

Attachment A7(b)

**Non-Indigenous Heritage Study – 2
Statutory and Policy Context – Botany
Road Precinct**

Figure 6: 1929 Botany Road resurfacing concrete slab.
Source: State Library of NSW: www.digital.sl.nsw.gov.au, GPO 1-14192, FL810163



Statutory and Policy Context

2.0

2.1 Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* (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 also requires State and local government authorities prepare local environmental planning instruments, such as the Sydney Local Environmental Plan 2012 (Sydney LEP), to give statutory force to planning controls. These instruments may incorporate specific provisions for the conservation and management of environmental heritage.

Building Controls

National Construction Code

The National Construction Code, including the Building Code of Australia (BCA), provides a uniform set of technical provisions for the design and construction of buildings and other structures within Australia. The BCA is produced and maintained by the Australian Building Codes Board (ABCB), and is given legal effect through the Environmental Planning and Assessment Act (EP&A Act).

Under the EP&A Act, all new buildings and new building work must be carried out in accordance with the NCC. In general, there is no requirement for an existing building to comply with the BCA unless the use of an existing building is changed. In the case of change of use, the main requirement is that the structural capacity and fire safety of the building be appropriate for the new use.

In the case of an existing building undergoing alterations and/or additions, the new work must comply with the BCA, with some discretion being available to consent authorities to decide if the existing building needs to be upgraded to meet the BCA. There are opportunities to provide alternatives and concessions to BCA compliance where it otherwise may result in adverse heritage impacts.

2.2 National Parks and Wildlife Act 1974

The *National Parks & Wildlife Act 1974* (the NPW Act) provides statutory protection for all Aboriginal objects (consisting of any material evidence of the Aboriginal occupation of NSW) and for 'Aboriginal Places' (areas of cultural significance to the Aboriginal community) under Section 86 of the NPW Act. Aboriginal objects are afforded automatic statutory protection in NSW whereby it is an offence to:

'damage, deface or destroy Aboriginal sites without the prior consent of the Director-General of the National Parks and Wildlife Service', (now part of the Department of Planning, Industry and Environment).

The NPW Act defines an Aboriginal 'object' as:

'any deposit, object or material evidence (not being a handicraft for sale) relating to indigenous and non-European habitation of the area that comprises New South Wales, being habitation before or concurrent with the occupation of that area by persons of Non-Aboriginal European extraction and includes Aboriginal remains.'

The NPW Act is administered by the Environment, Energy and Science Branch (ESS), formerly the Office of Environment and Heritage, of the Department of Planning, Industry and Environment. The Co-ordinator General of ESS is the authority responsible for the protection of all Aboriginal objects and place in NSW, whether they are on a national park estate or not.

Under Section 86 of the NPW Act it is an offence to harm or desecrate an Aboriginal object or place without prior written consent of the Co-ordinator General of ESS. Under Section 89A of the NPW Act, it is also a requirement to notify the Co-ordinator General of the ESS of the location of an Aboriginal object identified during any phase of works.

Under s90, if any Aboriginal cultural remains are exposed during works, then all work would need to be ceased until an Aboriginal heritage impact permit has been obtained and Aboriginal community consultation has been undertaken.

The provisions for recognising and protecting Aboriginal Cultural Heritage are proposed to be moved into a new Aboriginal Cultural Heritage Act which is still under development.

2.3 Heritage Act 1977

The *Heritage Act 1977* (Heritage Act) provides protection for items of 'environmental heritage' in NSW. Environmental heritage includes places, buildings, works, relics, movable objects or precincts considered significant based on historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic values. Items considered to be significant to the State are listed on the State Heritage Register (SHR) and cannot be demolished, altered, moved or damaged, or their significance altered without approval from the Heritage Council of NSW in accordance with Section 57(1) of the Act.

State Heritage Register

The SHR was established under Section 22 of the State 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 Heritage NSW, Department of Premier and Cabinet and includes a diverse range of over 1500 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. The Pressure Tunnel and Shatts that run diagonally underneath the study area are listed on the SHR, along with many other items located in the vicinity.

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 of the Heritage Act requires all government agencies to maintain a Heritage and Conservation Register that lists their heritage assets and includes an assessment of heritage significance.

They must also ensure that all items inscribed on its list are maintained with due diligence in accordance with State Owned Heritage Management Principles (contained within the State Agency Heritage Guide) 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. It is a requirement under Section 170A of the Heritage Act that an agency notify the Heritage Council of NSW no less than 14 days before it removes, transfers ownership, ceases to occupy or demolishes any place on its register.

Exemptions

Section 57(2) of the Heritage Act provides for a number of Exemptions to Section 57(1) approval requirements. Development the subject of an exemption under section 57(2) does not require prior Heritage Council approval but may still require notification and an approval from Heritage NSW, Department of Premier and Cabinet. There are two types of Exemptions: Standard and Specific.

Standard Exemptions apply to all items on the SHR and generally include minor and non-intrusive works and are in some instances subject to some qualifications. Typical exempted works include maintenance (to buildings and gardens), minor repairs and repainting in approved colours.

Specific exemptions apply to individual SHR items and are gazetted, included on the SHR listing, or identified in a Conservation Management Plan for the item and endorsed by the Heritage Council.

Minimum Standards of Maintenance and Repair

Section 118 of the Heritage Act provides for the regulation of minimum standards for the maintenance and repair of State Heritage Register items. These standards were regulated in 1999 and apply to all State Heritage Register items.

The minimum standards cover the following areas:

- weatherproofing
- fire protection
- security and
- essential maintenance.

An inspection to ensure that the item is being managed in accordance with the minimum standards must be conducted at least once every year (or at least once every three years for essential maintenance and repair standards).

Failure to meet the minimum standards may result in an order from the Heritage Council to do or refrain from doing any works necessary to ensure the standards are met. Failure to comply with an order can result in the resumption of land, a prohibition on development, or fines and imprisonment.

Archaeology

Part 6 Division 9 of the Heritage Act protects archaeological 'relics' from being exposed, moved, damaged or destroyed. This protection extends to situations where a person has reasonable cause to suspect that archaeological remains may be affected by the disturbance or excavation of the land. It applies to all land in NSW that is not included in the SHR. Section 4(1) of the Heritage Act (as amended 2009) defines a 'relic' as follows:

"relic means any deposit, artefact, object or material evidence that:

(a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and

(b) is of State or local heritage significance."

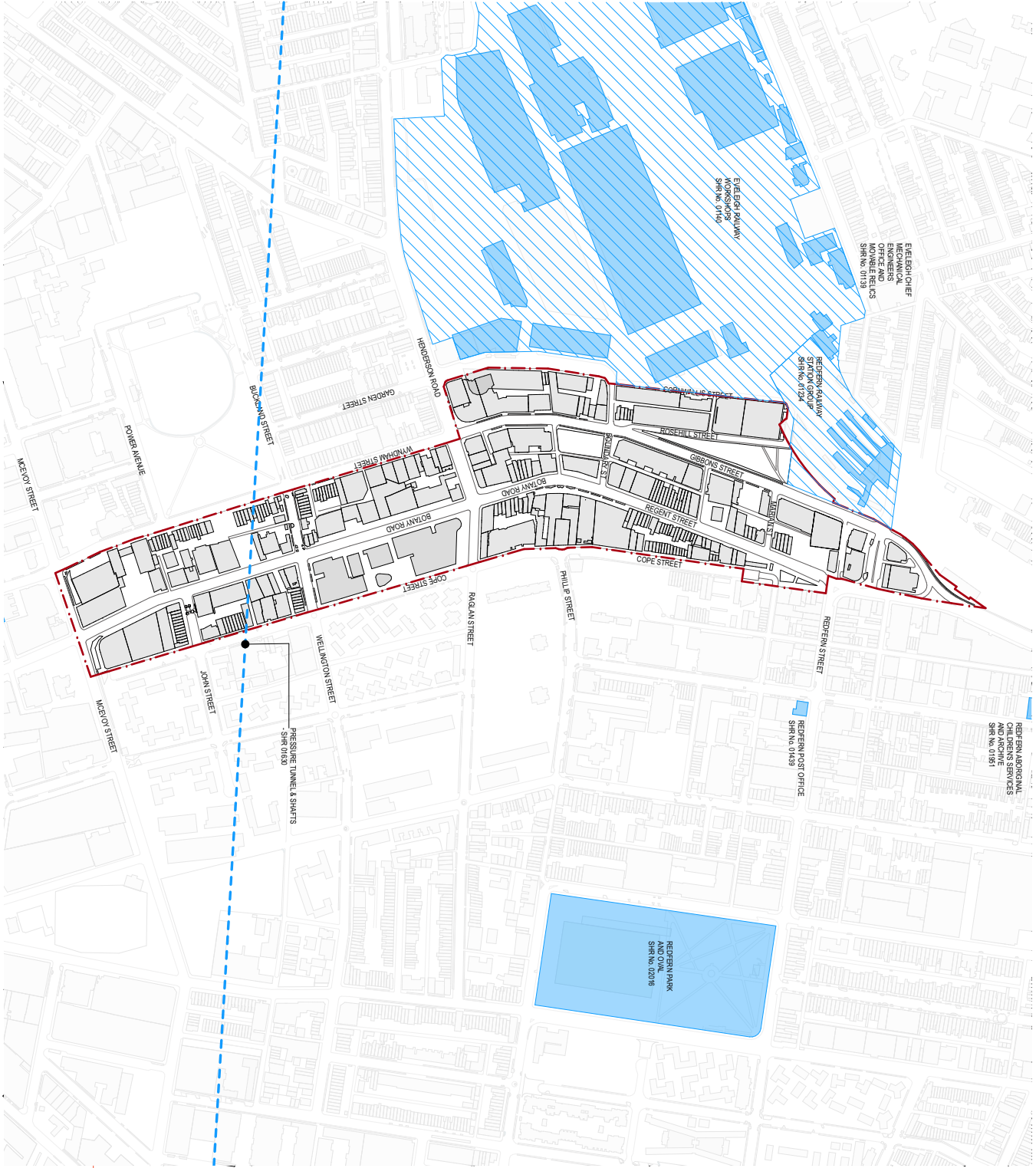
Sections 139-145 of the Heritage Act prevent the excavation or disturbance of land known or likely to contain relics, unless in accordance with an excavation permit. Excavation permits are issued under Section 140 of the Heritage Act, or Section 60 for sites listed on the SHR. Excavation Permit Applications must be supported by an Archaeological Research Design and overseen by an approved Excavation Director.

Section 146 of the Heritage Act requires that any discovery or location of a 'relic' is reported to the Heritage Council.

If the proposed work is minor and would have minimal impact on the heritage significance of the place or site within a SHR curtilage, it may be granted an exception or exemption under Section 139(4) or Section 57(2) of the Heritage Act.

Works

The Heritage Act identifies 'works' as being in a separate category to archaeological 'relics'. 'Works' refer to infrastructure. 'Works' may be buried and therefore archaeological in nature, however, exposure of a 'work' does not generally trigger reporting obligations or approval under the Heritage Act. 'Works', as items of environmental heritage, have the potential to provide information that contributes to our knowledge of past practices, and good environmental practice recognises this.



There are no identified items of State heritage significance located above ground in the Botany Road Corridor study area, however a pressure tunnel of State heritage significance passes through the study area underground. Eyleigh Railway Workshops and Redfern Railway Station about the site to the north west.

ITEM	ADDRESS	SHR#
Pressure tunnel & shafts to Waterloo Pumping Station, Potts Hill to Waterloo	Potts Hill Road	01630

Figure 7: State Heritage Items in the vicinity of the Botany Road Corridor.
Source: City of Sydney LEP Map with T25 overlay



State Heritage Items

2.4 City of Sydney Planning Controls

2.4.1 Sydney Local Environmental Plan 2012

The key local statutory planning instrument applying to the site is the Sydney Local Environmental Plan 2012 (SLEP 2012). Clause 5.10 of the LEP sets out controls relating to Heritage Conservation and has been prepared in accordance with the NSW Government's Standard Instrument—Principal Local Environmental Plan. This clause is consistent with current heritage best practice guidelines, providing for protection of heritage buildings, places, works and trees, Heritage Conservation Areas (HCAs), and archaeological relics.

Schedule 5 - Environmental Heritage of the LEP provides a list of Identified Heritage Items and Heritage Conservation Areas. There are ten identified heritage items within the study area and two Heritage Conservation Areas.

Part 5.10 of SLEP 2012 sets out the following objectives and controls related to Heritage Conservation.

Heritage conservation

(1) Objectives

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of the City of Sydney,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance,
- (2) Requirement for consent
- Development consent is required for any of the following:
 - (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):
 - (i) a heritage item,
 - (ii) a heritage item,
 - (iii) an Aboriginal object,
 - (iv) a building, work, relic or tree within a heritage conservation area,

- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,
- (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (d) disturbing or excavating an Aboriginal place of heritage significance,
- (e) erecting a building on land:
 - (i) on which a heritage item is located or that is within a heritage conservation area, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,
 - (f) subdividing land:
 - (i) on which a heritage item is located or that is within a heritage conservation area, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,
 - (3) When consent not required
 - However, development consent under this clause is not required if:
 - (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:
 - (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and
 - (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or
 - (b) the development is in a cemetery or burial ground and the proposed development:
 - (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
 - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or
- (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or
- (d) the development is exempt development,
- (4) Effect of proposed development on heritage significance
- The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6),
- (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, or
 - (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,
- (6) Heritage conservation management plans
- The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause,
- (7) Archaeological sites
- The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the Heritage Act 1977 applies):
 - (a) notify the Heritage Council of its intention to grant consent, and
 - (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent,
- (8) Aboriginal places of heritage significance

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and
- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent,
- (9) Demolition of nominated State heritage items
- The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:
 - (a) notify the Heritage Council about the application, and
 - (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent,
- (10) Conservation incentives
- The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose or an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:
 - (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
 - (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority and
 - (c) the consent to the proposed development would require that all necessary conservation work, identified in the heritage management document is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area,

2.4.2 Sydney Development Control Plan 2012

Sydney DCP (SDCP) supports SLEP and provides detailed planning and design guidelines to support the planning controls in the LEP. It covers matters including urban design, access and parking, landscaping and signage.

Provisions are included in Section 3.9 of SDCP for heritage items, conservation areas and contributory buildings along with neutral and appropriate infill buildings and detracting buildings. Building materials, public domain features and excavation are also covered by the DCP.

Heritage objectives are stated in Section 3.9.1 of the DCP:

1. (a) Ensure that heritage significance is considered for heritage items, development within heritage conservation areas, and development affecting archaeological sites and places of Aboriginal heritage significance.

2. (b) Enhance the character and heritage significance of heritage items and heritage conservation areas and ensure that infill development is designed to respond positively to the heritage character of adjoining and nearby buildings and features of the public domain.

A Heritage Impact Statement is required to be prepared to accompany any proposal involving substantial demolition or major alterations to a heritage item, building within a heritage conservation area or a building older than 50 years under the provisions of Section 3.9.1 of the DCP.

Section 3.10 contains provisions related to specific architectural building types including warehouses and industrial buildings, weatherboards, pubs and hotels, along with significant shopfronts, public buildings and community buildings.

The Botany Road Corridor study area straddles three Special Character Areas under the provisions of Section 2 of the SDOP 2012.

- 2.5.1 Green Square - Alexandria Park
- 2.7.7 Erskineville, Alexandria (west) and Newtown (south) - Alexandria Park and Wyndham Street
- 2.13.13 Waterloo Redfern - Regent Street/Botany Road.

The locality statements for these Special Character Areas include general principles for development which acknowledge the importance of heritage items and conservation areas and encourage development which responds to the traditional narrow lot, small footprint, 'fine grain' character of historic buildings within them.

There are ten heritage items of local significance located within the Botany Road Corridor study area and many others located in the vicinity.

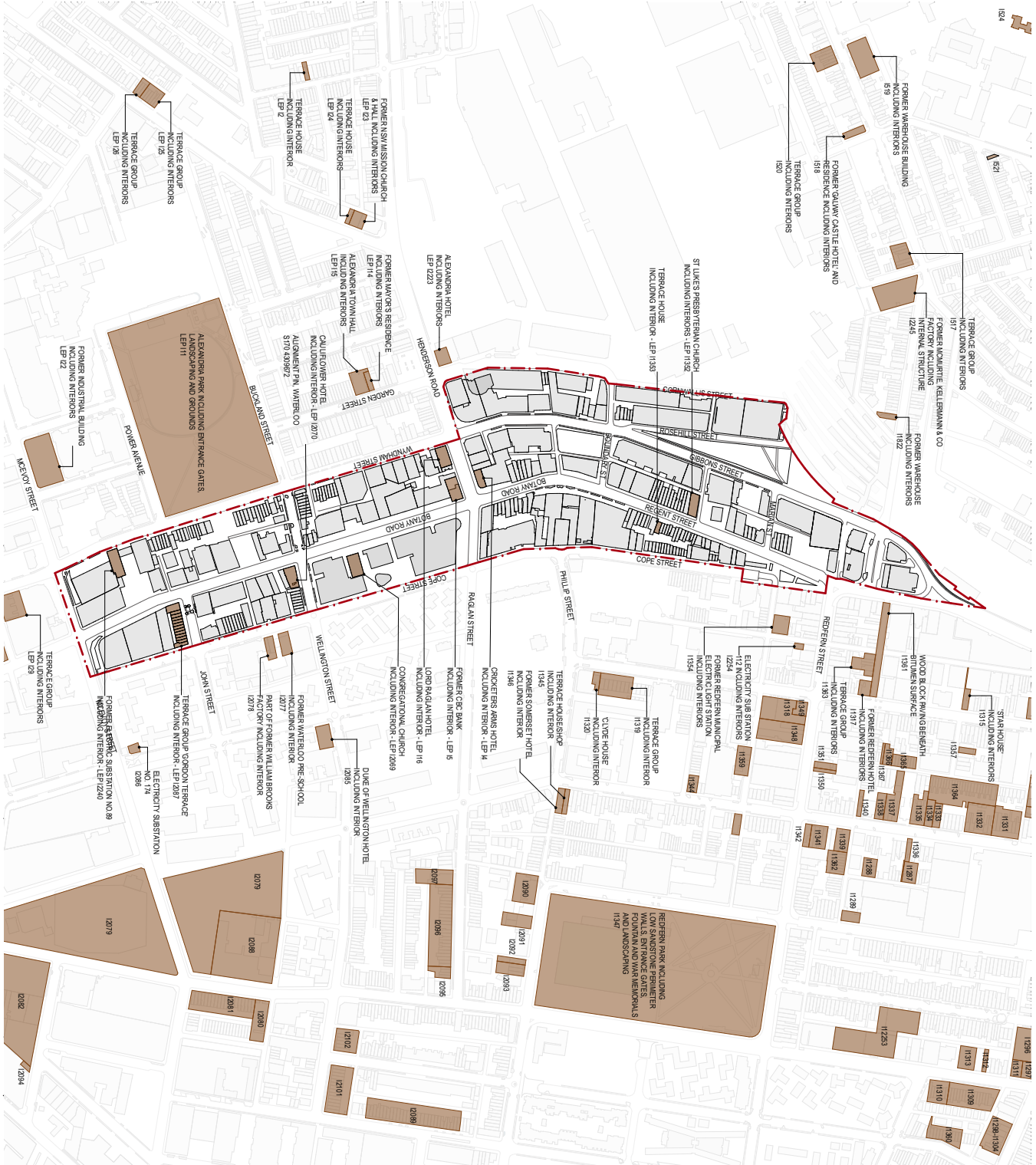


Figure 8: Local heritage items in the vicinity of the Botany Road Corridor. Source: City of Sydney LEP Map with T25 Overlay

Local Heritage Items



The Botany Road Corridor is located adjacent to two Heritage Conservation Areas (HCAs) of local significance: the Alexandria Park and Redfern Estate HCAs. The Alexandria Park HCA extends marginally into the study area at Henderson Road, Wyncham and Buckland Streets.

HERITAGE CONSERVATION AREA		LEP#
Alexandria Park	C1	
Redfern Estate	C56	

Figure 8: Existing Heritage Conservation Areas in the vicinity of the Botany Road Corridor.
Source: City of Sydney, LEP Map with T20 overlay.

Existing Heritage Conservation Areas