https://trove.nla.gov.au/newspaper/article/2202917?searchTerm=%22richard%20fitzgerald%22&searchLimits=l-decade=183>

²⁴ MacLaurin, E.C.B., 1966. ‘Fitzgerald, Richard (1772-1840).’ *Australian Dictionary of Biography*.

²⁵ MacLaurin, E.C.B., 1966. ‘Fitzgerald, Richard (1772-1840).’ *Australian Dictionary of Biography*.

²⁶ *The Sydney Gazette and New South Wales Advertiser*, Tue 23 August 1836. ‘Government Gazette.

Wednesday, August 17th, 1836. Grants of Land.’ Accessed online 1/10/2019 via Trove at:

<https://trove.nla.gov.au/newspaper/article/2206175?searchTerm=%22richard%20fitzgerald%22&searchLimits=l-decade=183>

In 1836, Fitzgerald leased Restitution Farm to Henry Bayly, following “what appears to have been an unregistered conveyance to Nicholas Bayly in 1810.”²⁷ In 1837 however, Fitzgerald was located somewhere near Penrith, and formed part of the local Association for the Suppression of Horse, Cattle, & Sheep Stealing.²⁸ There is no documentary evidence to suggest that a homestead or other structures were constructed on the property, however there may have been undocumented pastoral structures such as fencing for livestock or stockyards. It is likely that land use during Fitzgerald’s ownership was limited to land clearance and possibly grazing. The estate was likely absorbed into Bayly Park/Fleurs and likely formed part of the acreage owned by Richard Jones following his purchase of Bayly Park.

3.1.3 Fleurs and Richard Jones

Richard Jones purchased Bayly Park for £3400 in 1826, and the estate was renamed Fleurs.²⁹ At the time, the estate comprised approximately 2500 acres. Here, Jones kept a dairy herd, pigs, poultry, and a six-acre vineyard.³⁰ Jones’ pastoral “empire” was largely concentrated on estates west of the Blue Mountains and in the Hunter Valley.³¹ It is uncertain whether Jones lived at Fleurs or on another estate. An article in *The Sydney Morning Herald* from 1941, offering a reward for the return of five of Jones’ bullocks, stated that the reward would be given by “Mr Stevenson, Superintendent on the Fleurs Estate, South Creek.”³² This may suggest that Jones was a largely absent landowner, leaving the property to be run by a superintendent and workers, rather than utilising Fleurs as a family home. The addition of a vineyard to the property may have required the construction of new infrastructure for the processing of the grapes, however this is not confirmed in any known documentary source.

Jones sold Fleurs during the 1840s due to the credit squeeze and collapse of the wool market. The exact date is unknown, as is the buyer. Newspaper articles from the late 1840s suggest that Fleurs was utilised to house thoroughbred horses, and that there were “secure paddocks for the mares, and all care will be taken of them”, indicating that workmen were located on the estate and that it was continuing in its use as a pastoral estate.³³

3.1.4 Subdivision of Fleurs

In 1852 Fleurs was put to auction and a sale advertisement provides extensive detail regarding the character of the estate and the extant structures at the time (Figure 5). Described as a “princely estate” containing the “best land in the country of Cumberland”, the advertisement states that 1573 of 1823 acres were cleared and stumped, and that the sale was for thirteen subdivided lots within the estate unless one buyer purchased the entire estate.³⁴ The structures on the estate were listed, including a stone dwelling house with detached servants quarters, kitchen and laundry, a range of stone buildings, brick outbuildings, a vineyard and garden. Stone buildings in addition to the main

²⁷ Biosis, March 2018. *Mamre South State Significant Development Application Statement of Heritage Impact* p. 18. Prepared for Frasers Property Industrial Constructions Pty Ltd and Altis Property Partners Pty Ltd.

²⁸ *The Sydney Times*, Sat 29 Apr 1837. ‘Advertising.’ Accessed online 1/10/2019 at: <https://trove.nla.gov.au/newspaper/article/252652799?searchTerm=%22richard%20fitzgerald%22&searchLimits=l-decade=183>

²⁹ Office of Environment and Heritage, 2005. ‘Bayley Park – House.’

³⁰ Binney, Keith Robert, 2005. *Horsemen of the First Frontier (1788-1900) and the Serpent’s Legacy*. Volcanic Productions, Sydney. P. 84.

³¹ Office of Environment and Heritage, 2005. ‘Bayley Park – House.’

³² *The Sydney Morning Herald*, Fri 19 Nov 1841. ‘Stolen or Strayed.’ Accessed online 10/10/2019 via Trove at: <https://trove.nla.gov.au/newspaper/article/12872357?searchTerm=%22fleurs%22%20kemps%20creek&searchLimits=l-decade=184>

³³ *The Sydney Morning Herald*, Wed 16 1846. ‘To Stand at Fleurs.’ Accessed online 10/10/2019 via Trove at: <https://trove.nla.gov.au/newspaper/article/12895058?searchTerm=%22fleurs%22%20kemps%20creek&searchLimits=l-decade=184>

³⁴ *Empire*, Sat 5 Jun 1852. ‘Advertising.’ The Princely Estate of Fleurs. Accessed online 10/10/2019 via Trove at: <https://trove.nla.gov.au/newspaper/article/60135476?searchTerm=%22Fleurs%22%20subdivision&searchLimits=l-decade=184>

home included an under-ground dairy featuring stone milk troughs, a large store, a butcher shop with a stone table and harness room, and a wine-room with a cellar beneath, presumably below ground.³⁵ The brick outbuildings included a large coach house, tool-room, two stables (one large and one small), four brick rooms for labourers, a blacksmith's shop, and a gardeners cottage.³⁶ Additional structures on the estate included a large barn with threshing machine, four huts for workmen, a large Dutch barn, "extensive" cart sheds, loose boxes for horses, calf pens, pig-sties, fowl houses, milking yards and stock yards.³⁷ Available cartographic and documentary resources do not provide specific locations of any outbuildings or structures other than the main house, which is still extant. Analysis of similar estates in the Cumberland Plain and Camden region suggests that Bayly Park may have been designed in what has been deemed the 'Lowland' estate model, in which nearby contemporary estates including Mamre and Werrington have been designed.³⁸ Estates in this model generally feature a strong contrast between the main homestead and the wider pastoral landscape, with structures located in a cluster and surrounded by formalised plantings and garden areas.³⁹ Using the Lowland model and data from extant contemporary estates such as Mamre, it is likely that the additional outbuildings and structures would have been located nearby the main house, likely within a 500 metre radius.

By 1860 Fleurs had been purchased by Robert Cork,⁴⁰ and may have been sold to John Savery Rodd by 1862, indicated by marriage notices that list Rodd as the owner of Fleurs.⁴¹ In 1866, Fleurs was listed for auction by Rodd, with the auction advertisement similar to that from 1852.⁴² No new buildings are listed in the 1866 advertisement, suggesting that Cork and Rodd did not make any additions to the estate.

The property belonged to Elizabeth Rettalick in 1872, and Joseph Weston, who had re-established an estate named Bayly Park around the same time.⁴³ In 1883 the land was subdivided and purchased by the Penrith auctioneer T.R. Smith, and was sold again to land spectators in 1887.⁴⁴ In 1888, the property was subdivided into 'farm and orchard blocks' of 20-acres. The rural allotments were described as "ready for the plough" (Figure 6).⁴⁵ By 1895 Mamre Road had been constructed, effectively separating Bayly Park in two portions (Figure 7).

³⁵ *Empire*, Sat 5 Jun 1852. 'Advertising.' The Princely Estate of Fleurs.

³⁶ *Empire*, Sat 5 Jun 1852. 'Advertising.' The Princely Estate of Fleurs.

³⁷ *Empire*, Sat 5 Jun 1852. 'Advertising.' The Princely Estate of Fleurs.

³⁸ Morris, C., and Britton, G., 2000. *Colonial landscapes of the Cumberland Plain and Camden, NSW: A survey of selected pre-1860 cultural landscapes from Wollondilly to Hawkesbury LGAs*, p. 129.

³⁹ Morris, C., and Britton, G., 2000. *Colonial landscapes of the Cumberland Plain and Camden, NSW: A survey of selected pre-1860 cultural landscapes from Wollondilly to Hawkesbury LGAs*, p. 129.

⁴⁰ *The Sydney Morning Herald*, 29 Jun 1912. 'An Old Document.' Accessed online 10/10/2019 via Trove at: <https://trove.nla.gov.au/newspaper/article/100905177?searchTerm=%22Robert%20Cork%22%20fleurs&searchLimits=>

⁴¹ *The Sydney Morning Herald*, Tue 21 Oct 1862. 'Family Notices.' Accessed online 10/10/2019 via Trove at: <https://trove.nla.gov.au/newspaper/article/13235867?searchTerm=Robert%20%22Cork%22%20%22fleurs%22&searchLimits=l-decade=186>

⁴² *The Sydney Morning Herald*, Wed 18 April 1866. 'Advertising.' Accessed online 10/10/2019 via Trove at: <https://trove.nla.gov.au/newspaper/article/13129712?searchTerm=%22Fleurs%20subdivision&searchLimits=>

⁴³ Office of Environment and Heritage, 2005. 'Bayley Park – House.'

⁴⁴ Office of Environment and Heritage, 2005. 'Bayley Park – House.'

⁴⁵ *The Sydney Morning Herald*, June 21 1888. 'Advertising.' Accessed online 10/10/2019 via Trove at: <https://trove.nla.gov.au/newspaper/article/13689648>

Figure 5. Detail of Fleurs Estate sale advertisement in *Empire*, 1852. Source: Trove⁴⁶

THE IMPROVEMENTS
are perhaps the most extensive and complete of any in the country, and comprise

CAPITAL STONE DWELLING-HOUSE,
containing ten rooms, with servant's-room, kitchen, and laundry detached. The rooms are 10½ feet high, and finished in the best style; and the house is protected on all sides by an ornamental verandah 9 feet wide.

A RANGE OF STONE BUILDINGS
contain a splendid under-ground dairy, fitted up with stone milk troughs, lined with lead, stone-shelves, tables, &c. A large store, with counters, bins, drawers, &c., &c. A butcher's shop, with stone salting table, harness-room, still-room, and wine-room, with cellar underneath.

A THIRD RANGE OF BUILDINGS,
built of brick, is subdivided into large coach-house, tool-room, one large and one smaller stable (the front having been used as a wine-house), with fine roomy loft over.

IN ADDITION TO THE ABOVE,
there are the following amongst other improvements, viz. :—

- Four brick rooms, for labourers
- Brick-built blacksmith's shop
- Well finished brick-built gardener's cottage
- Large barn, with threshing machine
- Four huts for men
- Large Dutch barn
- Very extensive cart sheds
- Loose boxes, for entire horses
- Calf-pens, pig-sties, and fowl-houses
- Milking-yards and stock-yards
- &c., &c., &c.

A VINEYARD of 4½ acres, and also a well-stocked **GARDEN,**
must not be omitted, as the vines and trees are all in full bearing, and the former yields a considerable sum by its yearly product, which is capable of great extension, as the land is admirably suited for the growth of the vine.

Figure 6. Detail of Fleurs Estate Sale, *Sydney Morning Herald* 1888. Source: Trove

THE FLEURS ESTATE, ST. MARY'S, SOUTH CREEK, having been subdivided into **FARM and ORCHARD BLOCKS,** now is the time to secure them. Splendid water frontages, main road frontages, land **READY FOR THE PLOUGH** and cheap, £12 and £15 per acre. Public School close to the estate. **SPECIAL conveyance for intending purchasers meets 9 a.m. train on WEDNESDAY and SATURDAY.**

PLANS and all information from
CAMPBELL, MITCHELL, and CO.,
417, George-street, next Lassetter's.

⁴⁶ *Empire*, Sat 5 Jun 1852. 'Advertising.' The Princely Estate of Fleurs. Accessed online 10/10/2019 via Trove at: <https://trove.nla.gov.au/newspaper/article/60135476?searchTerm=%22Fleurs%22%20subdivision&searchLimits=>

Figure 7. Subdivision of farm, orchard & dairy lands on the famous Fleurs Estate, 1895. Note the establishment of Mamre Road. Source: NLA/Trove⁴⁷



⁴⁷ Richardson & Wrench, 1895. Subdivision of farm, orchard & dairy lands on the famous Fleurs Estate St Mary's : for auction sale on the ground Saturday 23rd February at 1 o'clock / by Richardson and Wrench Ltd., auctioneers. National Library of Australia, via Trove. Accessed online 17/10/2019 at: <https://nla.gov.au/nla.obj-230481253/view>

3.1.5 Twentieth century

In the early 1900s it appears that additional Federation era houses were constructed on Bayly's original land grant, with a house on Aldington Road believed to be associated with Bayly Park and still extant in the late 1980s.⁴⁸ The house was photographed and associated with Bayly Park in 1985, however it is unknown if the house is still extant.

In 1930 the Fleurs Estate comprised of 2311 acres subdivided into 10 paddocks and was offered by public auction again.⁴⁹ A 1934 advertisement described the property as "highly suitable for either sheep or cattle" or "eminently suited for subdivision into dairy farms."⁵⁰ There is no mention of structures on the property in the 1930s advertisements, which appealed to the location and suitability of the property for agriculture (Figure 10).

Subsequent development within Bayly's original land grant appears to be limited to the construction of residential and industrial properties, formalisation of roads, and continued agricultural land use with construction of associated structures and facilities. Mamre Road was widened in 1958 it is likely that portions of the study area on the western boundary were resumed. Any remnant structures from Bayly or Jones' occupation of Bayly Park/Fleurs in the area would have been demolished. No structures associated with the property are evident on plans for the road widening or on any subdivision plans in the area from the time.

Aerial imagery from the study area dating to 1961 (Figure 11), 1965 and 1970 shows that no residential structures were in the study area at the time, and market gardening had not yet commenced. The area appears to be utilised for grazing, and there is a moderate sized cattle pen at Mamre Road within Lot 56 (Figure 12). The land is largely cleared, with some isolated vegetation. There is also a small dam present slightly south-east of the cattle pen. From the aerial imagery the land appears to be relatively flat throughout the study area, with the exception of a crest at the south-west extent of the study area. Aerial imagery from the 1960s also shows that the dam located in Lot 54 is artificial, as it is not present in aerial imagery prior to 1982. The cattle pen and dam were demolished prior to 1982.

In aerial imagery from 1982, residential development and market gardening within the study area had commenced (Figure 13). The first house in the study area was the northern house located on Lot 55. In the same aerial imagery, several shed and agricultural yard structures – all of which are still extant – were constructed. The 1982 aerial also shows early construction of the dam and a raised chicken coop area on Lot 54. It may be possible that the soil excavated for the construction of the dam was used to level or raise the chicken coop platform towards the centre of Lot 54. While two sheds had been constructed and preparations for the chicken coop platform had commenced, the residential structures on the house had not been built yet.

By 1991 market gardening throughout the study area has increased and several new structures had been constructed (Figure 14). Within Lot 54, the main house had been constructed by this date, and the construction of the chicken coops and dam is complete. Land clearance had occurred for the construction of the second house within Lot 54. Within Lot 55, the 1991 imagery shows that excavation for the bases of the two southern houses within Lot 55 had occurred. The double-storey, partially conjoined residences within Lot 56 were also constructed prior to the 1991.

All extant structures within the study area were constructed prior to 2004, including the sheds at the north-west corner of the study area, and the two houses within Lot 55. There are no noticeable

⁴⁸ Penrith City Council, 1986. 'Farmhouse, Aldington Road, Kemps Creek.' Accessed online 17/10/2019 at: <http://www.photosau.com.au/penrith/scripts/ExtSearch.asp?SearchTerm=KC005>

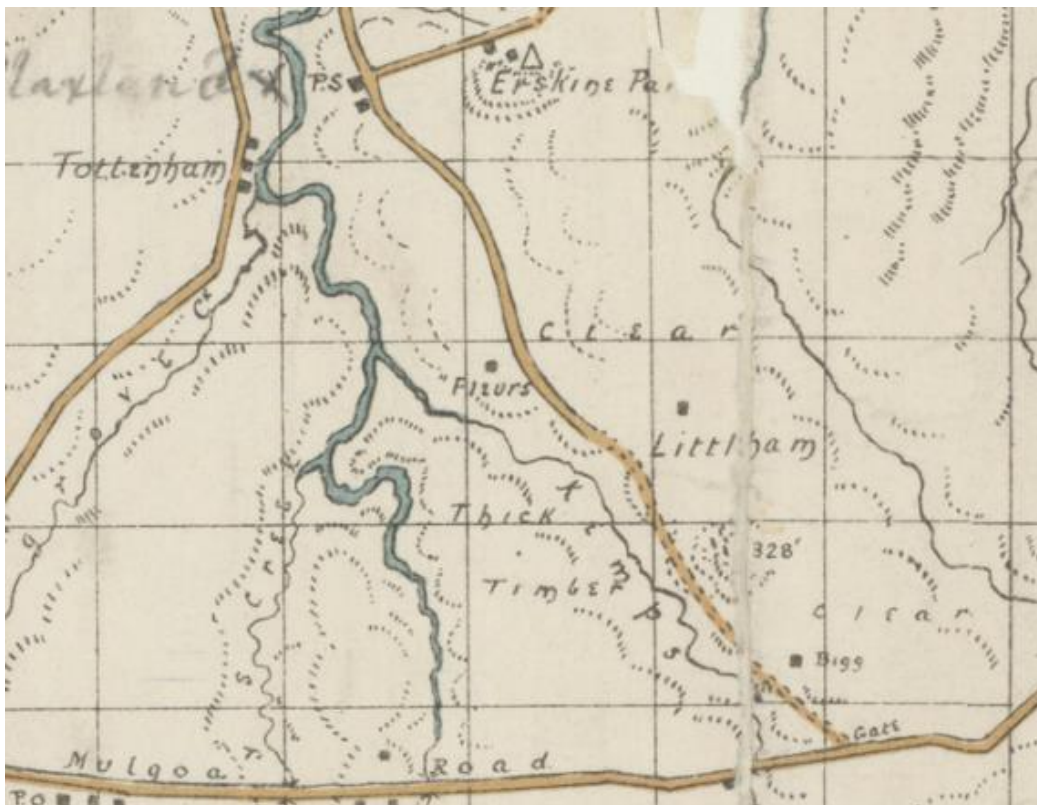
⁴⁹ Office of Environment and Heritage, 2005. 'Bayley Park – House.'

⁵⁰ *Nepean Times*, Sat 10 March 1934. 'Fleurs.' Accessed online 10/10/2019 via Trove at: <https://trove.nla.gov.au/newspaper/article/101335875?searchTerm=%22fleurs%22&searchLimits=>

changes within the study area between 2004 and 2019, except for the construction and removal of several narrow structures, likely for agriculture, immediately north of the main house in Lot 54. Lots 55-58 appear to have undergone limited earthworks from the mid-twentieth century onwards, with the exception of dam walls that have been raised above what appears to be the natural ground level.

The surrounding area has in recent years become utilised for industrial purposes, with a warehousing district being constructed north of the study area in Erskine Park. The study area has been designated as part of the Western Sydney Employment Area by the NSW Government and the upgrading of Mamre Road between the M4 Motorway and Kerrs Road is currently being planned for by the RMS, which will pass through the study area.

Figure 8. Fleurs Estate (only main homestead) and surrounding estates on map of Cumberland County, 1912. Source: SLNSW⁵¹



⁵¹ University of Sydney Department of Military Science/ New South Wales Department of Lands, 1912. *University of Sydney officer's course of instruction in duties of general staff, June 1909*. State Library of New South Wales. Accessed online 17/10/2019 at: https://search.slnsw.gov.au/primo-explore/fulldisplay?docid=SLNSW_ALMA21121687010002626&context=L&vid=SLNSW&lang=en_US&tab=default_tab

Figure 9. Bayly Park, Mamre Road., 1986. Source: Penrith City Council



Figure 10. Sale advertisement for Fleurs, 1934. Source: Trove

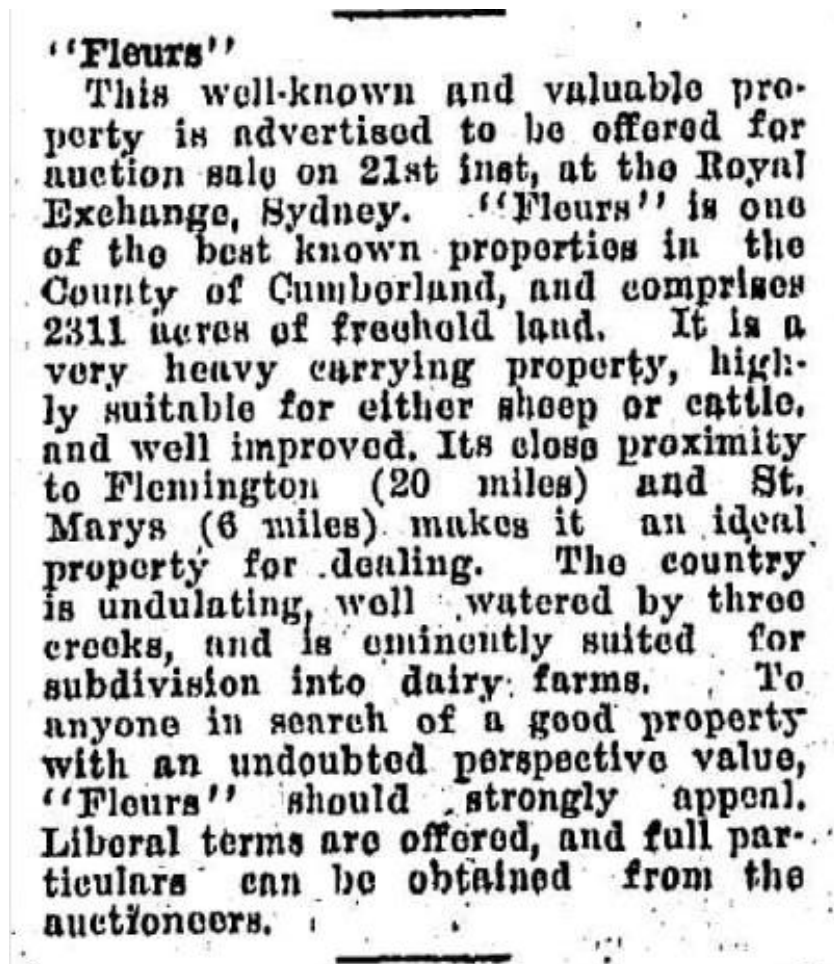


Figure 11. Overlay of the study area in 1961 aerial imagery (with cattle pen and dam circled in blue)



Figure 12. Detail of cattle pen and former dam in 1960 aerial imagery



Figure 13. Overlay of study area in 1982 aerial imagery



Figure 14. 1991 overlay of the study area



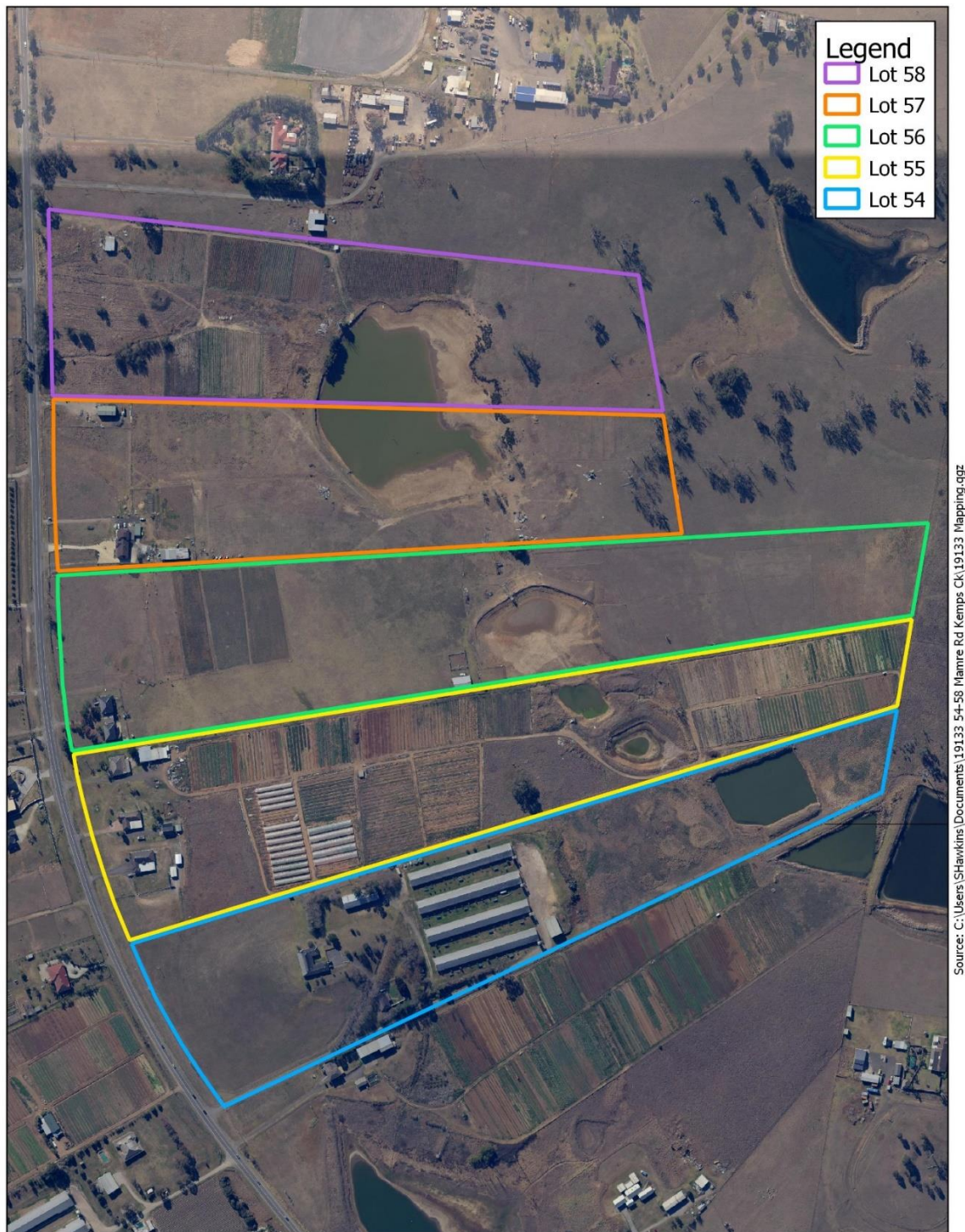
4.0 SITE INSPECTION

4.1 Description of the study area

An inspection of the study area was undertaken by Sarah Hawkins (Heritage Consultant, Artefact Heritage) and Jennifer Norfolk (Heritage Consultant, Artefact Heritage) on 2 September 2019, and by Sarah Hawkins and Ryan Taddeucci (Senior Heritage Consultant, Artefact Heritage) on 3 September 2019. The inspection was undertaken on foot, using physical maps and GPS. Photographs were taken to record different aspects of the heritage items within the study area and vicinity, vegetation, levels of disturbance and any areas of sensitivity.

The study area is situated on Mamre Road south of Bakers Lane. No heritage items are located within the study area, however the heritage curtilage of Bayly Park (Penrith LEP I104) is located approximately 300 metres south-west of the study area. On the western boundary of the study area, Mamre Road is single carriageway with one traffic lane per direction.

Figure 15. Lot Boundaries within the Study Area



Lot Boundaries
19133 Lots 54-58 Mamre Road
LGA: Penrith

Scale: 1:6000
Size: A4
Date: 11-10-2019

0 100 200 m



4.1.1 Lot 54

Lot 54 Mamre Road is the southernmost lot within the study area. The western third of the lots comprises of a large lawn area and contains two houses, likely dating to the late 20th century. There is a steep rise in the land from the road level to the location of the main house, which is situated on a raised platform (Figure 16 and Figure 17). The second house, which is much smaller in size, is situated at the low point of the property, approximately level with the driveway and Mamre Road. The access driveway to the property is located on the southern boundary of the Lot, before splitting into two separate driveways at a fork directly south of the main house (Figure 18 and Figure 19). One driveway curves north-east and serves as the access for the two houses on the property. The driveway is gravelled, lined by mature non-native trees on either side, and the yards of the houses are delineated by timber post and wire fences, which continue around the residential areas and line the frontage of the property along Mamre Road. The second driveway continues along the southern boundary of the property and provides access to the poultry and garden portions of the property. This driveway continues as a gravelled road, before becoming a dirt track at the eastern half of the property. Approximately 50 metres north-east of the main house is a large corrugated steel shed, surrounded by non-native trees including jacarandas.

Directly east of the two houses and the formal yard area of the property, four identical large chicken coops are aligned approximately north to south, each accompanied by a large silo on the southern side (Figure 20). Several small farm structures are located in the grassy areas between each coop. One large corrugated iron shed is located to the east of the chicken coops on the southern side of the property. A large gravelly-sand exposed platform is located on the eastern side of the chicken coops and appears to have been used as an informal parking area. Fragments of building debris were located throughout the exposure, including tile, sandstone, and ceramic fragments (Figure 21). It is unclear whether the debris is in situ or if it was brought to Lot 54 as fill to raise the ground level.

East of the chicken coops the ground level descends significantly, indicating that the area has been artificially built up, terracing what was likely a natural undulation in the landscape. East of the slope is a large area, approximately 160 x 120m of tall grass, which slopes downwards to the north (Figure 23 and Figure 26). In the eastern portion of the property is a large dam, which has been artificially built up (Figure 23). At the north-western corner of the dam there is a small corrugate iron pumping station (Figure 25) and a corrugated iron shed is located at the north-eastern corner (Figure 24). The far eastern portion of the property contained long grasses, possibly used for grazing previously.

Figure 16. Main house on summit of Lot 54.



Figure 17. View from house to Mamre Road (facing west)



Figure 18. Tree lined driveway between two houses



Figure 19. Main fence and gate area



Figure 20. Typical chicken coop and tank set up



Figure 21. Scatter of building debris east of coops



Figure 22. View from eastern boundary of Lot 54 to coops and houses (indicated by red arrow)



Figure 23. Built up area of dam on property (facing east)



Figure 24. Shed at NE corner of dam



Figure 25. Pumping station on NW corner of dam



Figure 26. Descent from chicken coop area to eastern half of property



Figure 27. Retaining wall and barn, facing NW



4.1.2 Lot 55

Lot 55 is the second lot from the south of the study area. The western portion, fronting Mamre Road, is occupied by three individual houses from the late 20th century, each with their own formalised driveways, yard spaces, and rear outbuildings (Figure 30 and Figure 29Figure 31). Within the south-eastern corner of Lot 55, a dirt track featured several small pieces of domestic decorative whiteware ceramic and glass (Figure 30 and Figure 31). Similar to Lot 54, it is uncertain if these fragments were brought into the site with previous earthworks. East of the residential area the study area is largely occupied by market gardens (Figure 32 and Figure 33) enclosed with timber post and barbed wire fencing (Figure 34). Modern rubbish piles are scattered throughout the property (Figure 35). A heavily grassed areas at the southern end of the site is present and occupied by two dams (Figure 36). The areas of market gardening showed extensive evidence of ground disturbance through gardening and irrigation (Figure 37). The grassy areas had low levels of visibility.

Figure 28. House on Lot 55



Figure 29. Centre house on Lot 55



Figure 30. Fenced area at front of property



Figure 31. Decorative ceramic fragments in exposed dirt track



Figure 32. Market garden area with irrigation



Figure 33. Market garden area



Figure 34. Western fence line of property



Figure 35. Typical modern rubbish piles



Figure 36. Dam on property



Figure 37. Irrigation or pumping infrastructure on Lot



4.1.3 Lot 56

Lot 56 is occupied by two large double storey residences dating to the late 20th century, which are joined by a carport (Figure 38). Several mature trees are located within the front yards of the residences. North-east of the residential area, a small area of the lot is used for market gardening, including irrigation (Figure 39 and Figure 40). An artificially built up dam is located within the centre of the property and extensive pumping infrastructure is located on the northern side of the dam (Figure 41). To the south-west of the dam, a corrugated iron shed is located at the southern extent of the property (Figure 42). Large rubbish piles of metal and timber were located at the northern side of the shed and was largely scattered across the property. Much of the remainder of the property is utilised for cattle grazing, with several paddocks demarcated with timber post and wire fencing (Figure 43).

Figure 38. Rear of houses and below-ground tank



Figure 39. Market gardening area (northern aspect)



Figure 40. Market gardening area (southern aspect)



Figure 41. Dam and pumping station



Figure 42. Shed/Stables



Figure 43. View to eastern paddocks of property



4.1.4 Lot 57

Lot 57 is located second from the north within the study area. Three separate driveways are located off Mamre Road, located at the north and south extents of the property. The northern driveway is gravelled and leads to a large shed located within a wire-fenced yard. The southern driveways are two formalised access routes to the residence at the south of the property, which is bordered by a white metal picket fence. The southernmost driveway is a sandy-gravelled surface leading to the residence, which likely dates to the 1980s, and the additional driveway is gravelled and leads to an extended garage at the rear of the house (Figure 44). To the east of the main house is a small number of sheds and outbuildings (Figure 45). Between the main house and northern shed is a large area of tall grassed land with yard rubbish scattered throughout (Figure 45, Figure 46, and Figure 47). In the centre of the property is the southern half of a large dam shared with Lot 58, which is encompassed by dried clay exposure (Figure 49). Small numbers of mature eucalyptus trees were located at the southern and eastern extents of the dam, and the area contained several Aboriginal stone artefacts and was assessed as an area of archaeological sensitivity.⁵²

The far eastern portion of the property largely comprised of low grass, which appeared to have recently been grazed. Several rubbish piles were located to the south and south-east of the dam. At the far east boundary of the property were several well-established eucalyptus trees (Figure 47).

⁵² For further detail please refer to Artefact Heritage, 2019. *Lots 54-58 Mamre Road, Kemps Creek Aboriginal Archaeological Survey Report*.

Figure 44. View west towards rear shed and house



Figure 45. Paddocks on Lot, western aspect



Figure 46. Paddocks, modern rubbish pile and dam



Figure 47. View east towards rear of property



Figure 48. Culvert near dam



Figure 49. Dam, taken from northern border of Lot, northern aspect



4.1.5 Lot 58

Lot 58 is located at the far north of the study area and is not used for residential purposes. Access to the property is at the northern extent of the Lot, in the form of a dirt track. In the north-west portion of the Lot there is a large shed and a small yard enclosure. To the south of the shed is an area of tall uncleared grasses, through which a minor creek runs east to west from the dam on the property (Figure 50). Much of the central area of the Lot is utilised for market gardening, including extensive irrigation (Figure 51, Figure 52, and Figure 53).

At the western side of the dam, the large exposed dry area continued from Lot 57 and Aboriginal artefacts were sighted in this area (Figure 49). The tree line at the edge of the dam continued into this

property also, with several semi-mature eucalyptus trees evident. The far western extent of the property included mid-length grasses and a small number of isolated large eucalyptus trees.

Figure 50. Creek area at western boundary of property



Figure 51. Market gardening area at west of property



Figure 52. Market gardening at centre of Lot



Figure 53. Market gardening at east of Lot



5.0 BUILT HERITAGE ASSESSMENT

5.1 Assessment of significance

The following section provides an overview description and assessment of significance of heritage items that are located in the vicinity of the study area. Information for each item has been extracted from their respective State Heritage Inventory (SHI) database listings on the NSW Office of Environment & Heritage website.

5.1.1 Bayley Park – House

Bayly Park is a single-storey sandstone and brick house with a newly renovated roof and rendered external walls. Large modern extensions have occurred at the rear of the house, notably an alfresco dining area. There is an extant verandah of all four sides of the house, and pine trees located around the house. The wider landscape has undergone several modifications throughout the twentieth and twenty-first centuries, however the plantings surrounding the homestead appear to be intact. The main access route to the homestead is lined with several trees. To the west of the homestead a tennis court has been added. There are a small number of outbuildings adjacent to the main homestead. These appear to be modern, however the construction date of these structures is uncertain. The LEP listing and previous studies of Bayly Park do not mention whether other historic structures associated with Bayly Park are still extant. The frontage of the property, facing on to Mamre Road, has been heavily asphalted and is currently utilised as a storage facility.

Figure 54. Bayly Park House – n.d. Source: Penrith City Local History/McGrath Real Estate



5.1.1.1 Assessment of significance

The following assessment of significance of the 'Bayley Park – House' heritage item has been adapted from its SHI listing, and is presented in Table 1 below.

Table 1. Significance assessment for the 'Bayley Park – House' heritage item

Criterion	Explanation
A – Historical Significance	<p>The property demonstrates a phase in the development of the region with the establishment of large pastoral and agricultural estates.</p> <p>The item has local significance under this criterion.</p>
B – Associative Significance	<p>The property is associated with the Bayley and Jones families.</p> <p>The item has local significance under this criterion.</p>
C – Aesthetic or Technical Significance	<p>The siting and broader landscaping scheme are excellent examples of a substantial country residences of the nineteenth century with plantings of landmark status.</p> <p>The item has local significance under this criterion.</p>
D – Social Significance	The item does not reach the threshold of local significance under this criterion.
E – Research Potential	The item does not reach the threshold of local significance under this criterion.
F – Rarity	<p>The property is rare for its historic associations with a settler family of note and colonial era rural estate.</p> <p>The item has local significance under this criterion.</p>
G – Representativeness	The item does not reach the threshold of local significance under this criterion.

5.1.1.2 Statement of significance

Under construction from the 1810s for Nicholas Bayley [sic], the property is unique in the south-eastern section of Penrith LGA for its historic associations with a settler family and colonial era rural enterprise. While the importance of the house requires investigation, the treed creekside setting with foreground of pastureland provides a historic item and demonstrates nineteenth century pastoral and agricultural estate planning.⁵³

⁵³ NSW Office of Environment and Heritage, 2005. 'Bayley Park – House.' *NSW Office of Environment and Heritage*.

6.0 ARCHAEOLOGICAL ASSESSMENT

6.1 Historical phasing within the study area

6.1.1 Original land grants: 1805-1826

The first land grants within the study area were granted to Richard Fitzgerald and Nicholas Bayly. Fitzgerald received 300 acres in 1805, and Bayly received 550 acres in 1810. These grants extended across the east and west sides of Mamre Road, bordered on the west by South Creek. Historic evidence suggests that from 1810, Bayly had been utilising Fitzgerald's land.

During this time intensive construction was undertaken at Bayly Park however it is unlikely that construction of significant structures occurred within the study area. The study area likely underwent land clearance and stumping, and would have been utilised for grazing. It is likely that orchard and garden areas associated with Bayly Park were located on the western side of Mamre Road. A fence along the boundary between Richard Fitzgerald and Nicholas Bayly's land grants was likely constructed and would have most likely been a timber post and rail construction. Paddock fences within Bayly Park and Restitution Farm may have been constructed also. It is unlikely that cottages, workmen huts, detached kitchens or large farm structures such as stables and barns would have been located within the study area. Contemporaneous country estates of a similar layout to Bayly Park frequently have built structures constructed in a cluster around the main homestead, and it would be unlikely that any of these structures were more than 500 metres away from the main homestead.

6.1.2 Fleurs: 1826 – 1883

During Richard Jones ownership of Bayly Park, the estate was renamed Fleurs. Several structures are listed in a real estate advertisement for the property during this phase, although it is possible these were constructed during Bayly's period of ownership. It is likely that most of the structures and outbuildings were located on the western side of Mamre Road and outside the study area. Possible structures that may have been built during this phase within the study area may have included loose boxes for horses, calf pens, pig-sties, milking yards or stock yards. The vineyard established by Jones may have been partially located on the eastern side of Mamre Road and within the study area, however it is more likely that it would have been located nearby the main house, particularly due to the alluvial soils associated with Kemps Creek.

During this phase it is most likely that the study area continued to be utilised for grazing and pastoral purposes, perhaps with minor cultivation of the land for vineyards. Additional fencing structures may have been constructed, likely using timber post and rail fencing.

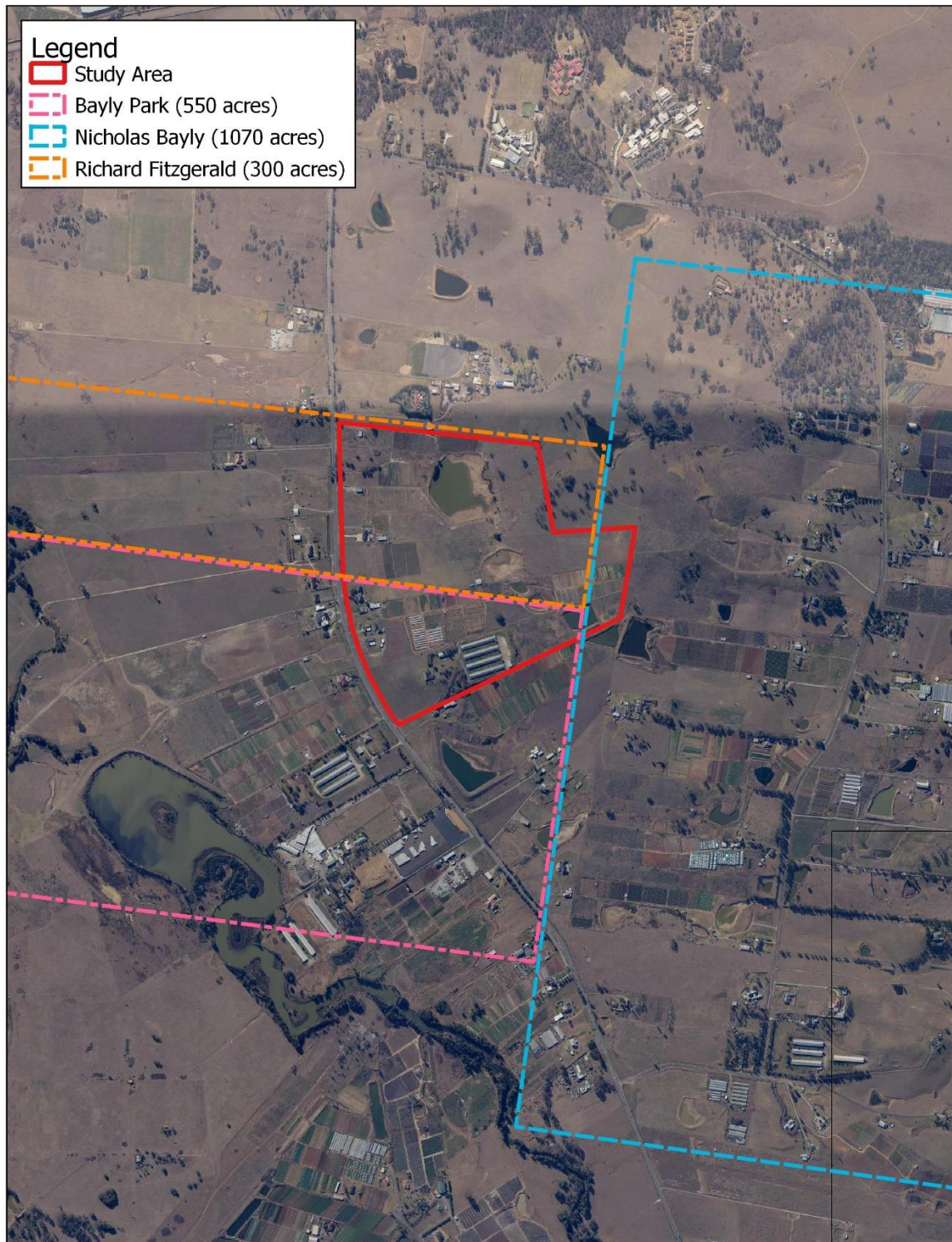
6.1.3 Subdivision: 1883 - c.1930s

In 1883 the Fleurs estate was subdivided into 20-acre lots by the Penrith-based Auctioneer T.R. Smith. Contemporaneously, Mamre Road was established, resulting in the division of Bayly Park. Several new boundary fences would have been established as a result of the subdivision, in addition to the erection of boundary fences along Mamre Road. As a result of the construction of Mamre Road any structures in the area would have been demolished. Further land clearance may have occurred in addition to the planting of new formal garden spaces. While Fleurs estate was subdivided, aerial imagery shows that no residential properties were constructed within the study area during this phase. Minor earthworks and irrigation may have also occurred during this phase. It is likely that grazing would have continued within parts of the study area.

6.1.4 Rural farming and residential use: 1930s – present

In 1930 Fleurs was again subdivided into 10- acre lots. During this phase, the study area was utilised for grazing until the 1980s, when market gardening was introduced. In 1958 Mamre Road was widened, which would have resulted in the demolition of fences and structures on the western boundary of the study area. The first residential property was constructed in Lot 55 between 1970 and 1982. Between 1982 and 1991, the remaining residential and agricultural structures within the study area were constructed. From 1982, the study area became used for market gardening and grazing in localised areas. During this phase, larger bulk earthworks would have begun, particularly in Lot 54, to create flat or raised land for the construction of large agricultural outbuildings. Earthworks would have been utilised to raise the levels of dams within the study area at this time, and it is possible that smaller creeks would have been blocked off and converted into dams during this phase.

Figure 55. Original Land Grants



Source: C:\Users\SHawkins\Documents\19133 54-58 Mamre Rd Kemps Ck\19133 Mapping.qgs



6.2 Assessment of Archaeological Potential

6.2.1 Phase 1: Original land grants (1805 - 1826)

Potential archaeological remains associated with phase 1 would be linked to the initial establishment of land grants, the clearance of land, and the construction of timber yard structures.

Potential remains associated with the construction of boundary fence lines between land grants and paddocks would likely take the form of remnant timber and post holes. Large areas of land clearance may have occurred within this phase, and there may be evidence of backfilled tree boles as a result of the land clearance. There is also potential for evidence of light-weight timber structures associated with yard structures, such as paddocks, pig sties or calf pens. This evidence would typically take the form of postholes.

Archaeobotanical remains may be present at considerable depths, however it is likely that they would have been disturbed and redistributed or redeposited as a result of subsequent ground disturbance. Due to the subsequent ground disturbance within the landscape as a result of ploughing, market gardening, irrigation and drainage channelling and twentieth century earthworks, it is likely that any archaeological remains from Phase 1 have been previously disturbed and removed. Furthermore, timber from this era would be unlikely to be preserved, particularly due to the damp and disturbed soils associated with market gardening and irrigation. If remnant timber structures were uncovered, it would also be particularly difficult to attribute them to any particular phase.

Due to the distance of the study area from the extant main homestead it is unlikely that any outbuilding structures would have been located within the study area. The 'Lowlands' model of homestead layout in the Cumberland suggests that additional outbuildings would have been clustered around the main homestead, and as such there is **nil** potential for significant remains associated with Bayly Park outbuildings to survive within the study area.

Overall, there is **nil-low** potential for archaeological remains associated with Phase 1 to be present within the study area.

6.2.2 Phase 2: Fleurs (1826 - 1883)

Archaeological remains associated with Phase 2 would be linked to the development of the Fleurs Estate and would largely be consistent with Phase 1. Potential remains may include remains of timber post and rail fences, timber post holes, or tree boles from land clearance. There is also potential to uncover tree boles from land clearance and archaeobotanical remains associated with agricultural cultivation. There is limited potential for timber yard structures or undocumented structures, including footings, foundations, or floor surfaces. As with Phase 1, it is likely that subsequent ground disturbance has disturbed and removed any archaeological remains associated with Phase 2. Furthermore, the identified potential remains would have a low chance of preservation and it would be unlikely that the remains could be attributed to Phase 2.

Due to the distance of the study area from the extant main homestead it is unlikely that any outbuilding structures would have been located within the study area. The 'Lowlands' model of homestead layout in the Cumberland suggests that additional outbuildings would have been clustered around the main homestead, and as such there is **nil** potential for significant remains associated with Bayly Park/Fleurs outbuildings in the study area.

There is **nil-low** potential for archaeological remains associated with Phase 2 to be uncovered within the study area.

6.2.3 Phase 3: Subdivision of Fleurs (1883 – c.1930s)

Potential archaeological remains associated with Phase 3 may be related to the subdivision of Fleurs Estate, particularly the establishment of undocumented agricultural structures, agricultural cultivation, and boundary fences.

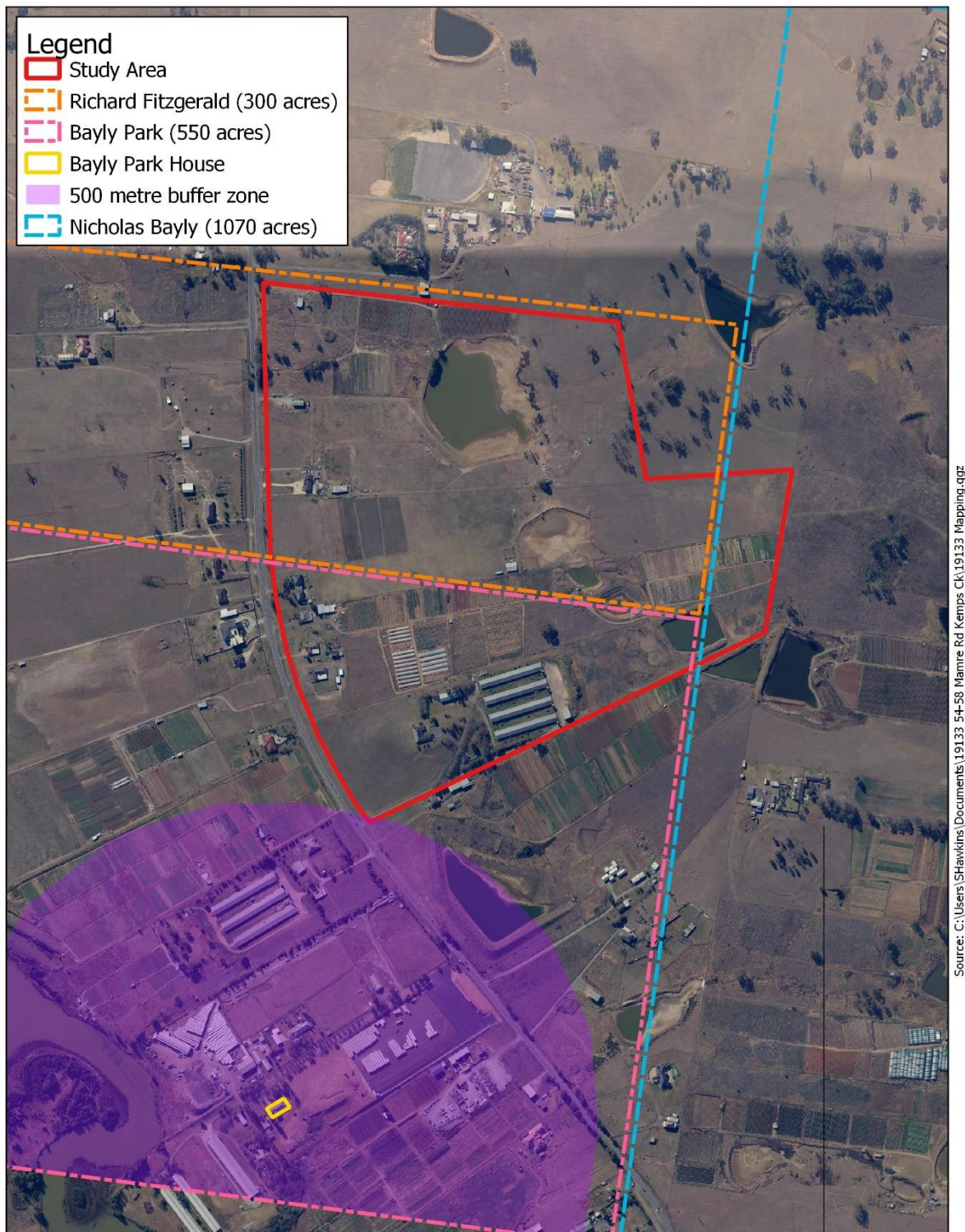
Following the subdivision of Fleurs Estate, new boundary fences would have been established. Potential archaeological remains would include remnant timber post and rail fences or timber post holes.

Due to effective demolition methodologies and earthworks in the late twentieth century, it is likely that archaeological remains associated with this phase would have been effectively removed during subsequent site disturbance. There is therefore **nil-low** potential for archaeological remains associated with Phase 3 to be present within the study area.

6.2.4 Phase 4: Semi-rural residencies and market gardening (c.1930s – present)

Potential archaeological remains from Phase 4 would be associated with the construction of post-war agricultural structures on the site. Potential remains may include timber or metal structural remains. Artefact scatters may also be present. Effective demolition methodology would significantly limit the likelihood that remains would be remnant in addition to the continual use of the land for farming, leading to the disturbance of soils. Therefore, there is **nil-low potential** that archaeological remains associated with Phase 4 would be present.

Figure 56. Area of potential structures associated with Bayly Park



6.3 Assessment of Archaeological Significance

This section assesses the heritage significance of the known or potential archaeological remains outlined in Section 6.2. Similar to other types of heritage items, archaeological remains should be managed in accordance with their significance. Assessing the heritage value of archaeological remains is complicated by the fact that their extent and nature is often unknown. Judgement must therefore be based on expected or potential attributes.

The *NSW Heritage Manual* provides the framework for the following significance assessment of the study area. These guidelines incorporate the aspects of cultural heritage value identified in the *Burra Charter* (Australia ICOMOS 2013). Heritage NSW, DPC has also issued the 2009 *Assessing Significance for Historical Archaeological Sites and 'Relics'*⁵⁴ and the 1996 *Archaeological Assessment Guidelines*.⁵⁵ The assessment of historical archaeological sites requires a specialised framework in order to consider the range of values of an archaeological site.

6.3.1 Assessment against the NSW heritage assessment guidelines

The significance of the potential archaeological resource, defined as being all potential archaeological remains within a site as identified in Section 6.2, has been assessed using the NSW heritage assessment criteria and described in Table 2.

Table 2. Significance assessment for archaeological remains

Criteria	Discussion
A – Historical Significance An item is important in the course or pattern of the local area's cultural or natural history	Substantial intact and in situ archaeological remains, including undocumented agricultural or residential structures associated with early development within the study area would represent early settlement and agricultural practices from colonial settlement in the Kemps Creek and Penrith area. Remains associated with the late 1800s subdivision of Fleurs may also reflect historic subdivision and residential development in the area. However, undocumented structures or evidence of historical site patterning are unlikely to be preserved intact and would not likely to be demonstrative of this historical criterion. Intact and in situ archaeological remains of residential or agricultural structures dating to the 1800s may reach the threshold of local significance.
B – Associative Significance An item has strong or special associations with the life or works of a person, or group of persons, of importance in the local area's cultural or natural history	The study area is associated with the original land grant of Bayly Park and Nicholas Bayly, and the subsequent Fleurs Estate. It is unlikely that any potential archaeological remains located within the study area could be identified as being associated with Nicholas Bayly and Bayly Park, or with Richard Jones and the Fleurs Estate. Potential archaeological remains within the study area are unlikely to reach the threshold of local significance under this criterion.
C – Aesthetic Significance An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in the local area	It is unlikely that any potential archaeological remains within the study area would represent uncommon or significant architectural, decorative arts styles, or engineering and construction techniques, and as such would not be considered to reflect outstanding creative or technical achievement. Potential archaeological remains within the study area are unlikely to reach the threshold of local significance under this criterion.
D – Social Significance	Potential substantive archaeological remains associated with Nicholas Bayly or the Fleurs Estate and subdivision may be of some interest to historians (including local

⁵⁴ NSW Heritage Branch 2009

⁵⁵ NSW Heritage Office 1996: 25 – 27

An item has strong or special association with a particular community or cultural group in the local area for social, cultural or spiritual reasons

historians) and some members of the local community. However potential remains would be unlikely to have a significant association with a particular community.

Potential archaeological remains within the study area are unlikely to reach the threshold of local significance under this criterion.

E – Research Potential

An item has potential to yield information that will contribute to an understanding of the local area's cultural or natural history

If substantial intact and in situ archaeological remains associated with undocumented residential or agricultural structures, or large preserved deposits of archaeobotanical resources were uncovered, these remains may provide insight into early farming practices within the Bayly Park and Fleurs Estates and may provide evidence of the location of agricultural endeavours such as Richard Jones vineyard. If undocumented agricultural structures that could be definitively dated to the 1800s were excavated these structures would inform the extent of the size of the Bayly Park and Fleurs Estates and indicate past land use.

Potential archaeological remains within the study area are unlikely to reach the threshold of local significance under this criterion.

F – Rarity

An item possesses uncommon, rare or endangered aspects of the local area's cultural or natural history

Substantial intact and in situ archaeological remains of undocumented agricultural or residential buildings or subsurface artefact bearing or archaeobotanical deposits dating to the 1800s would likely be considered uncommon within the Kemps Creek area. However, within the broader Penrith LGA area these types of remains would not be considered rare and it is likely that more substantial and/or significant remains associated with this time period, early colonial agricultural activity, and country estates has been previously excavated within the Penrith area.

Potential archaeological remains within the study area are unlikely to reach the threshold of local significance under this criterion.

G – Representative

An item is important in demonstrating the principal characteristics of a class of NSW's cultural or natural places of cultural or natural environments (or the cultural or natural history of the local area)

Archaeological remains associated with agricultural outbuildings or activities may be representative of early colonial agricultural practices at country estates and of previous archaeological evidence of material from a similar context.

Potential archaeological remains within the study area may reach the threshold of local significance under this criterion.

6.3.2 Statement of significance

Potential archaeological remains of undocumented agricultural or residential structures, artefactual deposits or archaeobotanical deposits, if found intact or in situ may be significant for their ability to hold research potential and provide information regarding the early colonial and agricultural activity within the study area. Structural remains may also reflect historical events associated with colonial settlement and country estates, agricultural practices, and subdivision of the study area, and may be representative of early colonial agricultural practices within the Penrith LGA. However, there is little known evidence of specific structures that may have been located in the study area,

6.4 Overview of archaeological potential and significance

Overall the study area, has nil-low potential to contain an archaeological resources of local heritage significance.

The archaeological potential and significance of the study area has been summarised in Table 3 below.

Table 3. Summary of archaeological potential and significance

Phase	Potential archaeological remains	Arch. potential	Significance
Phase 1: Original land grants (1805 – 1826)	Remnant timber from fences; post holes	Nil-low	Not Significant
	Tree boles from land clearance	Nil-low	Not Significant
	Remnant undocumented timber yard structures	Nil-low	Local
	Archaeobotanical evidence	Nil-low	Not Significant
	Bayly Park outbuildings	Nil	Local
Phase 2: Fleurs Estate (1826 – 1883)	Remnant timber from fences; post holes	Nil-low	Not Significant
	Tree boles from land clearance	Nil-low	Not Significant
	Remnant undocumented timber yard structures	Nil-low	Local
	Archaeobotanical evidence	Nil-low	Not Significant
	Bayly Park outbuildings	Nil	Local
Phase 3: Subdivision of Fleurs Estate (1883 – c. 1930)	Timber post and rail fences; post holes	Nil-low	Not Significant
	Building rubble associated with demolition of structures: tiles, bricks, sandstone	Nil-low	Not Significant
Phase 4: Semi-rural residencies and market gardening (c. 1930 – present)	Inter-war or Post war residential or agricultural structures: foundations, footings, building material including brick or tiles	Nil-low	Not Significant
	Artefact scatters or deposits	Nil-low	Not Significant

7.0 IMPACT ASSESSMENT

The objective of a SoHI is to evaluate and explain how the proposed development, rehabilitation or land use change will affect the heritage value of the site and/or place. A SoHI should also address how the heritage value of the site/place can be conserved or maintained, or preferably enhanced by the proposed works.

7.1 Proposal description

The proposed works involve the construction of industrial buildings, internal road network layout, building locations, gross floor area, car parking, concept landscaping, building heights, setbacks and built form parameters (Figure 57). Works would involve:

- The demolition and removal of existing rural structures and remediation works
- Clearing of existing vegetation across the study area
- Dewatering and decommissioning of dams across the study area
- Realignment of existing creek and establishment of an E2 Environmental Conservation zone
- Bulk earthworks and dewatering
- Importation and placement of spoil material
- Establishment of retaining walls
- Catchment level stormwater infrastructure, trunk services connections, utility infrastructure, roads and access infrastructure
- Construction of warehouse and distribution centre
- Boundary stormwater management, fencing and landscaping
- Staged subdivision.

The Department of Planning, Industry and Environment (DPIE) rezoned Mamre Road Precinct, including the site, in June 2020 under the State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP). The rezoning of this precinct responds to the demand for industrial land in Western Sydney. The site primarily zoned IN1 General Industrial with a small sliver of land zoned E2 Environmental Conservation.

Figure 57. Aspect Industrial Estate Master Plan (Provided by Mirvac on 22 September 2020)



7.2 Assessment of Heritage Impact

There are no listed or unlisted heritage items or elements of significant fabric located within the study area. During the site inspection, no buildings, features or objects within the study area were determined to be unlisted heritage items or moveable heritage of significance at a local level or above.

7.2.1 Bayley Park – House (Penrith LEP Item 104)

7.2.1.1 Physical impact

The proposal would not involve works that would encroach into the curtilage of Bayley Park – House, which is located approximately 290 metres south of the study area. There would be no direct impacts to the curtilage or significant fabric associated with the heritage item.

Due to the significant distance of Bayly Park House from the study area, it is not expected that significant fabric would be impacted by vibration associated with the bulk earthworks within the study area.

In summary, the proposal would not result in direct adverse impact to the curtilage of Bayley Park - House and would result in **neutral** physical impact to the item (SHR # 00674).

7.2.1.2 Visual impact

The proposal would involve bulk earthworks and the construction of warehousing structures approximately 290 metres north of the Bayley Park – House heritage item. The study area and its surrounds have largely maintained the historic rural character and setting of the area.

Bayly Park house is set back approximately 360 metres from Mamre Road and is encircled by large mature pine trees on each side, which have created a privacy screening around the house. The eastern half of the Bayley Park – House curtilage was previously cleared grazing land, however it is currently in use as an open storage facility with an artificial landscaping mound with recent vegetation planted to provide screening of the storage facility from the perspective of the road. Due to this, there are no extant direct sightlines between Bayly Park house and its surrounds and the study area.

The proposed works would result in a **negligible** visual impact to the Bayley Park heritage item.

Figure 58. View from Lot 54 to Bayly Park House, with location of house marked by red arrow



7.2.2 Assessment of impact to potential archaeological remains

The study area was assessed as having a nil-low potential for the identification of locally significant archaeological remains. Significant archaeological remains would be related to former agricultural activities in the study area during the early- to mid-nineteenth century, however there is no direct evidence of residential or agricultural structures in the study area during this time. Archaeological remains related to the property's agricultural use in the nineteenth century would likely be highly ephemeral and not likely to be identified intact or to be sufficiently robust to demonstrate heritage significance. As such, the proposed works would result in negligible impacts to significant non-Aboriginal archaeological remains.

7.3 Assessment of Proposal against Management Policies

The following sections will assess the proposal against strategies and policies outlined in the following relevant heritage management plans:

- Penrith DCP 2014.

7.3.1 Penrith DCP 2014

The Penrith DCP 2014 provides the following statements relating to character and heritage conservation that are relevant to this assessment:

Section 7.1.5: Development in the Vicinity of a Heritage Item or Conservation Area

B. Objectives

To ensure that the development of land or a building in the vicinity of a heritage item or heritage conservation area is undertaken in a manner that complements the heritage significance of the site or area.

Section 7.1.4 Design Guidelines

B. Objectives

- a) to conserve and maintain established setbacks to streets*
 - b) to ensure adequate curtilage and landscape setting for the item*
 - e) to ensure that the development of land or a building in the vicinity of a heritage item is undertaken in a manner that complements the heritage significance of the site*
-

Principle 6

Recognise and build on the distinctive characteristics of cities, including their human and cultural values, history and natural systems.

Much of the study area retains a rural character that is integral to the heritage values of the Bayley Park – House heritage item. While there are no heritage listed items within the study area, the study area maintains the rural character and pastoral setting that is associated with the significance of Bayley Park House and of the historic land use of Bayly Park Estate. However, recent developments within the heritage curtilage of Bayley Park House have resulted in changes to the setting of the heritage item, altering the rural character of the heritage item into an industrial space and obstructing views between Bayley Park House, the surrounding area, and the study area. The proposal would result in additional cumulative impacts within the study area which will likely further contribute to the loss of the rural character and setting.

The proposal would result in bulk earthworks within the vicinity of the heritage curtilage of Bayly Park. While it is unlikely that the works would be noticeable from Bayly Park House, it is expected that they would be visible and create a significant visual change to the environment when viewed from the curtilage of Bayly Park at Mamre Road. Several cumulative impacts have altered the rural landscape throughout the history of Bayly Park, including the subdivision of the Bayly Park/Fleurs Estate, construction and subsequent upgrades of Mamre Road, and the construction of late twentieth century housing within and surrounding the study area. The eastern portion of the Bayley Park – House heritage curtilage has recently been repurposed as an industrial storage facility, altering the rural character of the heritage item. It is expected that cumulative visual impacts will further erode the rural character of the area will arise as a result of the proposal, however the significant rural landscape has largely been altered in the area immediately surrounding Bayley Park - House. The industrial warehouse buildings will be located at a considerable distance from the heritage item of Bayley Park – House, over 800 metres to the north, and would not likely be visible or create a negative visual impact.

The Penrith DCP 2014 aims to ensure that development within the vicinity of a heritage item is undertaken in a manner that complements the heritage significance of the site or area. The proposal

will result in a localised change to the historic rural setting and agricultural land use of the local area, and cumulatively to the Kemps Creek region as a whole.

At this stage of the project there are opportunities to accommodate Principle 6 of the Penrith DCP 2014, to “recognise and build on the...cultural values, [and] history” of the area. At its current stage, the proposal would not be recognising or building upon the cultural values or history of the area, as it would be altering the rural character and changing the historic land use of the study area. In order to accommodate Principle 6 of the DCP, opportunities for providing heritage interpretation could be included as part of the proposed works.

The DCP recommends that established setbacks to streets are maintained. The proposal indicates a 20 metre setback from Mamre Road, which would complement the DCP objectives and provide opportunity for replanting along the frontage of Mamre Road. The proposal would also be in accordance with the objective “to ensure adequate curtilage...for the item.”

7.4 Statement of heritage impact

A statement of heritage impact for Bayly House has been prepared according to NSW Heritage Office guidelines⁵⁶ in Table 4 below.

Table 4: Statement of heritage impact to Bayly Park house

Development	Discussion
What aspects of the Proposal respect or enhance the heritage significance of the study area?	The proposal would not improve or enhance the heritage significance of any heritage item.
What aspects of the Proposal could have a detrimental impact on the heritage significance of the study area?	<p>The proposed development would be only partially visible from the perspective of Bayly Park house and while it would introduce additional non-rural elements into the largely rural landscape, this would result in negligible adverse impacts to the significance of Bayly Park house.</p> <p>There is a nil to low potential for significant archaeological remains to be located within the study area, however due to the very low chance of significant and intact remains in the study area, adverse impacts to significant archaeological remains are not anticipated.</p>
Have more sympathetic options been considered and discounted?	The proposed development is considered of negligible adverse heritage impact and no other sympathetic options were developed due to the lack of adverse heritage impacts to significant heritage items.

⁵⁶ Heritage NSW, 2002. *Statements of Heritage Impact*

8.0 CONCLUSIONS AND RECOMMENDATIONS

8.1 Conclusions

This SoHI has made the following conclusions:

- There is one listed heritage item within 300 metres of the proposed site boundary:
 - ‘Bayley Park – House’ (Penrith Local Environment Plan 2010 104)
 - ‘Bayley Park – House’ has been assessed as being significant at a local level and has identified the rural landscape of Bayly Park as a significant element
- The study area has been assessed as demonstrating nil-low potential to contain archaeological relics
- The proposal has been assessed as having the potential to result in:
 - Neutral physical impact to ‘Bayley Park – House’
 - Minor visual impact to ‘Bayley Park – House’
 - Negligible impact on archaeological relics.

8.2 Recommendations

The following recommendations will aid in mitigating the impact of the proposed development of the Aspect Industrial Estate on nearby heritage items and the associated cultural landscape:

The following recommendations will aid in mitigating the impact of the proposed development of the Aspect Industrial Estate on nearby heritage items and the associated cultural landscape:

- This report should be provided to the Department of Planning, Industry and the Environment (DPIE) in their consideration of the SSD Application for the proposed masterplan. This report has only assessed the impacts to potential archaeology as a result of the masterplan,
- Appropriate heritage interpretation media should be considered for inclusion within the proposed café or in other suitable areas throughout the proposal and would satisfy the objectives of the Penrith DCP.
- An unexpected find protocol should be enacted during the construction phase of the project. Should unexpected non-Aboriginal archaeological finds be encountered during works, work should cease in that area and an appropriately qualified archaeologist should be contacted to assess the potential significance of the find. Should archaeological remains be considered significant, further assessment, notification and/or approval from the DPIE may be required prior to works recommencing in that area.

9.0 REFERENCES

Artefact Heritage, 2019. *DRAFT Lots 54-58 Mamre Road, Kemps Creek Aboriginal Archaeological Survey Report*.

Heritage Branch, Department of Planning, 2009. *Assessing Significance for Archaeological Sites and 'Relics'*.

Binney, Keith Robert, 2005. 'Horsemen of the First Frontier (1788-1900) and the Serpent's Legacy. Volcanic Productions, Sydney.

Biosis, March 2018. *Mamre South State Significant Development Application Statement of Heritage Impact*. Prepared for Frasers Property Industrial Constructions Pty Ltd and Altis Property Partners Pty Ltd.

Butler, M., 2011. 'Botany.' *Dictionary of Sydney*. Accessed online 19/2/2019 at: <https://dictionaryofsydney.org/entry/botany>

Empire, Sat 5 Jun 1852. 'Advertising. The Princely Estate of Fleurs.' Accessed online 10/10/2019 via Trove at: <https://trove.nla.gov.au/newspaper/article/60135476?searchTerm=%22Fleurs%22%20subdivision&searchLimits=>

Encyclopaedia Britannica, 2017. 'Botany Bay.' Accessed online 19/2/2019 at: <https://www.britannica.com/place/Botany-Bay>

Karskens, G., 2009. *The Colony. A History of Early Sydney*.

Koettig, M., 1981. *Erskine Park – South St. Mary's Second Stage Release Area: Archaeological Survey for Aboriginal and Historic Sites*. Report to Penrith Council.

MacLaurin, E.C.B., 1966. 'Fitzgerald, Richard (1772-1840).' *Australian Dictionary of Biography*. Accessed online 26/9/2019 at: <http://adb.anu.edu.au/biography/fitzgerald-richard-2048>

Morris, C., and Britton, G., 2000. *Colonial landscapes of the Cumberland Plain and Camden, NSW: A survey of selected pre-1860 cultural landscapes from Wollondilly to Hawkesbury LGAs*.

Nepean Times, Sat 10 March 1934. 'Fleurs.' Accessed online 10/10/2019 via Trove at: <https://trove.nla.gov.au/newspaper/article/101335875?searchTerm=%22fleurs%22&searchLimits=>

Office of Environment and Heritage, 2005. 'Bayley Park – House.' *NSW Government Office of Environment and Heritage*. Accessed online 1/10/2019 at: <https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2260104>

Penrith City Council, 1986. 'Farmhouse, Aldington Road, Kemps Creek.' Accessed online 17/10/2019 at: <http://www.photosau.com.au/penrith/scripts/ExtSearch.asp?SearchTerm=KC005>

Penrith History, n.d. 'Kemps Creek.' *Penrith City Local History*. Accessed online 26/9/2019 at: <https://penrithhistory.com/suburb-profiles/kemps-creek/>

Richardson & Wrench, 1895. Subdivision of farm, orchard & dairy lands on the famous Fleurs Estate St Mary's : for auction sale on the ground Saturday 23rd February at 1 o'clock / by Richardson and Wrench Ltd., auctioneers. *National Library of Australia*, via Trove. Accessed online 17/10/2019 at: <https://nla.gov.au/nla.obj-230481253/view>

The Sydney Gazette and New South Wales Advertiser, Thu 4 March 1824. 'Classified Advertising.' Accessed online via Trove 1/10/2019 at:
<https://trove.nla.gov.au/newspaper/article/2182695?searchTerm=%22bayly%20park%22%20%22noble%22&searchLimits=l-decade=182>

The Sydney Gazette and New South Wales Advertiser, Thu 6 October 1831. 'Government Notices. Colonial Secretary's Office, Sydney, 30th September 1831. Deeds of Grant.' Accessed online 1/10/2019 via Trove at:
<https://trove.nla.gov.au/newspaper/article/2202917?searchTerm=%22richard%20fitzgerald%22&searchLimits=l-decade=183>

The Sydney Gazette and New South Wales Advertiser, Tue 23 August 1836. 'Government Gazette. Wednesday, August 17th, 1836. Grants of Land.' Accessed online 1/10/2019 via Trove at:
<https://trove.nla.gov.au/newspaper/article/2206175?searchTerm=%22richard%20fitzgerald%22&searchLimits=l-decade=183>

The Sydney Morning Herald, 29 Jun 1912. 'An Old Document.' Accessed online 10/10/2019 via Trove at:
<https://trove.nla.gov.au/newspaper/article/100905177?searchTerm=%22Robert%20Cork%22%20fleurs&searchLimits=>

The Sydney Morning Herald, Fri 19 Nov 1841. 'Stolen or Strayed.' Accessed online 10/10/2019 via Trove at:
<https://trove.nla.gov.au/newspaper/article/12872357?searchTerm=%22fleurs%22%20kemps%20creek&searchLimits=l-decade=184>

The Sydney Morning Herald, June 21 1888. 'Advertising.' Accessed online 10/10/2019 via Trove at:
<https://trove.nla.gov.au/newspaper/article/13689648>

The Sydney Morning Herald, Tue 21 Oct 1862. 'Family Notices.' Accessed online 10/10/2019 via Trove at:
<https://trove.nla.gov.au/newspaper/article/13235867?searchTerm=Robert%20%22Cork%22%20%22fleurs%22&searchLimits=l-decade=186>

The Sydney Morning Herald, Wed 16 1846. 'To Stand at Fleurs.' Accessed online 10/10/2019 via Trove at:
<https://trove.nla.gov.au/newspaper/article/12895058?searchTerm=%22fleurs%22%20kemps%20creek&searchLimits=l-decade=184>

The Sydney Morning Herald, Wed 18 April 1866. 'Advertising.' Accessed online 10/10/2019 via Trove at:
[https://trove.nla.gov.au/newspaper/article/13129712?searchTerm="Fleurs"%20subdivision&searchLimits=](https://trove.nla.gov.au/newspaper/article/13129712?searchTerm=)

The Sydney Times, Sat 29 Apr 1837. 'Advertising.' Accessed online 1/10/2019 at:
<https://trove.nla.gov.au/newspaper/article/252652799?searchTerm=%22richard%20fitzgerald%22&searchLimits=l-decade=183>



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