

February 2012

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Blue Mountains City Council

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Fabcot Pty Limited

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# Planning Agreement

Section 93F of the Environmental Planning  
and Assessment Act, 1979 (NSW)

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# Parties

**Blue Mountains City Council** ABN 52 699 520 223 of 2 – 6 Civic Place,  
Katoomba New South Wales (**Planning Authority**)

**Fabcot Pty Limited** ABN 55 002960 983 of 1 Woolworths Way, Bella Vista,  
New South Wales (**Developer**)

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# Background

- A Gembond Pty Limited (**Gembond**) owns the Land. The Developer is a related entity of Gembond.
  - B On 6 September 2010 the Developer made a Planning Application to the Planning Authority for Planning Approval to carry out the Development on the Land.
  - C The JRPP is the determining authority for the Planning Application.
  - D The Developer made an offer on 26 October 2011 to enter into this Agreement to make Development Contributions towards the Public Facilities if Planning Approval was granted and other conditions precedent were satisfied.
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# Operative provisions

## 1 Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the Act.

## 2 Application of this Agreement

This Agreement applies to the Land and the Development.

## 3 Operation of this Agreement

This Agreement operates only if:

- (a) The Planning Approval is granted by the JRPP;
- (b) A condition of the Planning Approval requires this Agreement to be entered into; and
- (c) The Agreement is entered into as required by Clause 25C(1) of the Regulation.

## 4 Definitions and interpretation

### 4.1 Definitions

In this Agreement the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Agreement** means this voluntary planning agreement including any schedules and annexures.

**Bank Guarantee** means an undertaking by an Australian bank to pay the face value of that undertaking on demand.

**Basement Car Park Land** means the Council Land but limited to part lots 31, 23, 21, 19, 17, 47 51 and lots 45, and 49 in DP 239909 and lot 2 in DP 620370, limited as to both height and depth.

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

**Commencement Date** means that date upon which the Agreement operates under **clause 3**.

**Conditions Precedent** means, in relation to the timing of the carrying out of the Works:

- (a) Grant of Planning Approval for the Development;
- (b) Issue of a Construction Certificate for the Development;
- (c) Grant of all such licences or other rights (as are reasonably necessary and as permitted by law) by the Planning Authority or by any other relevant authority, to the Developer, over the Council Land, local roads (subject to the provisions of the *Roads Act 1993*) or other land owned by the Planning Authority to enable the Developer to carry out the Development and the Works;
- (d) Extinguishment of the existing right of carriageway burdening the Land;
- (e) Grant of a lease over the Basement Car Park Land upon which the proposed 39 basement car parks are to be constructed in favour of Gembond or the Land Owner, as applicable, and containing the Planning Authority's consent to a sublease of the Basement Car Park Land to any related body corporate of Gembond ;
- (f) The Planning Authority procuring the Minister to prepare a new local environmental plan so as to effect 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 (which includes the Basement Car Park Land) from community land to operational land; and
- (g) Registration of appropriate easement or easements over part lots 37, 31, 43, 45, 47, 49 and 51 DP239909 and part lot 2 DP 620370 to authorise the overhanging awnings from the Development over Council Land.

**Construction Certificate** means a construction certificate as defined in the Act.

**Council Land** means the land described in **table 2** of **schedule 2**.

**CPI** means the All Groups Consumer Price Index (Sydney) as published by the Australian Bureau of Statistics.

**Dealing**, in relation to the Land, means selling, transferring or assigning the Land.

**Design Specifications** means those design specifications for the Works attached at **annexure B**, as modified from time to time.

**Development** means the proposed enlargement of the existing retail development on the Land and the provision of additional car parking on the Land and Council Land as described in the Planning Application.

**Development Contribution** means the provision of the material public benefit through the carrying out of the Works and the payment of the Monetary Contribution specified in **schedule 3**, to be used for or applied towards a Public Purpose.

**Excluded Works** means:

- (a) the repair and maintenance (and all associated costs) of the works identified at **Item A, C, E and F** of **schedule 3**;
- (b) The cost of electricity, repairs and maintenance for the works identified at **Item D** of **schedule 3**;
- (c) the landscaping of Pioneer Place, but not including those landscaping works that the Developer is required to undertake in accordance with the conditions of the Planning Approval.

**Explanatory Note** means the Explanatory Note attached at **schedule 4**.

**Land** means the land described in **table 1** of **schedule 2**.

**Land Owner** means Gembond or any other owner of the Land from time to time.

**Lessee** means the lessee of dealing AE173096M noted on the title of the Land.

**LPI** means the Land and Property Information Office of NSW or any other government agency replacing it.

**Masterplan** means the masterplan approved by the Planning Authority attached at **annexure C**, as modified from time to time with the approval of the Planning Authority.

**Monetary Contribution** means the cash contribution identified at **Item G** of **Schedule 3** and which is to be expended by Council for the Realignment Works.

**Occupation Certificate** means an occupation certificate as defined in the Act.

**Party** means a party to this Agreement, including their successors and assigns.

**Planning Application** means development application No X/823/2010 submitted on 6 September 2010 to the Planning Authority for the Development.

**Planning Approval** means the determination by approval of the Planning Application, as modified from time to time.

**Practical Completion** means:

- (a) in relation to the Works, the point of time at which the Works are fit for use and occupation, and are capable of being used and occupied for their intended purpose as set out in the Planning Approval; and
- (b) in relation to the Realignment Works, the point of time at which the Realignment Works are fit for use and occupation, and are capable of being used and occupied for their intended purpose.

**Public Facility** means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act matter or thing that meets a Public Purpose.

**Public Purpose** means any purpose that benefits the public or a section of the public, specified in section 93F(2) of the Act.

**Realignment Works** means the works to be carried out by the Planning Authority to realign the curb and footpath in the bottom tier of Pioneer Place.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW).

**Security** means any of:

- (a) a Bank Guarantee;
  - (b) an insurance bond issued or provided by an insurance company approved by the Planning Authority (acting reasonably); or
  - (c) such other security as is agreed in writing between the Parties,
- in favour of the Planning Authority.

**Security Amount** means:

- (a) for the Works, an amount equal to the total Works Contribution Value; and
- (b) for the Monetary Contribution, the amount identified at **Item G** of **schedule 3**.

**Works** means those works identified in **Items A – F** in **schedule 3** and that are:

- (a) as generally identified on the Masterplan;
- (b) to be carried out in accordance with the Design Specifications and the relevant Works Plans on the Council Land; and
- (c) not the Excluded Works.



**Works Contribution Value** means the estimated value for each of the Works specified in **column 4** of **schedule 3** and which includes a contingency amount for each item.

**Works Plans** means the plans that detail each of the Works that are to be carried out and that are attached at **annexure A**.

## **4.2 Interpretation**

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.

- (m) A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

## 5 Development Contributions to be made under this Agreement

### 5.1 Provision of Development Contributions

- (a) Subject to this Agreement, the Developer is to make a Development Contribution in respect of the Development in accordance with **schedule 3**, comprising:
  - (i) the carrying-out and the delivery of the Works; and
  - (ii) the payment of the Monetary Contribution.
- (b) The Developer will carry out the Works and pay the Monetary Contributions in accordance with the timing specified in **column 5 of schedule 3**.
- (c) Development Contributions made in accordance with this Agreement are made in full and final satisfaction of all costs and expenses required to be borne by the Developer of and incidental to the provision of the Public Facility to which it relates.
- (d) If the construction of the Realignment Works to be carried out by the Planning Authority does not reach Practical Completion within the period of 1 year from the date of the issue of the Construction Certificate for the Development, the Planning Authority will refund to the Developer any part of the Monetary Contributions not expended upon construction of the Realignment Works by that date.
- (e) For clarity, the Developer has no obligation to undertake the Excluded Works which must be undertaken by the Planning Authority at its cost, in accordance with the Planning Authority's adopted maintenance and repair schedule and as the Planning Authority's budget allowances for such maintenance and repair permits.

### 5.2 Indexation of Monetary Contribution

The Monetary Contribution is to be indexed quarterly in accordance with the CPI from the Commencement Date until such time as the Monetary Contribution is paid to the Planning Authority.

### 5.3 Delivery of Monetary Contribution

- (a) The Monetary Contribution is made for the purposes of this Planning Agreement when cleared funds are deposited and credited by means of electronic funds transfer into a bank account nominated by the Planning Authority.

- (b) The Developer is to give the Planning Authority not less than 10 Business Days written notice of its intention to pay the Monetary Contribution.
- (c) If a tax invoice is by law required to be provided to the Developer by the Planning Authority:
  - (i) The Developer is not required to pay the Monetary Contribution under this Agreement until the Planning Authority, after having received the Developer's notice under **clause 5.3(b)**, has given to the Developer a tax invoice for the amount of the Monetary Contribution; and
  - (ii) The Developer is not in breach of this Planning Agreement if it fails to pay the Monetary Contribution at the time required by this Planning Agreement by reason only of the Planning Authority's failure to give to the Developer a tax invoice in relation to the Monetary Contribution.

#### **5.4 Determining value of Works**

For the purposes of this Agreement, the Parties acknowledge that the Works Contribution Value specified in **column 4** of **schedule 3** in respect of each of the Works specified at **Items A – F** of **column 2** of that schedule is:

- (a) determined as the estimated value of that part of the completed Works determined using the method that would be adopted by a suitably qualified quantity surveyor, and all costs associated with the provision of that part of the completed Works including the costs of design, project management, consultants and any fees and charges incurred by the Developer;
- (b) the Works Contribution Value is to be indexed quarterly in accordance with the CPI from the Commencement Date until such time as the Conditions Precedent have been satisfied.

#### **5.5 Standard of Work**

The Developer shall carry out the Works in a good and workmanlike manner, in compliance with applicable standards (whether Australian Standards or otherwise) and legal requirements. The Works shall be constructed by appropriately qualified and experienced persons and contractors, and shall be conducted in accordance with the timing set out in **schedule 3**. The Developer shall permit duly authorised representatives of the Planning Authority to inspect the Works as they are constructed. The Planning Authority may nominate the stages at which it requires formal notification that the Works (or any part of the Works) are available for inspection, and the Developer shall use all reasonable endeavours to ensure that those inspection opportunities are provided to the Planning Authority.

## 5.6 Delivery of Works

- (a) The Developer will give the Planning Authority 14 Business Days notice of the date upon which the Developer anticipates that Practical Completion of a Work under **schedule 3** will be reached.
- (b) When the Developer is of the reasonable opinion that Practical Completion has been reached, the Developer must notify the Planning Authority in writing, specifying the date on which, in its opinion, Practical Completion has been reached.
- (c) Within 3 Business Days of the date upon which the Developer has nominated as the date upon which Practical Completion has been reached, the Planning Authority must carry out an inspection of the relevant Works.
- (d) The Planning Authority must, within 10 Business Days of carrying out its inspection of the Works provide notice to the Developer specifying that either:
  - (i) it is of the opinion that Practical Completion has been reached for the relevant Works; or
  - (ii) it is of the opinion that Practical Completion has not been reached, in which case it must set out all the matters that the Planning Authority reasonably considers must be completed in order for Practical Completion to be reached.
- (e) The Developer:
  - (i) must undertake the works specified by the Planning Authority under **sub-clause (d)(ii)**, as soon as practicable and once complete, the provisions of **subclauses (a) – (d)** will apply; or
  - (ii) if it does not agree with the matters set out in the Planning Authority's notice under **sub-clause d(ii)**, must notify the Planning Authority that a dispute has arisen under **clause 10** of this Agreement.

## 5.7 Failure to deliver Works

- (a) If the Developer fails to complete all or any part of the Works as required by this Agreement by the time specified in **column 5** of **schedule 3** for that item of Work, the Planning Authority may elect to complete that item or such part or parts of that item as are outstanding as at the date specified in **schedule 3** or otherwise as agreed, or appoint a contractor to carry out these Works on the Planning Authority's behalf.
- (b) If **sub-clause (a)** applies:
  - (i) if required, the Developer must procure that Gembond or the Land Owner, as applicable, allows the Planning Authority, its officers, employees, agents and contractors to enter the Land for the purposes of completing the relevant Work; and
  - (ii) the provisions of **clause 12.3** apply.

## 6 Application of the Development Contributions

The Works completed on the Council Land by the Developer under this Agreement must only be used for a Public Purpose.

## 7 Application of sections 94, 94A and 94EF of the Act to the Development

- (a) This Agreement wholly excludes the application of sections 94 and 94A of the Act to the Development.
- (a) This Agreement does not exclude the application of section 94EF of the Act to the Development.

## 8 Registration of this Agreement

- (a) The Developer must, at the Developer's expense, procure that the Land Owner arranges the registration of the Agreement on the relevant folios of the register held by the LPI pertaining to the Land no later than 40 Business Days after 29 November 2012.
- (b) The Developer acknowledges and agrees that the Planning Authority may approach the Lessee of the Land, prior to 29 November 2012, to request that the Lessee consent to the registration of this Agreement prior to 29 November 2012. If the said Lessee consents to the registration of this Agreement then the Developer shall act promptly to procure the registration of this Agreement on the relevant folios of the register held by the LPI pertaining to the Land.
- (c) The Planning Authority agrees:
  - (i) to provide a release and discharge of this Agreement with respect to the Land or any lot, including a strata lot, created on subdivision of the Land, on the happening of an event under **clause 13(a)(ii) to 13(a)(vi)**; and
  - (ii) in the circumstances specified in **clause 8(c)(i)**, to do all things reasonably necessary, including the execution of any documents, to enable the Land Owner to remove the notation of this Agreement on the relevant folios of the register, held by the LPI pertaining to the Land.

## 9 Review of this Agreement

- (a) The Parties agree that this Agreement may be reviewed or modified and that any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Agreement, will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

## 10 Dispute Resolution

### 10.1 Reference to Dispute

If a dispute arises between the Parties in relation to this Agreement, then either Party must resolve that dispute in accordance with this clause.

### 10.2 Notice of Dispute

The Party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

### 10.3 Representatives of Parties to Meet

- (a) The representatives of the Parties must promptly (and in any event within 14 Business Days of the written notice provided in accordance with **clause 10.2**) meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting;
  - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution);
  - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

### 10.4 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with **clause 10.3**; and
- (b) the Parties have been unable to reach an outcome identified in **clause 10.3(b)(i) to 10.3(b)(iii)**; and
- (c) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 10.3**,

then, that Party may, by 14 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

## 11 Enforcement

### 11.1 Enforcement by any party

Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.

Nothing in this agreement prevents:

- (a) A Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
- (b) the Planning Authority from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## 12 Security

### 12.1 Developer to provide Security

The Developer is to provide to the Planning Authority Security for the Security Amount for the:

- (a) Works, prior to the issue of a Construction Certificate for the Development; and
- (b) Monetary Contribution, within 7 Business Days of the Developer providing written notification to the Planning Authority that it intends to carry out the Development. That written notification must be provided at least 28 Business Days before the issue of the Construction Certificate for the Development.

### 12.2 Release of Security to the Developer

In respect of each Security provided to the Planning Authority under **clause 12.1**, the Planning Authority must release the Security to the Developer upon the earlier of:

- (a) in relation to the Works:
  - (i) the date of Practical Completion of the last of the Works to be completed by the Developer in accordance with this Agreement; or
  - (ii) the date on which replacement Security is provided to the Planning Authority from a transferee or assignee of the Developer,
- (b) in relation to the Monetary Contribution:
  - (i) the date of payment of the Monetary Contribution; or
  - (ii) the date on which replacement Security is provided to the Planning Authority from a transferee or assignee of the Developer.

## 12.3 Call on Security

(a)

(i) The Security is given to secure compliance by the Developer with its obligations to:

(A) perform the Works in accordance with this Planning Agreement;

(B) pay the Monetary Contribution in accordance with this Planning Agreement; and

(C) pay to the Planning Authority any damages (**Loss Compensation**) for any loss suffered by the Planning Authority (**Loss**) which is caused by any breach by the Developer of its obligation under this Planning Agreement to carry out the Works or pay the Monetary Contributions in accordance with this Planning Agreement.

(ii) The Planning Authority must only exercise its rights under the Security in accordance with this **clause 12.3**.

(b) The Planning Authority must not request a payment (**Security Payment**) under the Security from the provider of it, unless:

(i) the Planning Authority has first given ten Business Days written notice (**Claim Notice**) to the Developer of its intention to do so;

(ii) the Claim Notice specifies the Work, Monetary Contribution or Loss Compensation to which that Security Payment relates and the amount of the Security Payment;

(iii) the amount of the requested Security Payment does not exceed the amount of the relevant Work, Monetary Contribution or Loss Compensation, as the case requires;

(iv)

(A) the reason for the request is that:

(1) the Developer has, in breach of this Planning Agreement, failed to perform the Work, within ten Business Days of the Planning Authority demanding the carrying out of that Work; or

(2) the Developer has, in breach of this Planning Agreement, failed to pay the Monetary Contributions, within ten Business Days of the Planning Authority demanding the payment of the Monetary Contributions; or



- (3) the Developer has, in breach of this Planning Agreement, failed to comply with its obligation to carry out the Work or pay the Monetary Contribution in accordance with this Planning Agreement and the Developer has failed to pay any Loss Compensation the amount of which has been ascertained and to which the Planning Authority is entitled, within ten Business Days of the Planning Authority demanding payment of it; and
- (B) there is no dispute between the Developer and the Planning Authority under this Agreement:
  - (1) as to whether the Developer is obliged to perform the Work, pay the Monetary Contribution or Loss Compensation or is otherwise in breach of its obligations to do so; or
  - (2) about the Work, Monetary Contribution or Loss Compensation,

for which the Security Payment is requested.
- (c) The Planning Authority must not request a Security Payment unconscionably or in bad faith.
- (d) The Planning Authority must upon demand account to the Developer for any Security Payment to the extent that it exceeds or is otherwise not required to perform the Work, pay the Monetary Contribution or pay the Loss Compensation for which the Security Payment is requested.
- (e) The Planning Authority must use its reasonable endeavours to mitigate any Loss.

#### **12.4 Issue of Occupation Certificate**

For the purposes of section 109H(2) of the Act, in addition to the Developer's obligation to provide Security, the requirements of this Agreement will be satisfied if the Planning Authority has called on the Security in relation to the performance of the Works or the payment of the Monetary Contributions.

### **13 Release and Discharge**

- (a) The Developer and Gembond will be released from their obligations under this Planning Agreement if:
  - (i) the Developer and Gembond transfer, assign or dispose of their obligations in accordance with the requirements of **clause 16**;
  - (ii) the Planning Approval is declared invalid or lapses;
  - (iii) the Developer and Gembond have fulfilled each of their respective obligations under the Agreement;

- (iv) the Agreement is terminated;
- (v) the Parties agree that the performance of the Agreement has been frustrated by an event outside the control of the Parties to the Agreement; or
- (vi) the Parties otherwise agree to modify or discharge the Agreement in accordance with **clause 9**.

## 14 Notices

### 14.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.

#### **Planning Authority**

Attention: Manager, Development and Planning Services  
Address: Locked Bag 1005, Katoomba NSW 2780  
Fax Number: (02) 4780 5555

#### **Developer**

Both of the following:

Attention: Company Secretary, Fabcot Pty Limited  
Address: 1 Woolworths Way, Bella Vista  
Fax Number: 02 8888 0558

#### **And**

Attention: Christine Covington, Corrs Chambers  
Westgarth  
Address: Governor Phillip Tower, 1 Farrer Place,  
Sydney, NSW  
Fax Number: 02 9210 6611

### 14.2 Change of Details

If a Party gives the other Party three Business Days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

### **14.3 Giving of Notice**

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, two Business Days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the senders fax machine a report of an error free transmission to the correct fax number.

### **14.4 Delivery outside of business hours**

If any notice, consent, information, application or request is delivered, sent, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## **15 Approvals and consent**

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **16 Assignment and Dealings**

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Party except that the Developer may effect a Dealing without the prior written consent of the Planning Authority.
- (b) Any purported dealing in breach of this clause is of no effect.

## **17 Costs**

The Parties agree to bear their own costs of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement.

## **18 Entire Agreement**

- (a) This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Agreement.

## **19 Further acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

## **20 Governing law and jurisdiction**

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

## **21 No fetter**

Nothing in this Agreement shall be construed as requiring the Planning Authority to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## **22 Representations and warranties**

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

## **23 Severability**

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## **24 Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is

not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## **25 GST**

### **25.1 Construction**

In this **clause 25**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.

### **25.2 Intention of the Parties**

Without limiting the operation of this **clause 25**, as at the date of this Agreement, the Parties intend that:

- (a) Divisions 81 and 82 of the GST Law apply to the supplies made under and in connection with this Agreement;
- (b) no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 25.4** below) on account of GST.

### **25.3 Consideration GST exclusive**

All prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

### **25.4 Payment of GST – additional payment required**

- (a) If an entity (**Supplier**) makes a taxable supply under or in connection with this Agreement (**Relevant Supply**), then, subject to **clause 25.4(d)**, the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under **clause 25.4(b)**, **25.4(c)** and **25.4(e)** (as appropriate).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under **clauses 25.4(c)** and **25.4(e)**), the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate of GST applicable to that Relevant Supply.
- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
  - (i) a payment of money; nor
  - (ii) a taxable supply,

**(Non-taxable non monetary consideration),**

the Recipient must pay to the Supplier an additional amount equal to 1/11<sup>th</sup> of the GST-inclusive market value of the Non-taxable non-monetary consideration.

- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then, notwithstanding **clause 25.4(a)** and subject to **clause 25.4(e)**, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.
- (e) Notwithstanding **clause 25.4(d)** if the GST-inclusive market value of the non-monetary consideration of the Relevant Supply (**Supplier's taxable supply**) is less than the GST-inclusive market value of the non-monetary consideration comprising the taxable supply made by the Recipient to the Supplier for the Supplier's taxable supply (**Recipient's taxable supply**) then, the Recipient must pay to the Supplier an additional amount equal to 1/11<sup>th</sup> of the difference between the GST-inclusive market value of the Recipient's taxable supply and the GST-inclusive market value of the Supplier's taxable supply.
- (f) The recipient will pay the GST Amount referred to in this **clause 25.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

**25.5 Valuation of non-monetary consideration**

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under **clause 25.4**. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

**25.6 Tax invoice**

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under **clause 25.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

**25.7 Adjustment event**

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the GST Amount payable by the Recipient under **clause 25.4** will be recalculated taking into account any previous adjustment under this clause to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

## **25.8 Reimbursements**

Where a party is required under this Agreement to pay, indemnify or reimburse an expense, loss or outgoing of another party, the amount to be paid, indemnified or reimbursed by the first party will be the sum of:

- (a) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other party, or to which the representative member of a GST group of which the other party is a member, is entitled; and
- (b) any additional amount payable under **clause 25.4** in respect of that reimbursement.

## **25.9 No Merger**

This **clause 25** does not merge in the completion, discharge, rescission or termination of this Agreement or on the transfer of any property supplied or to be supplied under this Agreement.

## **26 Effect of Schedules**

The Parties agree to comply with any terms contained in Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

## **27 Relationship of parties**

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

## **28 Further steps**

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

## **29 Counterparts**

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

## **30 Rights cumulative**

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

# Schedule 1

## Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
<b>Description of the land to which this Agreement applies-</b> (Section 93F(3)(a))	The Land and the Council Land
<b>Description of the development to which this Agreement applies-</b> (Section 93F(3)(b)(ii))	The Development
<b>The scope, timing and manner of delivery of Development Contributions required by this Agreement -</b> (Section 93F(3)(c))	Clause 5
<b>Applicability of Section 94 of the Act -</b> (Section 93F(3)(d))	The application of section 94 of the Act is wholly excluded in respect of all of the Development on the Land.
<b>Applicability of Section 94A of the Act -</b> (Section 93F(3)(d))	The application of section 94A of the Act is wholly excluded in respect of all of the Development on the Land.
<b>Applicability of Section 94EF of the Act -</b> (Section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of the Development on the Land.
<b>Applicability of Section 93F (3)(e) of the Act</b>	Clause 12
<b>Mechanism for Dispute resolution -</b> (Section 93F(3)(f))	Clause 10
<b>Enforcement of this Agreement -</b> (Section 93F(3)(g))	Clause 11 and 12



Provision of the Act	This Agreement
<b>Registration of this Agreement</b> (Section 93H)	Clause 8
<b>No obligation to grant consent or exercise functions</b> - (Section 93F(9))	Clause 21

## Schedule 2

Table 1: Description of Land

**Location:** 30 – 34 Waratah Street and 38 – 40 Parke Street, Katoomba, NSW.

Lot	Deposited Plan
1	DP787996

Table 2: Description of Council Land

**Location:** Pioneer Place, Katoomba, NSW.

Lot	Deposited Plan
2	DP621621
1	DP506174
37	DP239909
35	DP239909
31	DP239909
43	DP239909
45	DP239909
47	DP239909
27	DP239909
29	DP239909
25	DP239909
2	DP620370
49	DP239909
51	DP239909
23	DP239909
21	DP239909
19	DP239909
17	DP239909
4	DP598367
2	DP585560
15	DP239909

32	DP239909
33	DP239909

## Schedule 3

### Development Contributions

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Works	Public Benefit	Contribution Value	Timing
A	Half of the vehicle ramp between Upper Pioneer Place and Lower Pioneer Place in accordance with the relevant Design Specifications and the relevant Works Plans (but excluding any vehicle ramp repairs and maintenance which will be at the cost of the Planning Authority)	Provides upgraded public vehicular linkage between upper and lower Pioneer Place car parks	\$44,879.09	After satisfaction of all the Conditions Precedent and before the issue of the final Occupation Certificate for the Development.
B	Awning over DDA	Provides sheltered DDA car parking	\$77,790.28	After satisfaction of all the Conditions Precedent

	car parking on Upper Pioneer Place in accordance with the relevant Design Specifications and the relevant Works Plans (with the Land Owner being responsible for the costs of repairs and maintenance)	on Upper Pioneer Place		and before the issue of the final Occupation Certificate for the Development.
C	Waratah Street Vehicle Entry/Exit Place in accordance with the relevant Design Specifications and the relevant Works Plans (but excluding any road repairs and maintenance which will be at the cost of the Planning Authority)	Provides upgraded public vehicular ingress/egress from upper and lower Pioneer Place car parks	\$39,997.14	After satisfaction of all the Conditions Precedent and before the issue of the final Occupation Certificate for the Development.
D	70% Upper Pioneer Place Car Park lighting Place in accordance with the	Provides lighting to car parking on Upper Pioneer Place	\$49,429.39	After satisfaction of all the Conditions Precedent and before the issue of the final Occupation Certificate for the Development.

	relevant Design Specifications. Practically this equates to 5 out of 7 lights on Upper Pioneer Place that are identified in blue on the attached Design Specifications and the relevant Works Plans (but excluding the cost of electricity, repairs and maintenance which will be at the cost of the Planning Authority)			
E	Waratah Street Seagull Medians in accordance with the relevant Design Specifications and the relevant Works Plans (but excluding any seagull median repairs and maintenance which will be at the cost of	Provides improved public vehicular access into Pioneer Place benefiting all shops on Pioneer Place	\$30,807.00	After satisfaction of all the Conditions Precedent and before the issue of the final Occupation Certificate for the Development.

	the Planning Authority)			
F	Waratah Street Pedestrian Footpath Place in accordance with the relevant Design Specifications and the relevant Works Plans (but excluding any pedestrian footpath repairs and maintenance which will be at the cost of the Planning Authority)	Provides improved public pedestrian access to Pioneer Place	\$40,379.10	After satisfaction of all the Conditions Precedent and before the issue of the final Occupation Certificate for the Development.
G	Monetary Contribution to be expended by the Planning Authority for the purposes of constructing the Realignment Works as per the Masterplan.	Provides improved public pedestrian access.	\$105,718.00	On the issue of the Construction Certificate for the Development
<b>Total Contribution Value</b>			<b>\$389,000.00</b>	

# Schedule 4

## Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

### Explanatory Note

#### Planning Agreement

Under section 93F of the *Environmental Planning and Assessment Act 1979* (NSW). The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed Planning Agreement (**Planning Agreement**) prepared under subdivision 2 of division 6 of Part 4 (section 93F) of the *Environmental Planning and Assessment Act 1979* (**Act**).

This Explanatory Note has been prepared by the Parties as required by clause 25E of the *Environment Planning and Assessment Regulation 2000* (**Regulation**).

#### 1 Parties

The Parties to the Agreement are Blue Mountains City Council (**Planning Authority**) and Fabcot Pty Limited (**Developer**).

#### 2 Description of Subject Land

The Planning Agreement applies to the Land described in Table 1 of Schedule 2 located at the address 30 – 34 Waratah Street and 38 – 40 Parke Street, Katoomba, NSW on which the Development will be carried out and the Council Land described in Table 2 of Schedule 2 located at Pioneer Place, Katoomba on which the Works will be carried out.



### 3 Description of Proposed Change to Environmental Planning Instrument/Planning Application

The Developer has made a Planning Application to the Planning Authority for the proposed enlargement of the existing retail development located on the Land and the provision of additional car parking on the Land and Council Land (known as Pioneer Place) as described in the Development Application.

### 4 Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to facilitate the improvement of Pioneer Place in accordance with Council's approved Pioneer Place Masterplan for the benefit of the public.

The Planning Agreement contains a schedule (schedule 3) identifying the composition of the development contributions to be made to the Planning Authority as well as the timing and manner of the delivery of those development contributions.

The Developer will be providing development contributions with a value of \$389,000 comprising:

- Monetary Contribution of \$105, 718;
- Works in Kind to a value of \$283,282 (including a contingency amount).

The Planning Agreement assists in promoting, co-ordinating, managing and securing the orderly and economic development of the Land.

The development contributions provided under the Planning Agreement will benefit the Planning Authority's local government area.

### 5 Assessment of the Merits of the Planning Agreement

#### 5.1 For Planning Authorities:

##### (a) Development Corporations – How the Planning Agreement Promotes its Statutory Responsibilities

Not applicable.

##### (b) Other Public Authorities – How the Planning Agreement promotes the objects (if any) of the act under which it is constituted

Section 7 of the *Local Government Act 1993* (LG Act) includes the purposes of the LG Act. Subsection 7(d) provides as follows:

*“to give councils:*

- the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public*
- the responsibility for administering some regulatory systems under this Act*
- a role in the management, improvement and development of the resources of their areas,*

The Planning Agreement is consistent with the first and the third dot point as these clearly state that the Planning Authority is able to provide services (such as a public car parking area) for its community and the wider public, and to manage the resources of the area. Specifically, by providing contributions to the Planning Authority to help improve and manage the Pioneer Place parking facility, the Planning Agreement is consistent with this provision of the LG Act.

**(c) Councils – How the Planning Agreement promotes the elements of the Council’s charter**

The Planning Authority’s charter is specified in the LG Act and it has 12 specific elements to it. The Planning Agreement is consistent with and promotes the following relevant elements of the Charter:

*“to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services are managed efficiently and effectively”;*

The Planning Agreement will help provide a higher quality of public parking facilities for the Katoomba commercial precinct by helping to fund works and facilities for this area that have been identified in the Pioneer Place Masterplan;

*“To exercise community leadership”*

The Katoomba commercial precinct is an important commercial area in the Blue Mountains and the parking area in Pioneer Place provides significant support to it. The Planning Authority has exercised community leadership by preparing a Masterplan for Pioneer Place and by securing funding through this Planning Agreement to help implement its recommendations

*“To bear in mind that it is custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible”;*

The purpose of the Planning Agreement is to help secure funding in helping it to manage Pioneer Place more efficiently and so it can quickly implement the recommendations of the Pioneer Place Masterplan.

*“To raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and when appropriate by borrowings and grants”*

The Planning Agreement will raise funds to improve the amenity and performance of an important local parking facility that serves the Katoomba commercial precinct.

*“To ensure that in the exercise of its functions it acts consistent and without bias, particularly where an activity of the council is affected”;*

The processes followed in preparing the Planning Agreement have been carried out in accordance with legislative requirements, including exhibiting the Planning Agreement in accordance with the legislative requirements.

**(d) All Planning Authorities – Identify the planning purpose served by the Planning Agreement and assess whether the Planning Agreement provides a reasonable means of achieving it.**

The planning purpose that is served by the Planning Agreement is that it will provide funding for works in Pioneer Place Katoomba to upgrade the public amenity and safety in Pioneer Place Katoomba. Pioneer Place provides the major public parking facility in the Katoomba commercial precinct and provides parking for many of the patrons of the shops along Katoomba street. The Planning Authority recently adopted the first Stage of a Masterplan for Pioneer Place, which recommends a number of works to improve public amenity and safety. Many of these works will be implemented by the contributions obtained through the Planning Agreement and for this reason the Planning Agreement will provide a beneficial outcome to the members of the public that use the Katoomba shopping precinct. By making the parking area more attractive it is also expected that in a small way it will draw more people to the centre and therefore assist in the economic performance of businesses within the Katoomba commercial precinct.

The Planning Agreement is considered to be a reasonable means of achieving this purpose because it will mean that the Planning Authority will not have to provide separate funding for these works. Having the works implemented through the Planning Agreement will also mean that they will be completed more quickly, because they won't have to be programmed into the Councils Section 94A Works Schedule and be implemented according to the priorities in that Schedule.

**(e) All Planning Authorities – Whether the Planning Agreement Conforms with the Authority's Capital Works Program**

The works included in the Planning Agreement are consistent with the recommendations of Council's Stage 1 Masterplan for Pioneer Place. At this stage they are not included in Council's Capital Works Program because the Masterplan was only adopted by Council at its meeting on 11 October 2011, and the Works Plan has not been updated to reflect

this. Nevertheless, as the Masterplan has been adopted it reflects Council's policy on Pioneer Place.

**5.2 The impact of the Planning Agreement on the public or any section of the public**

By implementing significant amenity and safety improvements in Pioneer Place that have been recommended through the Pioneer Place Masterplan the Planning Agreement is expected to have a positive impact for the public although there will be some short term disruption to the public's use of the area whilst the construction of the works occur. The proposed works may also give a minor boost to the economic performance of the Katoomba commercial precinct.

**5.3 The exhibition of the Planning Agreement will provide further information on the likely impact of the Planning Agreement on the public. Other matters**

It is relevant to note that the value of the works to be constructed under the Planning Agreement exceeds the amount that Council would normally be paid for a development of this value through its Section 94A Plan.

**Executed** as a deed

**Executed by Fabcot Pty Ltd** (ABN 55 )  
002 960 983) )

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

**Executed by Blue Mountains Shire** )  
**Council** by its duly appointed officer in )  
the presence of: )

.....  
Witness

.....  
Officer

.....  
Name of Witness (print)

.....  
Name of Officer (print)

# Annexure A

## Works Plans







FOR FACBOT PTY. LIMITED  
06063 DA3.03J













# Annexure B

## Design Specifications

## Reason for Master Planning Katoomba CBD

Improve traffic and pedestrian flow

### *Work to Date*

Sue Bell an internal Urban Designer at Council has prepared a hierarchy of treatments which are pending final review and sign off. This will then be used to roll out over a set period amended finishes to the Katoomba CBD footpaths, crossings etc.

The various elements are described in their decreasing hierarchy, only as applicable to the Marketplace site surrounds, i.e. Pioneer Place and associated parking, Waratah St and Parke Street.

The purpose of this brief is to amend Councils' master plan design to suit the specifics of the site.

This design brief is to be read in conjunction with Drummond and Rosen Drawing 06063 DA3.18C.

**Primary (Nodal) Treatment:****Road Based Treatments**

Kerb and Gutter	Integrated uncoloured concrete kerb and gutter
Pedestrian Crossing:	Coloured and stamped AC to look like pavers with line marking to suit standards – see photo below labelled Fig 1  The ramped sides leading to and from the crossing would be formed in concrete and integral with the road way.
Basecourse:	Assume 300mm compacted road base under the crossing
Pavement:	Coloured concrete local traffic loading 180mm thick with top mesh SL82 (Council yet to nominate colour)
Basecourse:	Assume 120mm compacted road base under the concrete pavements
Stormwater:	Allow for transition pipes under the crossing to allow for stormwater to pass the raised crossing 100*100 4mm SHS – mill finish

**Footpath Based Treatments**

Pavement:	75mm thick coloured (throughout – not cast on top) concrete slab, SL72 bottom mesh  Tooled joints in the top (i.e. with a finishing edger) on a square 800mm grid  Coloured concrete to finish against property lines of adjoining premises  Footpath to sit on 100mm compacted road base – no membrane
Brick Header:	Not required – kerb only
Brick Banding:	Double Brick banding (laid on edge) on 8.4m centres
Signage:	To be redone throughout

**Driveways Treatments (Gateways)**

Pavement:	200mm thick coloured (throughout – not cast on top) concrete slab, SL72 top and bottom mesh (no sawn joints)  Coloured concrete to finish against property lines of adjoining premises  Footpath to sit on 100mm compacted road base – no membrane
Kerb and Gutter	Integrated uncoloured concrete kerb and gutter formed into a cross over
Tactile Banding (sides)	There is to be a band of Stainless steel tactile buttons, 600mm wide by the depth of the footpath (between the rear of Kerb and property line adjoining), drilled and glued into the concrete footpath either side of any driveways

**Pedestrian Ramp (within the main Nodal zone)**

Pavement:	Structural Concrete poured in coloured concrete to match the Primary zone footpaths.  No sawn joints as this is a structural slab  Kerb upturns on the sides with stainless steel handrails to suit BCA requirements  Fair faced block under to create the walkthrough to the basement car park – painted and graffiti treated.
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## ***Secondary Treatment – Type 1: Most of Pioneer Place***

### **Road Based Treatments**

Kerb and Gutter	Integrated uncoloured concrete kerb and gutter
Pavement:	Normal AC to suit traffic loading
Basecourse:	Assume 300mm compacted road base under the pavements
Stormwater:	Assume to reuse all existing stormwater system

### **Footpath Based Treatments**

Pavement:	75mm thick non coloured and exposed aggregate concrete slab, SL72 bottom mesh Tooled joints in the top (i.e. with a finishing edger) on a square 1800mm grid Exposed Aggregate concrete to finish against property lines of adjoining premises Footpath to sit on 100mm compacted road base – no membrane
Brick Header:	Not required – kerb only
Brick Banding:	Double Brick banding (laid on edge) on 8.4m centres
Signage:	To be redone throughout

### **Driveways Treatments**

Pavement:	150mm thick coloured Exposed Aggregate concrete slab, SL72 top and bottom mesh (no sawn joints) Exposed Aggregate concrete to finish against property lines of adjoining premises Footpath to sit on 100mm compacted road base – no membrane
Kerb and Gutter	Integrated uncoloured concrete kerb and gutter formed into a cross over
Tactile Banding (sides)	There is to be a band of Stainless steel tactile buttons, 600mm wide by the depth of the footpath (between the rear of Kerb and property line adjoining), drilled and glued into the concrete footpath either side of any driveways



## ***Secondary Treatment – Type 2: Along Supermarket and DDS shopfront***

### Road Based Treatments

Kerb	None - Flat suspended structural slab
Gutter:	None - Flat suspended structural slab
Footing under K&G	NA
Pavement:	Existing flat suspended structural slab – load rating to be determined New flat structural slab to match – uncoloured concrete with stiff broom finish.
Stormwater:	Assume to reuse all existing stormwater system

### Footpath Based Treatments

Pavement:	Existing pea gravel epoxy layer ~5mm thick with painted brick pattern to be removed Allow to reapply grey coloured (or other colour as may be agreed later) epoxy layer to provide some differentiation from the car park slab. Carry this finish across the new slab for consistency.
Brick Header:	Not Required
Brick Banding:	Not Required
Signage:	To be redone throughout
Wind barriers:	Allow to reinstate at all doorways in full height aluminium framed glass. Allow for stainless steel rails at floor level and handrail level to offer trolley protection

Driveways Treatments – NA along this location

### ***Tertiary Treatment: Parke and Waratah Streets***

#### **Road Based Treatments**

Kerb and Gutter:	Uncoloured concrete, integrated and formed in situ to meet design standards – where it needs to be replaced. Waratah and Parke Streets will generally be reused K&G's
Footing under K&G:	Assume 150mm compacted road base under for the width of K&G – where it needs to be replaced. Waratah and Parke Streets will generally be reused K&G's
Pavement:	Normal AC to suit traffic loading
Basecourse:	Assume 300mm compacted road base under both crossing and pavements
Stormwater:	Assume to reuse all existing stormwater system

#### **Footpath Based Treatments**

Pavement:	25mm AC Footpath to sit on 100mm compacted road base
Brick Header:	Not Required
Brick Banding:	Double Brick banding (laid on edge), on approximately 8.4m centres to suit the local conditions
Footings under bricks:	Allow for a strip of 100mm thick compacted road base, with the bricks laid on a bed of sand/cement 50mm thick
Signage:	To be redone throughout

#### **Driveways Treatments**

Pavement:	150mm thick coloured Exposed Aggregate concrete slab, SL72 top and bottom mesh (no sawn joints) Exposed Aggregate concrete to finish against property lines of adjoining premises Extent of driveway to be widened to facilitate zone for tactile installation (refer below) Footpath to sit on 100mm compacted road base – no membrane
Kerb and Gutter	Integrated uncoloured concrete kerb and gutter formed into a cross over joined to existing K&G
Tactile Banding (sides)	There is to be a band of Stainless steel tactile buttons, 600mm wide by the depth of the footpath (between the rear of Kerb and property line adjoining), drilled and glued into the concrete footpath either side of any driveways

## ***Pram Ramps***

Refer to the attached sketch for design details

Allow to use coloured concrete – Colour as noted on the Drawing

Allow for Stainless Steel tactile buttons to drilled and glued into the pram ramp itself

Allow to install an additional array of Stainless Steel tactile buttons to drilled and glued into the footpath concrete pavement being 600 deep by the width of the pram ramp

Where the pram ramp is in a tertiary treatment allow to extend the concrete on each side to allow the space for the field of tactile buttons to be installed in concrete. Refer to the Drawing for details

## ***Landscaping***

- Species are yet to be resolved by Council, or to match existing where supplementing missing street trees
- Use of root vaults and structural soils in the road alignment to provide adequate root volumes
- Planters as per P18 + 19 in Public Domain Technical Manual
- Allow for BCA compliant Stainless Steel Handrails to the steps between the 2 car park levels
- Allow for BCA compliant Stainless Steel Handrails to the ramp between the 2 car park levels
- Allow for a stainless steel handrail the full length of the upper car park to protect from falls over the edge.
- Allow for wheel stops for each car bay along the upper car park, facing the lower car park.
- Other street furniture items e.g. bins and bike racks to comply with Technical Manual.

## ***Proposed Finishing's***

### ***Coloured and Stamped AC***



### ***Tactile Studs: For use in coloured concrete***



Similar to AllSafe TS1114S

## Lighting

Current Lighting: Pivoting Poles are presently situated on the lower portion of Pioneer Place – to be removed with new installation.

Limits of new Public lighting:

Pioneer Place for the extend of the upgrade on the attached Drawing and associated open to air car parking upper and lower levels. All street/public lighting outside this area will be the subject of future council works, e.g. Parke and Waratah Streets.

Council has issued a preliminary sketch noting the potential location of lights. These are to be confirmed in due course by a specialist lighting designer to suit the Lighting Design Brief, Australian Standards and Endeavour Energy requirements.

Installation Type: Public (with limited Endeavour Energy maintenance)

Luminaries: Bourke Hill or Parkville

Pole Type + outrigger: Westerly – non pivoting as they will be vehicle accessible for maintenance.

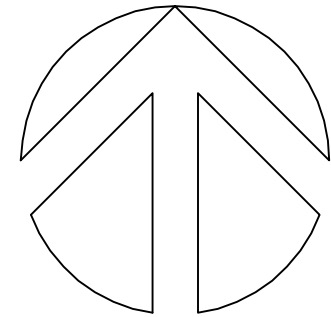
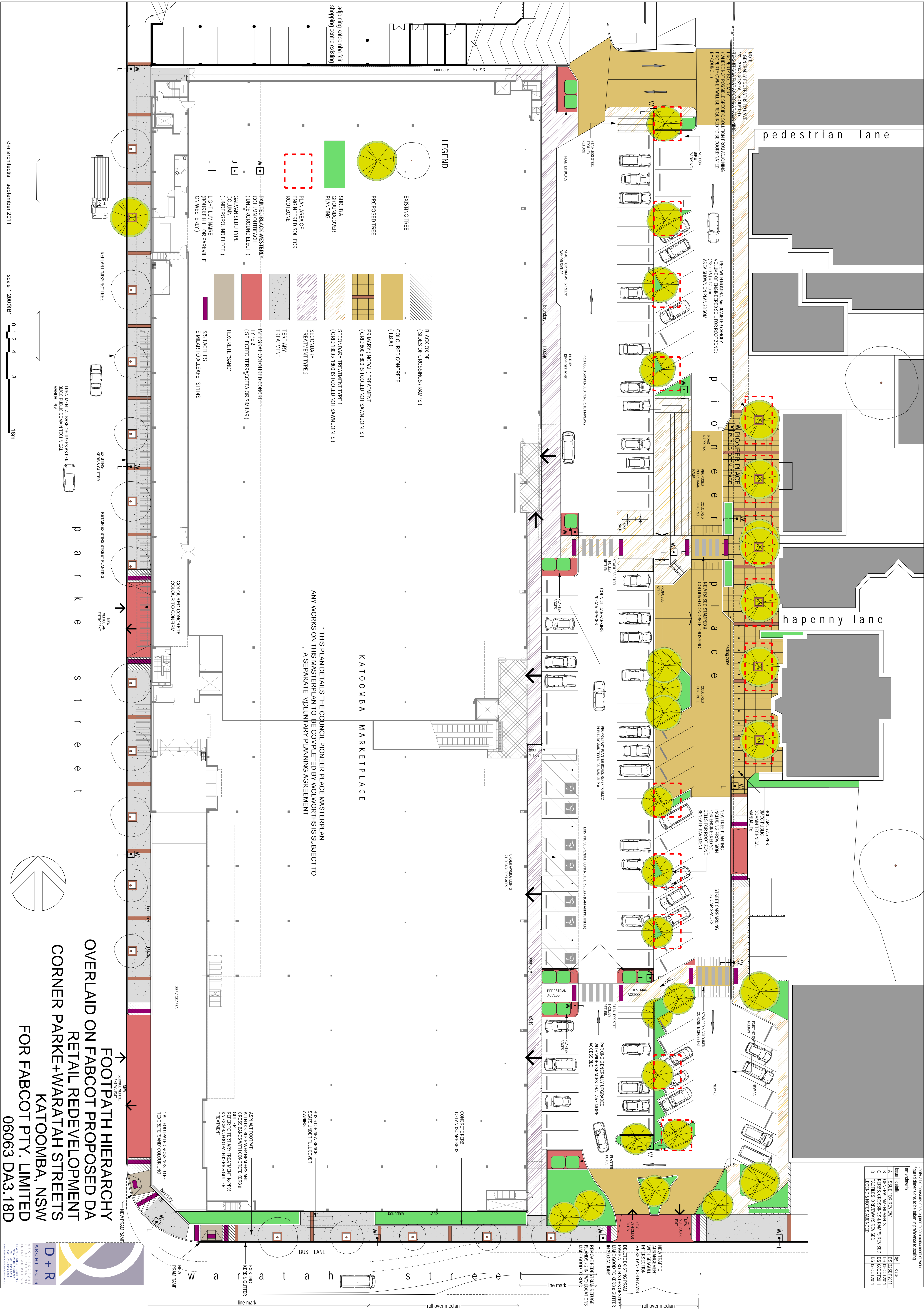
Footings: Protected Location: Drilled and concrete filled per manufacturer recommendation  
Prone Location: i.e. at the end of a car bay - Sitting on 1200mm high 600 diameter concrete up stand per attached sketch plan labelled 297512 Rev B from Integral Energy

Lighting Design Category:

In accordance with the attached lighting design brief issued by Council (highlighted in Blue by Projectvision to indicate applicable sections. Areas to be treated, roadways, footpaths, ramps, car parking locations DDA and otherwise and pedestrian crossings



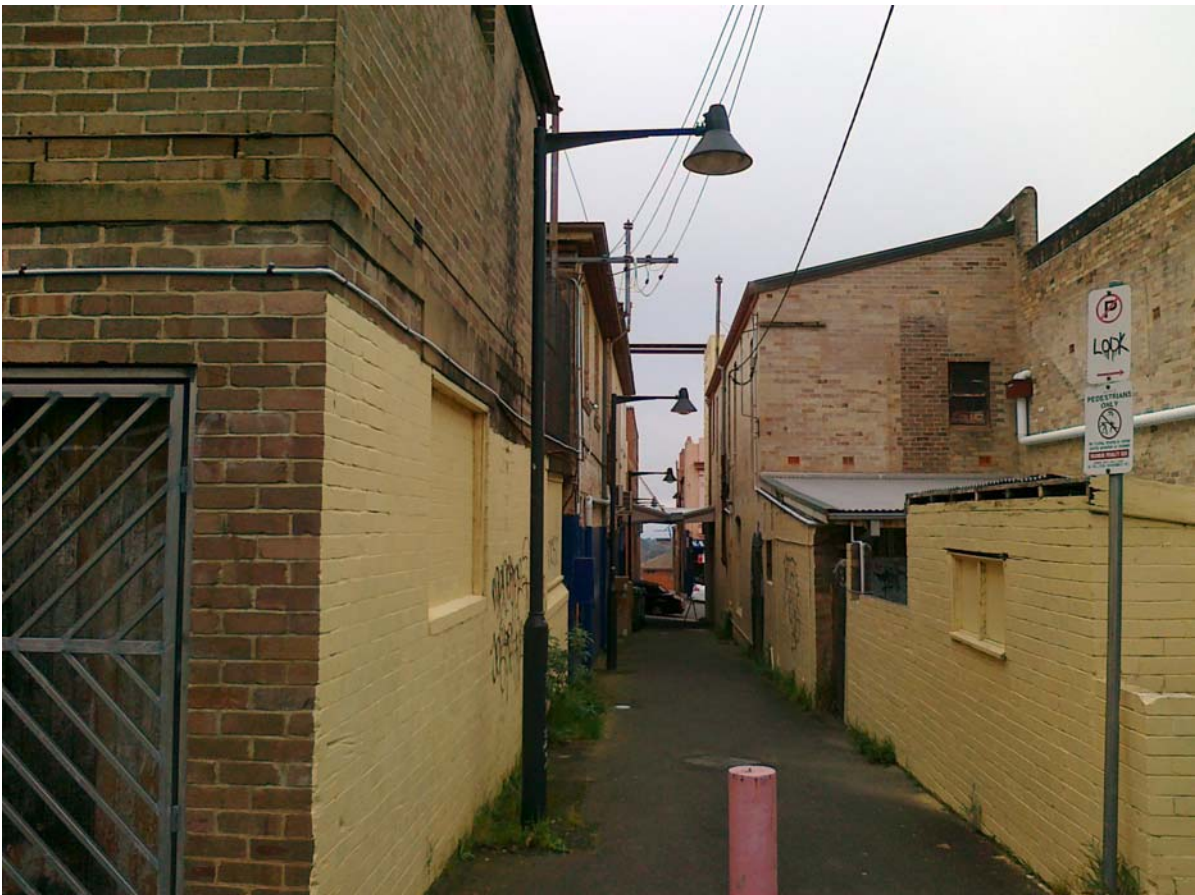
Verify all dimensions on site prior to commencement of work figured dimensions to be taken in preference to scaling amendments			
Issue	Author	By	Date
A	ISSUE FOR REVIEW	DS	22SEP2011
B	GENERAL AMENDMENTS	DS	09OCT2011
C	KERBS, CROSSINGS & RAMP REVISION	DS	09OCT2011
D	TACTILES DRIVEWAYS REVISION	DS	09OCT2011
LEGEND & NOTES AMENDED			



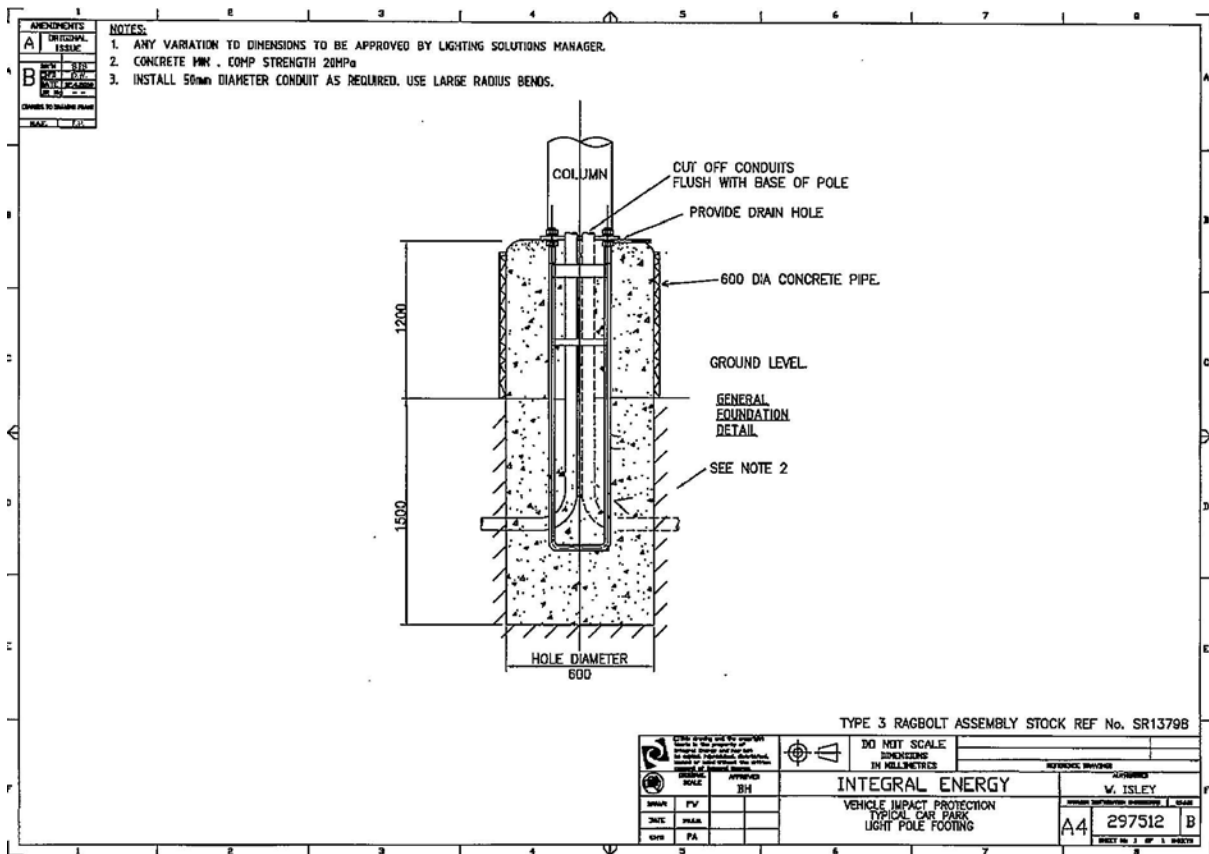




Main Proposed Light Fitting



Possible supplementary fitting in high lighting areas – e.g. crossings, primary nodal areas



Footings for poles where exposed to vehicular damage – currently not used but this is an Endeavour energy requirement.

### Lighting Design Brief - 3 pages

The attached Document is issued by Council for an area greater than the site in question. This document may need to be reissued to suit the site alone if required by Endeavour Energy.



## Public lighting design brief

*To be completed by public lighting customer (fields marked with \* are mandatory).*

<b>1. Project identification</b> *	Pioneer Place, Waratah Street and Parke Street Katoomba	Cap number *	
<p>Precise location of the project:</p> <p>Pioneer Place (from Pryor Place to Waratah Street), Waratah Street (from Pioneer Place to Parke Street) and Parke Street (from Waratah Street to Pryor Place), Katoomba</p>			
UBD map ref. *			
<p>Brief description of the scope and extent of work: *</p> <p>Provision of street lighting along Pioneer Place and associated car parks, footways and ramps from Pryor Place to Waratah Street, Katoomba.</p> <p>Provision of street lighting along Waratah Street from Pioneer Place to Parke Street.</p> <p>Provision of street lighting along Parke Street from Waratah Street to Pryor Place</p>			
<b>2. Design specification</b>			
Lighting in accordance with AS1158 *			
Roads requiring V category lighting N/A	Arterial roads, main roads, sub-arterial roads N/A	V1/V2/V3/V4/V5 N/A	
Roads requiring P category lighting Waratah Street (from Pioneer Place to Parke Street)  Parke Street (from Waratah Street to Pryor Place)	Collector roads, local roads, common areas P2 including a minimum of one luminaire within 10 metres of the intersection with Pioneer Place.  P2 including a minimum of one luminaire within 10 metres of the intersection with Waratah Street and the intersection with the loading and car park driveways. Parke Street roadway within 10 metres of Waratah Street to be not less 3.5 lux.	P3/P4/P5 P2  P2	
Roundabouts - treatment required - refer AS1158.3.1, clause 3.2.6 N/A			

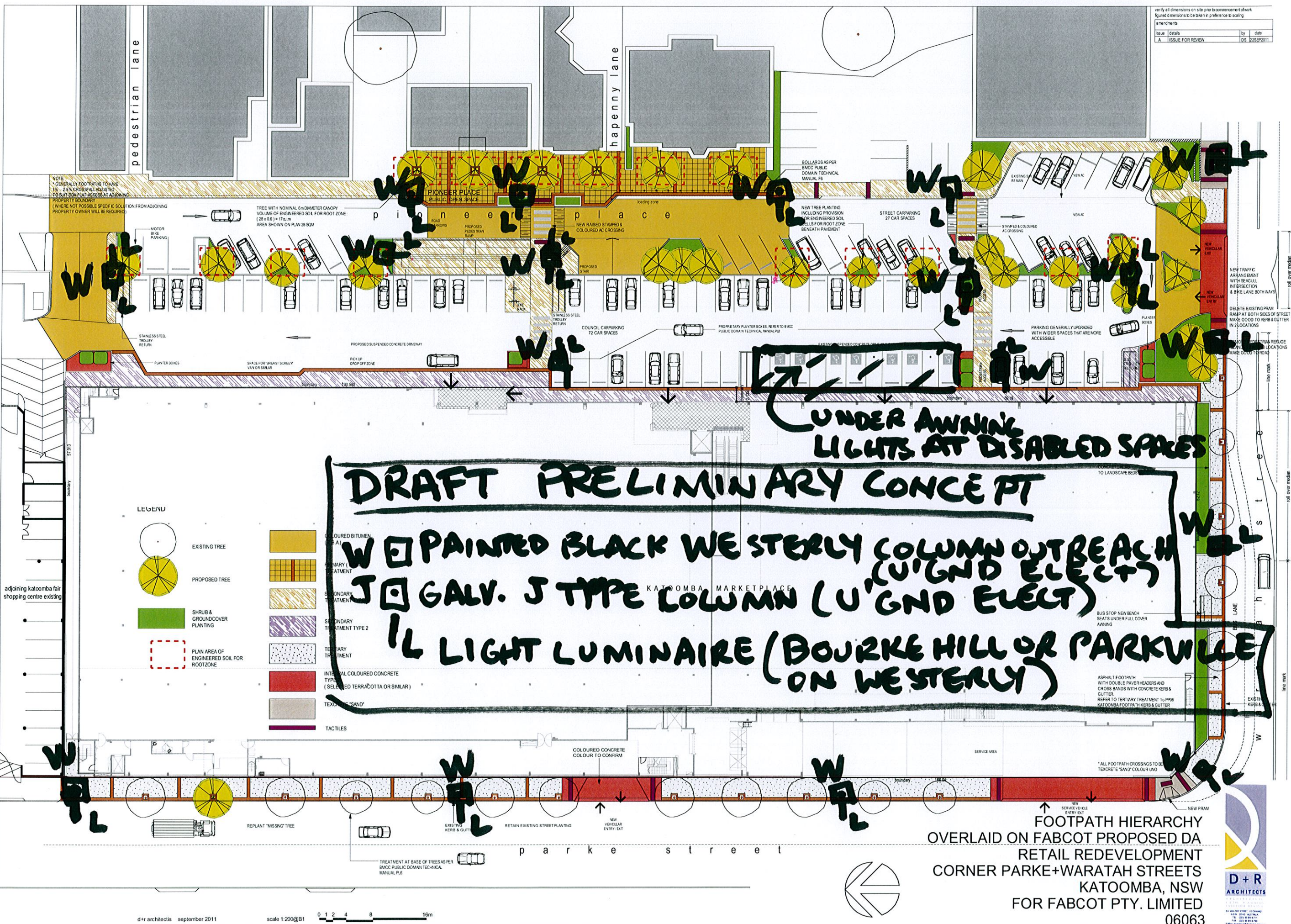
<p>LATMs - treatment required - refer AS1158.3.1, clause 3.2.6</p> <p>The traffic calming LATM treatments of contrasting pavement on isles and roadways to comply with AS 1158.3.1 and be not less than 3.5 lux including 3 metre approach areas.</p>
---

<p>Pathways</p> <p>N/A</p>	<p>Footways, cycleways, laneways, park paths.</p> <p>N/A</p>	<p>P1/P2/P3/P4</p> <p>N/A</p>
<p>Public activity areas</p> <p>N/A</p>	<p>Town centres, malls, transport interchanges</p> <p>N/A</p>	<p>P6/P7/P8</p> <p>N/A</p>
<p>Connecting elements</p> <p>Ramps and steps</p>	<p>Steps, stairways, ramps, footbridges.</p> <p>The ramps and steps to comply with AS 1158.4 category P9.lighting;</p>	<p>P9</p> <p>P9</p>
<p>Car parks</p> <p>Pioneer Place (upper - South to North section and lower - North to South section)</p>	<p>Location</p> <p>The general roadway, parking and footpath areas to comply with AS 1158.4 category P11b lighting - including a minimum of one luminaire within 10 metres of the intersection with Pryor Place, the link from upper to lower near Loading Bay, the entry from the underground car park to the lower Pioneer Place and intersection with Waratah Street</p>	<p>P11a,b,c/P12</p> <p>P11b as detailed and P12 for disabled parking spaces</p>
<p>Supplementary lighting required at any pedestrian crossings (please provide details).</p> <p>The pedestrian crossings to comply with AS1158.4 category PX3 lighting;</p>		
<p>Lighting not required to comply with AS1158 (provide specific requirements).</p> <p>All to comply</p>		
<p><b>3. Equipment specification</b></p>		
<p>Equipment requirements (please provide details of your requirements)</p>		
<p>Endeavour Energy's standard lighting equipment to be used</p>		<p>Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/></p>

<p>Nominate specific requirements:</p> <p><b>Underground electricity connected directly to Endeavour Energy street light grid.</b></p> <p><b>Pioneer Place</b> and Waratah Street (northern side)-<b>Westerly columns and outreaches with Parkville or Bouke Hill luminaires.</b></p> <p>Parke Street (eastern side)- "Engal" or equivalent Endeavour Energy accepted galvanised columns, outreaches with Endeavour Energy accepted "Sylvania" or equivalent luminaires.</p>					
Public lighting customer acceptance of painted lighting poles					Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<p>Colour requirements:</p> <p><b>For Westerly columns 6 metres or more high - metal column to collar to be power coat painted -colour Dulux satin finish (88351) or approved equivalent. Upper columns and outreaches to be plain galvanised unpainted.</b></p> <p><b>For Westerly columns 6 metres high or less high - columns, outreaches to be power coat painted - colour Dulux satin finish (88351) or approved equivalent.</b></p> <p>Westerly wall mounted outreaches to be power coat painted - colour Dulux satin finish (88351) or approved equivalent</p> <p><b>All Parkville or Bourke Hill luminaires to be power coat painted - colour Dulux satin finish (88351) or approved equivalent.</b></p> <p>All "Engal" columns to be unpainted galvanised.</p>					
<p>By signing this document, the Public Lighting customer accepts responsibility for all maintenance of the paint finish, including repainting of the columns, that may be required (<i>refer Integral Energy General Terms and Conditions for connection of public lighting assets</i>)</p>					
Public lighting customer acceptance of non-standard lighting equipment ( <i>Unregulated Tariff class applies</i> ).					Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<p>Details of pole and luminaire required</p> <p><b>Pioneer Place</b> and Waratah Street <b>-Westerly columns and outreaches with Parkville or Bouke Hill luminaires</b></p> <p>Parke Street - "Engal" columns or equivalent with "Sylvania" or equivalent luminaires.</p> <p><b>All lanterns to be the most energy efficient that comply with requirements and are accepted by Endeavour Energy for maintenance.</b></p> <p><b>Non-standard lighting equipment can only be eligible for connection as Unregulated Tariff class lighting and requires a specific agreement between the Public Lighting customer and Endeavour Energy. For Unregulated Tariff class lighting, Endeavour Energy will provide maintenance limited to the replacement of lamp, photoelectric cell and fuse, provided an Endeavour Energy standard lamp is used in the non-standard luminaire. All other maintenance will be the responsibility of the Public Lighting customer (<i>refer Integral Energy General Terms and Conditions for connection of public lighting assets</i>).</b></p>					
<b>4. Customer authorisation</b>					
Public Lighting customer: BLUE MOUNTAINS CITY COUNCIL					
<p><b>Customer contact</b> (name in block letters):</p> <p>GRAHAM GREEN - TRAFFIC AND ROAD SAFETY ENGINEER</p>					
Signature				Date	
Phone:	(02) 4780 5549	Fax:	(02) 4780 5555	Mobile:	0412 195657



verify all dimensions on site prior to commencement of work figured dimensions to be taken in preference to scaling			
drawn by	date	checked by	date
A	ISSUE FOR REVIEW	DS	23SEP2011



**UNDER AWNING LIGHTS AT DISABLED SPACES**

**DRAFT PRELIMINARY CONCEPT**

**WE PAINTED BLACK WE STERLY COLUMN OUTREACH (U'GND ELECT)**

**J GALV. J TYPE COLUMN (U'GND ELECT)**

**L LIGHT LUMINAIRE (BOURKE HILL OR PARKVILLE ON WESTERLY)**

**FOOTPATH HIERARCHY  
OVERLAID ON FABCOT PROPOSED DA  
RETAIL REDEVELOPMENT  
CORNER PARKE+WARATAH STREETS  
KATOOMBA, NSW  
FOR FABCOT PTY. LIMITED  
06063**



# Annexure C

## Council Approved Pioneer Place Masterplan



LEGEND

- EXISTING TREE
- PROPOSED TREE
- SHRUB & GROUNDCOVER PLANTING
- EXPOSED AGGREGATE CONCRETE.
- INTEGRAL COLOURED CONCRETE TYPE 1.
- INTEGRAL COLOURED CONCRETE TYPE 2.
- INTEGRAL COLOURED CONCRETE WITH 800 WIDE JOINTS WITH 460 WIDE DOUBLE PAVER BANDS.



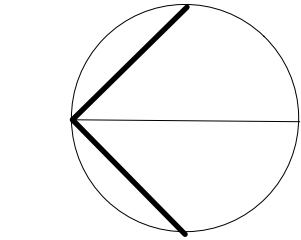
B	Issue For Adoption	27/09/11
A	Consultation Issue	08/06/11
Amendments	Track Changes	Date

Figured dimensions take precedence over scaling drawings.  
Contractors to check and verify all levels, datum and dimensions on site.  
All materials and workmanship to be in accordance with current written manufacturers instructions, local regulations and SAA codes.  
Conflicting information to be brought to notice of the Architect/  
Landscape Architect before proceeding with any works.

Integrated Design  
Associates

Blue Mountains  
10 Asquith Avenue  
Wentworth Falls 2782  
Phone 02 4757 1856  
www.integrateddesign.com.au

Master Plan  
Pioneer Place  
KATOOMBA, NSW  
for  
Blue Mountains  
City Council



Drawn :  
Checked :  
Date :  
Scale :  
1:200 1:100 @ A0  
1:100 2 4 6m  
1:200 4 8 12m  
Project No. :  
Sheet No. :  
201116L  
- of -

MP 01 B  
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