

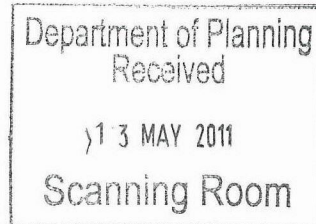


16 May 2011

Community and Corporate Group

Reference File: F06981

Mr Peter Goth  
Regional Director, Sydney West  
Department of Planning  
Locked Bag 5020  
PARRAMATTA NSW 2124



Dear Mr Goth

**SUBJECT                      Planning Proposal for Blue Mountains Local  
Environmental Plan 2005 (Amendment No. 23) in  
accordance with Section 56 of the Environmental Planning  
& Assessment Act 1979, seeking Gateway Determination**

Blue Mountains City Council resolved on 10 May 2011 to commence the process to amend Blue Mountains Local Environmental Plan 2005 to reclassify certain land at Pioneer Place Katoomba.

The attached Planning Proposal has been prepared for the subject LEP in accordance with section 55 of the *Environmental Planning & Assessment Act 1979* and the Department of Planning's guides titled, '*A guide to preparing local environmental plans*' and '*A guide to preparing planning proposals*'.

Blue Mountains City Council requests the Gateway Determination from the Minister on the Planning Proposal in accordance with section 56 of the Act.

Furthermore, Council is required under the *Local Government Act 1993* to conduct a public hearing as the proposal seeks to reclassify land from community to operational. To accommodate this undertaking, Council requests that the Gateway Determination establishes a timeframe for completion of the reclassification that exceeds the standard 6 months.

Should you have any questions in relation to the Planning Proposal, please contact Ryan Gill, Assistant Strategic Planner on (02) 4780 5781.

Yours faithfully,

**RYAN GILL**  
Assistant Strategic Planner  
City Planning

MINUTE NO. 169

**7. 11/50265. Blue Mountains Local Environmental Plan 2005 - Draft Amendment 23 -  
Reclassification of certain land at Pioneer Place Katoomba**

The meeting was addressed by: Lindsay Rowles.

A MOTION was MOVED by Councillors Van der Kley and Greenhill:

- 1. That the Council adopt the provisions of the Planning Proposal prepared under s.55 of the Environmental Planning & Assessment Act 1979 for the reclassification of lots 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 43, 45, 47, 49 and 51 in DP 239909 and lot 2 in DP 620370, Pioneer Place Katoomba from Community Land to Operational Land under the Local Government Act 1993;**
- 2. That the Planning Proposal for Blue Mountains Local Environmental Plan 2005 Draft Amendment 23 be forwarded to the Department of Planning for assessment and Gateway Determination by the Minister under s.56 of the Environmental Planning & Assessment Act 1979;**
- 3. That Blue Mountains Local Environmental Plan 2005 Draft Amendment 23 be processed in accordance with the Gateway Determination; and**
- 4. That a report is brought before the Council, subject to the Gateway Determination, at the conclusion of the notification period and public hearing by November 2011 to enable consideration of submissions received on Blue Mountains Local Environmental Plan 2005 Draft Amendment 23.**

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being:

| <b>For</b>  |                                                               |
|-------------|---------------------------------------------------------------|
| Councillors | Creed<br>Greenhill<br>Van der Kley<br>Mays<br>Myles<br>Searle |

| <b>Against</b> |                   |
|----------------|-------------------|
| Councillors    | McCallum<br>Gibbs |



## **PLANNING PROPOSAL**

### **Blue Mountains Local Environmental Plan 2005 – Draft Amendment 23**

### **Reclassification of certain land at Pioneer Place, Katoomba**

## INTRODUCTION

The preparation of a planning proposal is the first step in preparing a Local Environmental Plan (LEP); in this case, it is the first step in preparing an amending LEP to Blue Mountains LEP2005. A planning proposal is a document that explains the intended effect of the proposed LEP and the justification for making it. This planning proposal has been prepared in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Department of Planning Guidelines 'A guide to preparing local environmental plans' and 'A guide to preparing planning proposals'

This planning proposal addresses matters that must be considered to deliver an amending LEP that reclassifies 17 land parcels at Pioneer Place, Katoomba.

### The Site

The Planning Proposal applies to 17 land parcels at Pioneer Place, Katoomba (Figure 1). Pioneer Place is a Council owned and managed car park, nested between the current Coles/Kmart complex to the west and various retail and commercial premises to the east. Pioneer Place occupies an area of roughly 1.26 ha of land and has vehicular access from Katoomba, Waratah and Parke Streets. A major public investment known as the Cultural Centre development is occurring on adjacent land to the north.

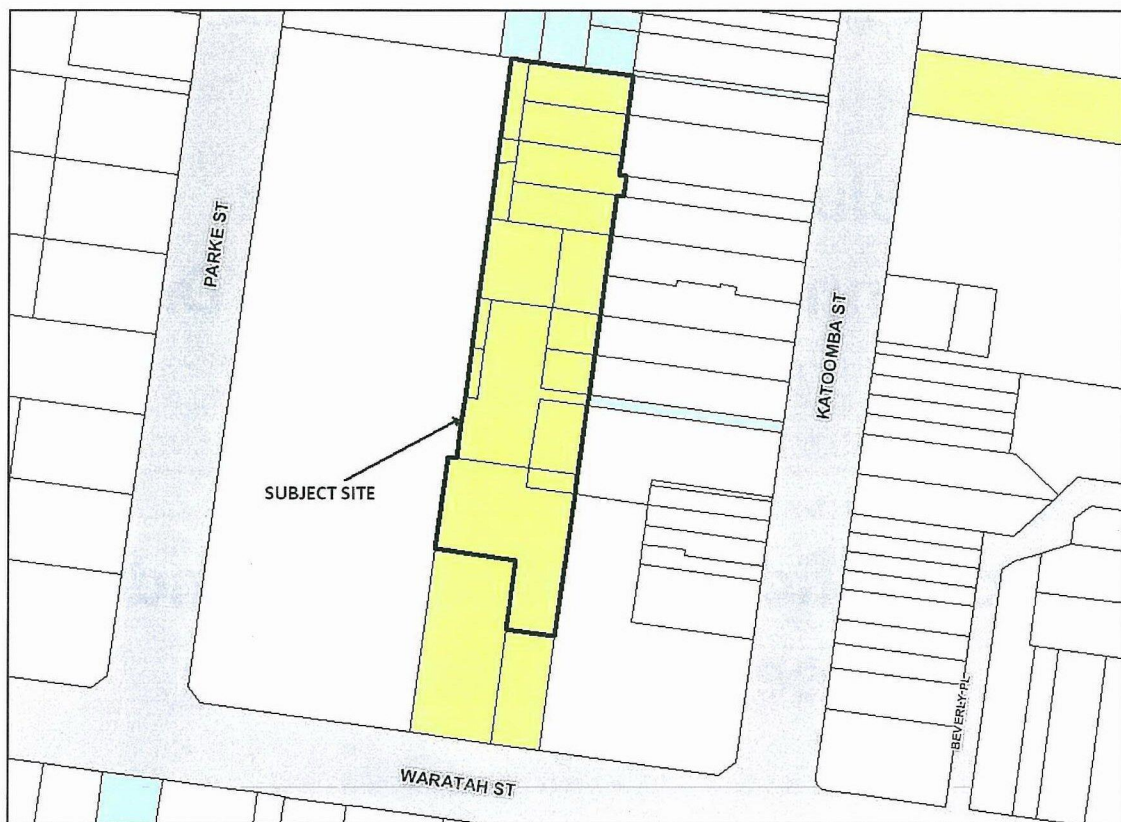


Figure 1: Land parcels subject to Planning Proposal

## Background

The preparation of this Planning Proposal was prompted by the submission of a major Development Application (DA) for alterations and additions to the current Coles/Kmart complex at 30-34 Waratah Street, Katoomba. As well as representing a major capital investment in central Katoomba, it has been recognised that there is potential to deliver an enhanced public realm through the outcome of this proposal, namely, improvements to the adjacent Council owned public car park, Pioneer Place.

The DA involves enlargement of the building footprint and a subsequent increase in retail floorspace which triggers a requirement to provide additional parking in accordance with Council's parking standards. To satisfy this requirement, the DA includes a subterranean parking area under the existing ground level parking area located in front of the Kmart building as illustrated in Figure 2. The land on which this element of the proposal is to occur is classified as Community Land under the Local Government Act 1993. Consequently, the DA in its current form cannot be assessed without resolution of associated community property matters.

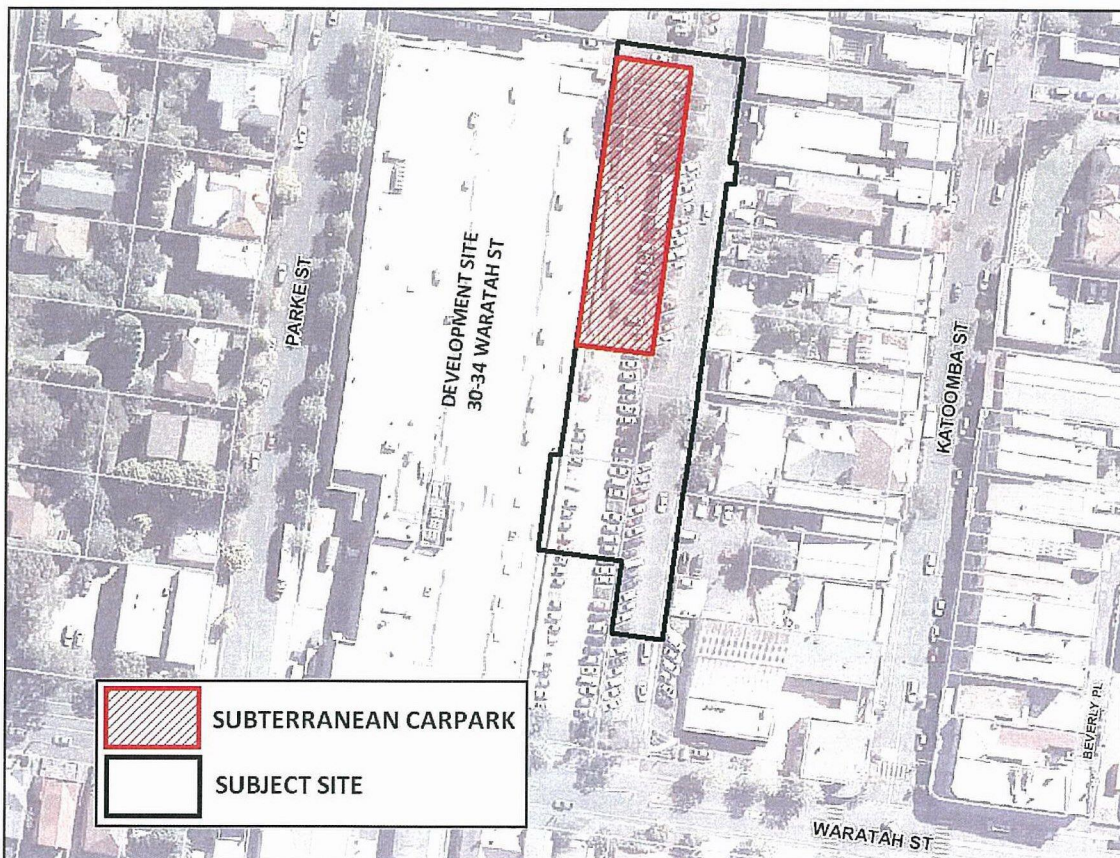


Figure 2: Location of proposed subterranean car park

There are two fundamentally different approaches that can be taken to enable car parking to proceed on the applicable community land; a Plan of Management or a Reclassification of the land from Community to Operational to enable transfer or lease of the Stratum Title.

Under the Local Government Act 1993, Council must prepare a PoM for Community Land. A PoM establishes how the applicable Community Land is to be used and managed. For the Council to be able to lease the land for commercial purposes the land needs to be reclassified to Operational Land. The subject land can then be leased for an appropriate term. The Local Government Act 1993, Sections 45, 46, 46A, 47 and General Regulation 116 prohibits a commercial lease on Community Land.

The reclassification of the relevant land parcels from Community to Operational is considered the most effective and appropriate means of facilitating the development of the proposed subterranean car park. This approach provides the Council with much greater flexibility in dealing with the land below the existing parking level and would enable the sale or long term lease of the stratum title.

## **PART 1 – OBJECTIVES OR INTENDED OUTCOMES**

This part provides a concise statement which sets out the intended outcomes of the planning proposal. It is a statement on what is planned to be achieved.

The objective of this Local Environmental Plan is to re-classify land from “Community” to “Operational” pursuant to Section 27 of the Local Government Act 1993. The subject land is comprised of 17 allotments as illustrated in Figure 3 and described in the table below.

The proposal will allow Council to transfer or lease certain parcels of land to facilitate the development of a subterranean car park associated with the adjacent supermarket.



Figure 3: Parcels subject to Planning Proposal

| Reference | Property Address         | Lot | DP     | Current Classification |
|-----------|--------------------------|-----|--------|------------------------|
| 1         | 38-40 Parke St, Katoomba | 17  | 239909 | Community              |
| 2         | 38-40 Parke St, Katoomba | 19  | 239909 | Community              |
| 3         | 38-40 Parke St, Katoomba | 21  | 239909 | Community              |
| 4         | 38-40 Parke St, Katoomba | 23  | 239909 | Community              |
| 5         | 38-40 Parke St, Katoomba | 25  | 239909 | Community              |
| 6         | 38-40 Parke St, Katoomba | 27  | 239909 | Community              |
| 7         | 38-40 Parke St, Katoomba | 29  | 239909 | Community              |
| 8         | 38-40 Parke St, Katoomba | 31  | 239909 | Community              |
| 9         | 38-40 Parke St, Katoomba | 33  | 239909 | Community              |
| 10        | 38-40 Parke St, Katoomba | 35  | 239909 | Community              |

*Planning Proposal – Draft Amendment 23  
Reclassification of certain land at Pioneer Place, Katoomba*

|    |                             |    |        |           |
|----|-----------------------------|----|--------|-----------|
| 11 | 38-40 Parke St,<br>Katoomba | 37 | 239909 | Community |
| 12 | 38-40 Parke St,<br>Katoomba | 43 | 239909 | Community |
| 13 | 38-40 Parke St,<br>Katoomba | 45 | 239909 | Community |
| 14 | 38-40 Parke St,<br>Katoomba | 47 | 239909 | Community |
| 15 | 38-40 Parke St,<br>Katoomba | 49 | 239909 | Community |
| 16 | 38-40 Parke St,<br>Katoomba | 51 | 239909 | Community |
| 17 | 38-40 Parke St,<br>Katoomba | 2  | 620370 | Community |

**PART 2 – EXPLANATION OF PROVISIONS**

The following explanation provides an explicit statement of how the intended outcome described in Part 1 will be achieved.

Schedule 7 of the Blue Mountains LEP 2005 is being amended by the insertion of the table as shown in Appendix A.

### **PART 3 – JUSTIFICATION**

In the case of LEPs which are being prepared solely to classify or reclassify public land, the Director General of Planning has issued a set of requirements as to the specific matters that must be addressed in the justification for the planning proposal. In accordance with these requirements, this section sets out the case for changing the classification of the subject land as set out in Part 1.

**A. Is the planning proposal the result of any strategic study or report?**

This planning proposal is the result of numerous Council reports relating to parking and functionality issues associated with the Council owned public car park, Pioneer Place, and is also closely related to the Master Planning exercise currently being undertaken as a means to address these issues.

The Planning Proposal seeks to reclassify Community Land to Operational Land to facilitate development of a subterranean car park associated with a current DA. In accordance with Councils desire to address the issues associated with Pioneer Place, this proposal is viewed as an opportunity to realise an improved public outcome through the DA.

**B. Is the planning proposal consistent with the local council's community plan, or other local strategic plan?**

The Planning Proposal is consistent with Blue Mountains City Council's Community Plan and is not inconsistent with any other strategic plan.

The reclassification will facilitate development of a subterranean car park in Pioneer Place, Katoomba. The proposal to develop a subterranean car park relates to a DA for additions to the adjacent supermarket complex. This application is being assessed in parallel with the undertaking of a Master Planning exercise for Pioneer Place. These two projects are considered to have complementary outcomes in terms of improvements to Pioneer Place.

**C. If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished.**

In order to facilitate the DA, the land in question needs to be reclassified. It is prudent whilst doing so to also extinguish all interests to provide certainty to the developer and Council alike. The following table details the manner in which the subject land parcels were acquired by Council. Any interests created as a product of these dealings are proposed to be extinguished as part of the process of reclassification:

*Planning Proposal – Draft Amendment 23*  
*Reclassification of certain land at Pioneer Place, Katoomba*

| Reference | Lot and Deposited Plan | Manner acquired                                                                                                                                                                                                                                                           | After acquisition                                                                                                                                           |
|-----------|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1</b>  | Lot 17 in DP 239909    | Council resolved on 12 May 1970 to acquire. Reports dated 28.4.1970 and 11.2.1970 indicates the owner will transfer to Council with some conditions. Transferred to Council vide Dealing M275718 for \$25.00 on 22.4.1971 for car parking area.                           | On 15 June 1976, Council resolved to use Katoomba Town Improvement Local Fund (KTILF), together with loan funds, to fund construction work within car park. |
| <b>2</b>  | Lot 19 in DP 239909    | Council resolved on 10 December 1974 to acquire. Financed from the Katoomba Town Improvement Local Fund (KTILF). Transferred to Council vide Dealing P179696 for \$500.00 on 20.1.1975 for car parking area.                                                              | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                        |
| <b>3</b>  | Lot 21 in DP 239909    | Council resolved on 4 December 1973 to acquire. Expenditure to be met by KTILF. Transferred to Council vide Dealing N802011 for \$3675.00 on 26.3.1974 for car parking area.                                                                                              | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                        |
| <b>4</b>  | Lot 23 in DP 239909    | Council vide Minute No. 743/31 resolved on 10 July 1973 to acquire. Transferred to Council vide Dealing P8076 for \$1500.00 on 19.8.1974 for car parking area.                                                                                                            | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                        |
| <b>5</b>  | Lot 25 in DP 239909    | Council resolved on 12 May 1970 to acquire. Report dated 28.4.1970 indicates the owner will transfer at no cost to Council. Transferred to Council vide Dealing N227305 for \$1.00 on 16.2.1973 for car parking area.                                                     | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                        |
| <b>6</b>  | Lot 27 in DP 239909    | Council resolved on 3 March 1970 to acquire. Report dated 11.2.1970 indicates the owner will transfer at no cost to Council. Transferred to Council vide Dealing M175710 for \$1.00 on 28.11.1970 for car parking area.                                                   | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                        |
| <b>7</b>  | Lot 29 in DP 239909    | Council resolved on 3 April 1973 to acquire. Notice of resumption notified in Government Gazette dated 5 September 1975 and registered as a transfer vide Dealing P427843 for the purpose of opening a public road and providing sites for the accommodation of vehicles. | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                        |

*Planning Proposal – Draft Amendment 23*  
*Reclassification of certain land at Pioneer Place, Katoomba*

| Reference | Lot and Deposited Plan | Manner acquired                                                                                                                                                                                                                                                                                                                                                                                                                                                            | After acquisition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>8</b>  | Lot 31 in DP 239909    | Council resolved on 16 November 1971 to acquire. Expenditure to be met by KTILF.<br>Transferred to Council vide Dealing P69542 for \$16,500.00 on 18.10.1974 for car parking area                                                                                                                                                                                                                                                                                          | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>9</b>  | Lot 33 in DP 239909    | Council resolved on 12 July 1976 to acquire.<br>Notice of resumption notified in Government Gazette dated 28 January 1977 and registered as a transfer vide Dealing Q90563 for the purpose of opening a public road and providing, controlling & managing sites for the accommodation of vehicles.<br><br>Decision by the Land & Valuation Court on 1 December 1978 against Council for \$6000 with costs as compensation for the resumption of Lots 33 & 35 in DP 239909. | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.<br>Reference is made in the Works and Town Planning Committee report dated 15 June 1976 that only one property remains to be acquired which contains this parcel.<br><br>In 2010, correspondence was entered into between the then Land & Property Management Authority (LPMA) and Council in regards to the information in the second schedule of the Folio for this parcel. The second schedule indicated, "2. 2851314 LAND ABOVE DESCRIBED IS A PUBLIC ROAD". This has been deemed to be incorrect and the folio has been rectified by LPMA to now indicate in the second schedule, "2. LAND IS REQUIRED FOR ROAD PURPOSES". |
| <b>10</b> | Lot 35 in DP 239909    | Council resolved on 12 July 1976 to acquire.<br>Notice of resumption notified in Government Gazette dated 28 January 1977 and registered as a transfer vide Dealing Q90563 for the purpose of opening a public road and providing, controlling & managing sites for the accommodation of vehicles.<br><br>Decision by the Land & Valuation Court on 1 December 1978 against Council for \$6000 with costs as compensation for the resumption of Lots 33 & 35 in DP 239909. | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.<br><br>Reference is made in the Works and Town Planning Committee report dated 15 June 1976 that only one property remains to be acquired which contains this parcel.                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

*Planning Proposal – Draft Amendment 23  
Reclassification of certain land at Pioneer Place, Katoomba*

| Reference | Lot and Deposited Plan                                                      | Manner acquired                                                                                                                                                                                                                              | After acquisition                                                                                                                                                                                                                                                        |
|-----------|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>11</b> | Lot 37 in DP 239909                                                         | Council vide Minute No. 1292 resolved on 9 December 1975 to acquire.<br>Expenditure to be met by Loan Funds.<br>Transferred to Council vide Dealing P854697 for \$27500.00 for car parking area.                                             | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                                                                                                                                     |
| <b>12</b> | Lot 43 in DP 239909                                                         | Council resolved on 3 March 1970 to acquire. Report dated 11.2.1970 indicates the owner will transfer at no cost to Council.<br>Transferred to Council vide Dealing M157884 for \$1.00 on 25.11.1970 for car parking area.                   | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                                                                                                                                     |
| <b>13</b> | Lot A in DP 692 (Lots 44 & 45 in DP 239909)<br><br>(Lot 45 in DP 239909)    | Council resolved on 26 October 1971 by Minute No. 1173 to acquire Lots 44 & 45 in DP 239909.<br>Transferred to Council vide Dealing M541691 for \$6000.00 on 18.11.1971 for car parking area.                                                | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                                                                                                                                     |
| <b>14</b> | Lot 40 in DP 692 (Lots 46 & 47 in DP 239909)<br><br>(Lot 47 in DP 239909)   | Council resolved on 4 March 1975 by Minute No. 337 to acquire Lots 46 & 47 in DP 239909. Financed from the Katoomba Town Improvement Local Fund (KTILF).<br>Transferred to Council vide Dealing P400687 for \$40000.00 for car parking area. | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.<br><br>Lot 46 in DP 239909 as well as Lot 48 in DP 239909 transferred to New World Properties Pty Ltd for \$300000.00 vide Dealing S784604 in 1981. |
| <b>15</b> | Lot 1 in DP 509384 (Lots 48 & 49 in DP 239909)<br><br>(Lot 49 in DP 239909) | Council resolved on 26 October 1971 by Minute No. 1173 to acquire.<br>Transferred to Council vide Dealing M541691 for \$6000.00 on 18.11.1971 for car parking area.                                                                          | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.<br><br>Lot 48 in DP 239909 as well as Lot 46 in DP 239909 transferred to New World Properties Pty Ltd for \$300000.00 vide Dealing S784604 in 1981. |

*Planning Proposal – Draft Amendment 23  
Reclassification of certain land at Pioneer Place, Katoomba*

| Reference | Lot and Deposited Plan                         | Manner acquired                                                                                                                                                                                                       | After acquisition                                                                                                    |
|-----------|------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>16</b> | Lot 51 in DP 239909                            | Council resolved on 12 May 1970 to acquire. Report dated 28.4.1970 indicates the owner will transfer at no cost to Council. Transferred to Council vide Dealing M342387 for \$1.00 on 18.5.1971 for car parking area. | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park. |
| <b>17</b> | Lot 2 in DP 569384<br><br>(Lot 2 in DP 620370) | Council resolved to acquire. Transferred to Council vide Dealing J647457 on 17.7.1961.                                                                                                                                | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park. |

**D. The concurrence of the landowner, where the land is not owned by the relevant planning authority.**

Blue Mountains City Council is the owner of all the subject parcels of land.

**PART 4 – COMMUNITY CONSULTATION**

The Council will undertake the exhibition of the proposal in accordance with the Gateway Determination.

**APPENDIX A – Draft LEP 2005 – Amendment to schedule 7**

**Schedule 7      Classification and reclassification of public land as operational land**

**Part 2      Land classified, or reclassified, under amended section 30 of the Local Government Act 1993 – interests changed**

| Locality | Description                                     | Any trusts etc not discharged |
|----------|-------------------------------------------------|-------------------------------|
| Katoomba | Lot 17 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 19 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 21 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 23 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 25 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 27 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 29 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 31 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 33 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 35 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 37 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 43 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 45 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 47 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |
| Katoomba | Lot 49 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil                           |

*Planning Proposal – Draft Amendment 23  
Reclassification of certain land at Pioneer Place, Katoomba*

|          |                                                 |     |
|----------|-------------------------------------------------|-----|
| Katoomba | Lot 51 DP 239909<br>38-40 Parke St,<br>Katoomba | Nil |
| Katoomba | Lot 2 DP 620370<br>38-40 Parke St,<br>Katoomba  | Nil |

ITEM NO: 7

SUBJECT: BLUE MOUNTAINS LOCAL ENVIRONMENTAL PLAN 2005 - DRAFT  
AMENDMENT 23 - RECLASSIFICATION OF CERTAIN LAND AT PIONEER  
PLACE KATOOMBA

FILE NO: F06981 - 11/50265

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**Management Plan Link**

*Principal Activity:* Civic Leadership - Providing Good Government

*Service:* City-wide Strategic Planning

*Project:* Provide statutory land use planning including Local Environmental Planning

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**Recommendations:**

1. *That the Council adopt the provisions of the Planning Proposal prepared under s.55 of the Environmental Planning & Assessment Act 1979 for the reclassification of lots 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 43, 45, 47, 49 and 51 in DP 239909 and lot 2 in DP 620370, Pioneer Place Katoomba from Community Land to Operational Land under the Local Government Act 1993;*
  2. *That the Planning Proposal for Blue Mountains Local Environmental Plan 2005 Draft Amendment 23 be forwarded to the Department of Planning for assessment and Gateway Determination by the Minister under s.56 of the Environmental Planning & Assessment Act 1979;*
  3. *That Blue Mountains Local Environmental Plan 2005 Draft Amendment 23 be processed in accordance with the Gateway Determination; and*
  4. *That a report is brought before the Council, subject to the Gateway Determination, at the conclusion of the notification period and public hearing by November 2011 to enable consideration of submissions received on Blue Mountains Local Environmental Plan 2005 Draft Amendment 23.*
- 

**Report by Group Manager, Community & Corporate:****Reason for report**

This report seeks the Council's approval to proceed with the reclassification of lots 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 43, 45, 47, 49 and 51 in DP 239909 and lot 2 in DP 620370, Pioneer Place, Katoomba from "Community" land to "Operational" land. The report outlines that provision is also made to discharge the land of any trusts or interests that may affect the land. Reclassification of land will provide an opportunity for Council to participate in a proactive way in the revitalisation of Katoomba CBD.

**Background**

At the meeting of 22 February 2011 the Council considered a report which outlined a program for the preparation of a master plan for Pioneer Place, and preferred approach to resolve matters relating to Community Land in this area. The Council resolved:

*"2. That the Council endorses Council officers entering into discussions with  
Fabcot Pty Ltd regarding matters relating to Community Land on Part or*

*whole lots 17, 19, 21, 23, 27, 29, 31, 33, 35, 37, 45, 47, 49 and 51 in DP239909 and lot 2 in DP620370 in Katoomba;*

3. *That the outcome of these negotiations be reported back to the Council for consideration and direction;"*

[Minute No. 47]

The trigger for these considerations has been the lodgement of a major Development Application (DA) by Fabcot Pty Ltd for alterations and additions to the current Coles/Kmart complex at 30-34 Waratah Street, Katoomba (X/823/2010). As well as representing a major capital investment in central Katoomba, it has been recognised that there is potential to derive community benefit from the outcome of this proposal, namely, improvements to the adjacent Council owned car park, Pioneer Place. Furthermore, as outlined in previous reports to the Council, there are opportunities for the public benefit derived from this DA to complement and support the desired outcomes of the Pioneer Place Master Planning exercise which has commenced and is due to report back to the Council in July 2011.

Taking steps to facilitate additional parking in Pioneer Place is considered a proactive response to the outcomes of the Katoomba Charrette Outcomes Report and Town Centre Revitalisation Strategy (Revitalisation Strategy) of April 1999. The Strategy identified a shortfall of parking spaces and indicated that some existing developments would find it difficult if not prohibitive to provide additional car parking. Consequently, other opportunities would need to be identified and realised.

#### **The Development Application lodged by Fabcot Pty Ltd**

The proposal involves enlargement of the building footprint and a subsequent increase in retail floor space which triggers a requirement for additional car parking in accordance with the Council's parking standards. To satisfy this requirement, the DA proposes a subterranean parking area located under the existing ground level parking area located in front of the Kmart building as illustrated in Figure 1. Other new works such as accessible pedestrian ramps and crossings are also proposed. The land on which the subterranean parking is proposed is owned by the Council and classified Community Land under the Local Government Act 1993. Consequently, the DA in its current form cannot be processed without the approval of the Council as land owner, and resolution of associated Community Land matters.



Figure 1: Subject site

#### Outcome of discussions and Council Investigations

As detailed in a previous report to the Council (Item 13, Ordinary Meeting, 22.02.11) there are two fundamentally different approaches that can be taken to enable car parking to proceed on the applicable Community Land: inclusion in an approved Plan of Management (PoM) or a Reclassification of the land from Community to Operational under the Local Government Act 1993 to enable sale or lease or change of use of a stratum title for the proposed subterranean parking area.

Under the Local Government Act 1993, Council must prepare a PoM for parcels of Community Land. A PoM establishes how the applicable Community Land is to be used and managed. Subject to inclusion of relevant measures in an adopted PoM, the Council would have the ability to lease the stratum title for a period not exceeding 21 years. However a much longer lease period would be required to make the investment required for the construction and operation of an underground car park commercially viable. In this regard, retaining the Community Land classification and leasing in accordance with an adopted PoM is not considered a feasible option.

The reclassification of the relevant land parcels from Community to Operational Land is considered the most effective and appropriate means of facilitating the increase of parking provision through the development of the proposed subterranean car park. This approach provides the Council with the ability to consider the sale or long term lease of a stratum title, while retaining ownership and control of the ground level car park. Sale or lease of the stratum title would provide funds to the Council and would either eliminate or drastically reduce the ongoing responsibility and maintenance obligations of the Council for additional parking provision in this area.

### Reclassification process

The reclassification process is clearly established in State Planning legislation and requires a resolution of the Council to proceed with the Planning Proposal in the first instance, prior to entering the Department of Planning's Gateway decision making process. The Gateway will determine the next stages of community consultation. A public hearing is also required to be conducted prior to the matter being reported back to the Council for final approval. As per Section 58(4) of the EP&A Act 1979, the Council may also, at any time, request the Minister to determine that the matter does not proceed.

There is a \$15,600 fee and a requirement to conduct a Public Hearing associated with undertaking a reclassification. Fabcot Pty Ltd has committed to pay the fee and to cover the expenses associated with holding the Public Hearing.

The reclassification of this land will not prejudice the outcomes of detailed master planning work. The proposed parking and access thereto occurs below the surface and extends existing basement parking along the face of privately owned land. Reclassification to Operational Land provides flexibility for the Council and future plans for the premises, regardless of whether the land is made available for car parking purposes for the Woolworths development.

### The Planning Proposal

The intended outcome of the planning proposal is to reclassify a number of land parcels from Community Land to Operational Land to facilitate the development of the subterranean car park and to allow for the sale of lease of that stratum title. The table below provides a description of each of the land parcels subject to the reclassification, while Figure 2 indicates the location of each lot. The reclassification of this land will have the effect of extinguishing any trusts or interests that affect each land parcel and provide flexibility in how the land can be used as part of the revitalisation and upgrade of Katoomba CBD including Pioneer Place

| Reference | Property Address         | Lot | DP     | Current Classification |
|-----------|--------------------------|-----|--------|------------------------|
| 1         | 38-40 Parke St, Katoomba | 17  | 239909 | Community              |
| 2         | 38-40 Parke St, Katoomba | 19  | 239909 | Community              |
| 3         | 38-40 Parke St, Katoomba | 21  | 239909 | Community              |
| 4         | 38-40 Parke St, Katoomba | 23  | 239909 | Community              |
| 5         | 38-40 Parke St, Katoomba | 25  | 239909 | Community              |
| 6         | 38-40 Parke St, Katoomba | 27  | 239909 | Community              |
| 7         | 38-40 Parke St, Katoomba | 29  | 239909 | Community              |
| 8         | 38-40 Parke St, Katoomba | 31  | 239909 | Community              |
| 9         | 38-40 Parke St, Katoomba | 33  | 239909 | Community              |
| 10        | 38-40 Parke St, Katoomba | 35  | 239909 | Community              |
| 11        | 38-40 Parke St, Katoomba | 37  | 239909 | Community              |

| Reference | Property Address         | Lot | DP     | Current Classification |
|-----------|--------------------------|-----|--------|------------------------|
| 12        | 38-40 Parke St, Katoomba | 43  | 239909 | Community              |
| 13        | 38-40 Parke St, Katoomba | 45  | 239909 | Community              |
| 14        | 38-40 Parke St, Katoomba | 47  | 239909 | Community              |
| 15        | 38-40 Parke St, Katoomba | 49  | 239909 | Community              |
| 16        | 38-40 Parke St, Katoomba | 51  | 239909 | Community              |
| 17        | 38-40 Parke St, Katoomba | 2   | 620370 | Community              |



Figure 2: Lots subject to proposed reclassification

#### History of Land Acquisition

The following table details the manner in which the subject land parcels were acquired by Council. It is clear from the summaries below that the lots were acquired primarily to facilitate the establishment of car parking for the town, as such the proposed reclassification to facilitate additional parking, albeit by a private developer, is considered appropriate. Any interests created as a product of these dealings are proposed to be extinguished as part of the process of reclassification:

| Reference | Lot and Deposited Plan | Manner acquired                                                                                                                                                                                                                                    | After Acquisition                                                                                                                                           |
|-----------|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1         | Lot 17 in DP 239909    | Council resolved on 12 May 1970 to acquire. Reports dated 28.4.1970 and 11.2.1970 indicates the owner will transfer to Council with some conditions.<br>Transferred to Council vide Dealing M275718 for \$25.00 on 22.4.1971 for car parking area. | On 15 June 1976, Council resolved to use Katoomba Town Improvement Local Fund (KTILF), together with loan funds, to fund construction work within car park. |
| 2         | Lot 19 in DP 239909    | Council resolved on 10 December 1974 to acquire. Financed from the Katoomba Town Improvement Local Fund (KTILF).<br>Transferred to Council vide Dealing P179696 for \$500.00 on 20.1.1975 for car parking area.                                    | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                        |
| 3         | Lot 21 in DP 239909    | Council resolved on 4 December 1973 to acquire. Expenditure to be met by KTILF.<br>Transferred to Council vide Dealing N802011 for \$3675.00 on 26.3.1974 for car parking area.                                                                    | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                        |
| 4         | Lot 23 in DP 239909    | Council vide Minute No. 743/31 resolved on 10 July 1973 to acquire.<br>Transferred to Council vide Dealing P8076 for \$1500.00 on 19.8.1974 for car parking area.                                                                                  | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                        |
| 5         | Lot 25 in DP 239909    | Council resolved on 12 May 1970 to acquire. Report dated 28.4.1970 indicates the owner will transfer at no cost to Council.<br>Transferred to Council vide Dealing N227305 for \$1.00 on 16.2.1973 for car parking area.                           | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                        |
| 6         | Lot 27 in DP 239909    | Council resolved on 3 March 1970 to acquire. Report dated 11.2.1970 indicates the owner will transfer at no cost to Council.<br>Transferred to Council vide Dealing M175710 for \$1.00 on 28.11.1970 for car parking area.                         | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                        |

| Reference | Lot and Deposited Plan | Manner acquired                                                                                                                                                                                                                                                                                                                                                                                                                                                            | After Acquisition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7         | Lot 29 in DP 239909    | Council resolved on 3 April 1973 to acquire.<br>Notice of resumption notified in Government Gazette dated 5 September 1975 and registered as a transfer vide Dealing P427843 for the purpose of opening a public road and providing sites for the accommodation of vehicles.                                                                                                                                                                                               | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 8         | Lot 31 in DP 239909    | Council resolved on 16 November 1971 to acquire. Expenditure to be met by KTILF.<br>Transferred to Council vide Dealing P69542 for \$16,500.00 on 18.10.1974 for car parking area                                                                                                                                                                                                                                                                                          | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 9         | Lot 33 in DP 239909    | Council resolved on 12 July 1976 to acquire.<br>Notice of resumption notified in Government Gazette dated 28 January 1977 and registered as a transfer vide Dealing Q90563 for the purpose of opening a public road and providing, controlling & managing sites for the accommodation of vehicles.<br><br>Decision by the Land & Valuation Court on 1 December 1978 against Council for \$6000 with costs as compensation for the resumption of Lots 33 & 35 in DP 239909. | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.<br>Reference is made in the Works and Town Planning Committee report dated 15 June 1976 that only one property remains to be acquired which contains this parcel.<br><br>In 2010, correspondence was entered into between the then Land & Property Management Authority (LPMA) and Council in regards to the information in the second schedule of the Folio for this parcel. The second schedule indicated, "2. 2851314 LAND ABOVE DESCRIBED IS A PUBLIC ROAD". This has been deemed to be incorrect and the folio has been rectified by LPMA to now indicate in the second schedule, "2. LAND IS REQUIRED FOR ROAD PURPOSES". |

| Reference | Lot and Deposited Plan                                                              | Manner acquired                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | After Acquisition                                                                                                                                                                                                                                                                                 |
|-----------|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10        | Lot 35 in DP 239909                                                                 | <p>Council resolved on 12 July 1976 to acquire. Notice of resumption notified in Government Gazette dated 28 January 1977 and registered as a transfer vide Dealing Q90563 for the purpose of opening a public road and providing, controlling &amp; managing sites for the accommodation of vehicles.</p> <p>Decision by the Land &amp; Valuation Court on 1 December 1978 against Council for \$6000 with costs as compensation for the resumption of Lots 33 &amp; 35 in DP 239909.</p> | <p>On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.</p> <p>Reference is made in the Works and Town Planning Committee report dated 15 June 1976 that only one property remains to be acquired which contains this parcel.</p> |
| 11        | Lot 37 in DP 239909                                                                 | <p>Council vide Minute No. 1292 resolved on 9 December 1975 to acquire. Expenditure to be met by Loan Funds. Transferred to Council vide Dealing P854697 for \$27500.00 for car parking area.</p>                                                                                                                                                                                                                                                                                          | <p>On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.</p>                                                                                                                                                                       |
| 12        | Lot 43 in DP 239909                                                                 | <p>Council resolved on 3 March 1970 to acquire. Report dated 11.2.1970 indicates the owner will transfer at no cost to Council. Transferred to Council vide Dealing M157884 for \$1.00 on 25.11.1970 for car parking area.</p>                                                                                                                                                                                                                                                             | <p>On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.</p>                                                                                                                                                                       |
| 13        | <p>Lot A in DP 692 (Lots 44 &amp; 45 in DP 239909)</p> <p>(Lot 45 in DP 239909)</p> | <p>Council resolved on 26 October 1971 by Minute No. 1173 to acquire Lots 44 &amp; 45 in DP 239909. Transferred to Council vide Dealing M541691 for \$6000.00 on 18.11.1971 for car parking area.</p>                                                                                                                                                                                                                                                                                      | <p>On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.</p>                                                                                                                                                                       |

| Reference | Lot and Deposited Plan                                                      | Manner acquired                                                                                                                                                                                                                           | After Acquisition                                                                                                                                                                                                                                                        |
|-----------|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 14        | Lot 40 in DP 692 (Lots 46 & 47 in DP 239909)<br><br>(Lot 47 in DP 239909)   | Council resolved on 4 March 1975 by Minute No. 337 to acquire Lots 46 & 47 in DP 239909. Financed from the Katoomba Town Improvement Local Fund (KTILF). Transferred to Council vide Dealing P400687 for \$40000.00 for car parking area. | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.<br><br>Lot 46 in DP 239909 as well as Lot 48 in DP 239909 transferred to New World Properties Pty Ltd for \$300000.00 vide Dealing S784604 in 1981. |
| 15        | Lot 1 in DP 509384 (Lots 48 & 49 in DP 239909)<br><br>(Lot 49 in DP 239909) | Council resolved on 26 October 1971 by Minute No. 1173 to acquire. Transferred to Council vide Dealing M541691 for \$6000.00 on 18.11.1971 for car parking area.                                                                          | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.<br><br>Lot 48 in DP 239909 as well as Lot 46 in DP 239909 transferred to New World Properties Pty Ltd for \$300000.00 vide Dealing S784604 in 1981. |
| 16        | Lot 51 in DP 239909                                                         | Council resolved on 12 May 1970 to acquire. Report dated 28.4.1970 indicates the owner will transfer at no cost to Council. Transferred to Council vide Dealing M342387 for \$1.00 on 18.5.1971 for car parking area.                     | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                                                                                                                                     |
| 17        | Lot 2 in DP 569384<br><br>(Lot 2 in DP 620370)                              | Council resolved to acquire. Transferred to Council vide Dealing J647457 on 17.7.1961.                                                                                                                                                    | On 15 June 1976, Council resolved to use KTILF, together with loan funds, to fund construction work within car park.                                                                                                                                                     |

**Sustainability Assessment**

| Effects       | Positive                                                                                                                                                                                                                             | Negative                                                                                            |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| Environmental | The reclassification will allow the Council to consider the DA for development of a subterranean car park and associated works to public parking facilities, including enhanced urban design of the public domain and accessibility. | Impacts of the proposed development would be considered as part of any subsequent DA determination. |

| <b>Effects</b> | <b>Positive</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>Negative</b>                                                                                                                                                                                                                               |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Social         | Reclassification of the land from Community to Operational will enable consideration of the sale or lease of the land which, in turn, will facilitate development of a subterranean car park. It is intended that any proposed development would complement the objectives of the broader strategy to improve access, mobility and urban design of Pioneer Place.                                                                                                                                  | The reclassification of Community Land may be perceived by some members of the community as a potential threat to a community asset however, the original purpose for which Council purchased this land was for vehicular access and parking. |
| Economic       | The reclassification of land from Community to Operational has both direct and indirect economic benefits. The Council would receive a direct economic gain from any sale or lease of the underground stratum of the reclassified land. The proposed development itself represents a significant capital investment in the centre of Katoomba. The reclassification and subsequent development will facilitate parking, access and urban design improvements in Pioneer Place and support the CBD. | If the choice is made to lease rather than sell the subject land, the Council runs the risk of having the land returned at the end of the lease in a dilapidated state, necessitating capital expenditure to improve/repair the facility.     |
| Governance     | This scenario represents an opportunity for Council to work with the private sector in order to achieve an outcome for Pioneer Place that may otherwise be unachievable without private investment. Working effectively with each of the stakeholders involved should ensure a more desirable outcome for the community.                                                                                                                                                                           | Nil                                                                                                                                                                                                                                           |

#### **Financial implications for the Council**

The reclassification/rezoning process requires investment of Council staff time and resources in order to research property details to prepare reports, to undertake consultation, etc. Generally this cost is born by the land owner or the party desirous of achieving the reclassification/rezoning. In this case, Fabcot Pty Ltd have committed to covering costs of the reclassification. In this regard, the proposal to reclassify the land will involve no cost to the Council.

The reclassification will enable consideration of the sale or long term lease of the stratum title which would provide a direct financial benefit to the Council. If, however, the Council decides to lease the land, there may be costs associated with maintenance of the resultant parking facility. These considerations would be the subject of future investigations and reports to the Council.

#### **Legal and risk management issues for the Council**

There are no foreseeable legal or risk management issues associated with the reclassification or this land. The reclassification will have the effect of extinguishing any trusts or interests that may affect the land.

Legal and risk management issues relating to the sale or lease of the land will be explored in further reports should the reclassification proceed.

**External consultation**

The Gateway Determination will prescribe the consultation required with the community, State and Commonwealth authorities. Legislation requires that the minimum consultation to occur would be by way of public exhibition of the planning proposal and a public hearing.

**Conclusion**

This reclassification process is the first stage in Council enabling the land to potentially be incorporated into a future development. The reclassification provides the Council with the opportunity to participate in the revitalisation of Katoomba CBD and Pioneer Place. In the main, existing Katoomba Street businesses currently provide limited customer parking and this will continue to be an issue if the buildings in the CBD are extended. Additional parking is a key issue not only for the sustainability of the proposed DA submission but also the main street businesses.

This report recommends that the Council resolve to commence the process to amend the Blue Mountains Local Environmental Plan 2005 by reclassifying lots 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 43, 45, 47, 49 and 51 in DP 239909 and lot 2 in DP 620370 at Pioneer Place Katoomba from Community Land to Operational Land. It is clear from the history of these land parcels that the lots were acquired primarily to facilitate the establishment of car parking for the town, as such the proposed reclassification to facilitate additional parking, albeit by a private developer, is considered appropriate. In order to allow the potential for sale or long term lease of the stratum title and subsequently, facilitate a required parking increase in the vicinity of Pioneer Place, a reclassification of land is considered necessary. In this regard a Planning Proposal has been prepared in accordance with section 55 of the *Environmental Planning and Assessment Act 1979 (the Act)*. The Planning Proposal is ready to be forwarded to the Department of Planning for assessment and Gateway Determination by the Minister in accordance with section 56 of the Act.

**ATTACHMENTS/ENCLOSURES**

|   |                   |          |           |
|---|-------------------|----------|-----------|
| 1 | Planning Proposal | 11/50271 | Enclosure |
|---|-------------------|----------|-----------|

\* \* \* \* \*