

Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning (ABN 38 755 709 681)

L A Kennett Enterprises Pty Ltd (ACN 001 587 588)
trading as Glenfield Waste Services

Figela Pty Ltd (ACN 003 179 986)

J.C. & F.W. Kennett Pty Ltd (ACN 000 346 216)

Helen Louise Kennett

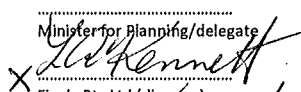
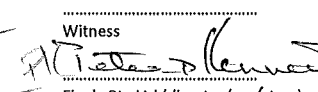
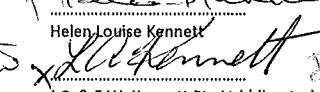
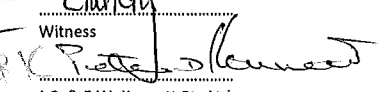
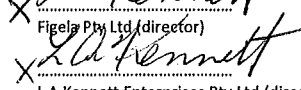
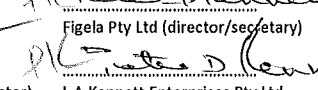
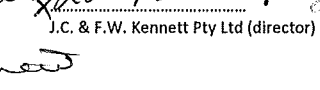
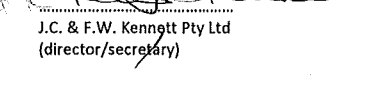
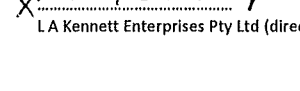
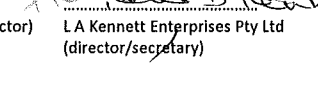
Minister for Planning/delegate	Witness	Helen Louise Kennett	Witness
			
Figela Pty Ltd (director)	Figela Pty Ltd (director/secretary)	J.C. & F.W. Kennett Pty Ltd (director)	J.C. & F.W. Kennett Pty Ltd (director/secretary)
			
L A Kennett Enterprises Pty Ltd (director)	L A Kennett Enterprises Pty Ltd (director/secretary)		
			

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This deed is dated

2016

Parties:

Minister

Minister for Planning (ABN 38 755 709 681)
of Level 15, 52 Martin Place, Sydney, New South Wales 2000

Developer

L A Kennett Enterprises Pty Ltd (ACN 001 587 588) trading as Glenfield Waste Services
of Canterbury Road, Glenfield, New South Wales 2167

Landowners

J.C. & F.W. Kennett Pty Limited (ACN 000 346 216)
of Canterbury Road, Glenfield, New South Wales 2167

Figela Pty Ltd (ACN 003 179 986)
of Tall Timbers, Canterbury Road, Glenfield, New South Wales 2167

Helen Louise Kennett
of 443 Luddenham Road, Luddenham, New South Wales 2745

Introduction:

- A** The Landowners own the Land.
- B** The Developer proposes to carry out the Development on the Land.
- C** This deed constitutes an agreement between the Developer, the Landowners and the Minister that the Developer and the Landowners will make the Development Contribution on the terms and conditions of this deed.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Agreed Encumbrances means those encumbrances the Minister agrees may be created with respect to or registered on the Riparian Land in accordance with clause 2.3 of Schedule 4.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, including as set out in Schedule 5, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Biobanking Agreement has the same meaning as in Part 7A of the *Threatened Species Conservation Act 1995* (NSW).

Business Day means any day that is not a Saturday, Sunday, or public holiday within the meaning of the *Public Holidays Act 2010* (NSW), and concludes at 5 pm on that day.

Commencement Date means the date on which this deed is signed by all the parties.

Contamination has the same meaning as in the CLM Act.

Contamination Consultant means a suitably qualified consultant as agreed by the Minister.

CLM Act means the *Contaminated Land Management Act 1997* (NSW).

Corporations Act means the *Corporations Act 2001* (Cth).

Crown Road means that part of the Land shown as marked "ROAD CLOSURE" on the Riparian Land Plan.

Development means:

- (a) the development of the Land for the purposes of a materials recycling facility generally in accordance with the Development Application; and
- (b) the subdivision of the Land to create the Riparian Land.

Developer means the Developer and the Landowners, unless otherwise specified in this deed.

Development Application means development application reference SSD 6249.

Development Consent has the same meaning as in the Act.

Development Contribution means the contribution to be provided by the Developer as set out in the table in clause 1 of Schedule 4 and in accordance with Schedule 4.

EPI means an environmental planning instrument within the meaning of the Act.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), as amended from time to time.

Land means the land described in clause 1 of Schedule 3.

Landowners means J.C. & F.W. Kennett Pty Limited (ACN 000 346 216), Figela Pty Ltd (ACN 003 179 986) and Helen Louise Kennett.

LPI means the Land and Property Information Division within the Department of Finance and Services.

Minister means the Minister for Planning and includes the Secretary, or other officer of the Department of Planning and Environment.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Nominee means:

- (a) a Transferee; or
- (b) any other person nominated by the Minister for the purposes of clause 4 of Schedule 4 that has the power to compulsorily acquire land in New South Wales including the Minister administering the Act (as corporation sole).

Real Property Act means the *Real Property Act 1900* (NSW).

Riparian Land means the land described in column 1 of the table in clause 2 of Schedule 3, having a minimum size as described in column 2 of the table in clause 2 of Schedule 3 and generally as shown on the Riparian Land Plan, subject to clause 1(b) of Schedule 4.

Riparian Land Plan means the plan attached at Annexure A.

Riparian Land Subdivision means the subdivision of part of the Land to create the parcels of land that will comprise the Riparian Land.

Riparian Land Transfer Date means a date which is within 36 months of the Commencement Date.

Roads Act means the *Roads Act 1993* (NSW).

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

Planning Application means:

- (a) a Development Application; or
- (b) any other application required under the Act,

which seeks approval for the subdivision of the Land.

Rail Link means that part of the proposed rail link connecting the intermodal terminal with the Southern Sydney Freight Line forming part of the SIMTA Development Application which affects the Land.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

Registrar-General means the Registrar General who maintains the Register.

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

Roads Act means the *Roads Act 1993* (NSW).

Secretary means the Secretary of the Department of Planning and Environment.

SIMTA Development Application means the development application by Sydney Intermodal Terminal Alliance reference SSD 6766 for proposed rail infrastructure.

Site Audit Report has the same meaning as in the CLM Act.

Site Audit Statement has the same meaning as in the CLM Act.

Site Auditor has the same meaning as in the CLM Act.

Subdivision Certificate has the same meaning as in the Act.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Transfer means a transfer under the Real Property Act in favour of a Transferee for \$1 and marked by the Office of State Revenue.

Transfer Date means the date that any Transfer under the Real Property Act is registered in accordance with clause 4 of Schedule 4.

Transferee means any person nominated by the Minister as a transferee for the purposes of this deed.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, **the introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;

- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

This deed commences on the Commencement Date.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

2.4 Application of sections 94, 94A and 94EF of the Act

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

3. Development Contribution

3.1 Developer to provide Development Contribution

The Developer undertakes to provide to the Minister, or the Nominee, the Development Contribution in accordance with the provisions of Schedule 4.

3.2 Acknowledgement

The Developer acknowledges and agrees that, subject to section 93E of the Act, the Minister:

- (a) has no obligation to use the Development Contribution for a particular purpose and has no obligation to re-transfer the Development Contribution;
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority;
- (c) has no obligation to provide any compensation to the Developer for the Development Contribution.

4. Enforcement

4.1 Developer to provide Security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing a Bank Guarantee to the Minister in accordance with the terms and procedures set out in Schedule 5.

5. Registration

5.1 Registration of deed

Within 10 Business Days of the Commencement Date, the Developer at its own expense is to take all practical steps and otherwise do anything to procure the following in relation to the registration of this deed:

- (a) the consent of each person, as required by the Registrar-General, who:
 - (i) has an estate or interest in the Land registered under the Real Property Act; or
 - (ii) is seized or possessed of an estate or interest in the Land,to the registration of this deed on title and to the terms of this deed;
- (b) the execution of any relevant documents; and
- (c) the production of the relevant certificates of title;
- (d) payment of any duty liability arising from this deed under the *Duties Act 1997* (NSW) and even if duty is not liable to be paid, presentation of this deed for marking at the Office of State Revenue; and
- (e) the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

5.2 Evidence of registration

The Developer must provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed.

5.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

5.4 Landowners' interest in Land

The Landowners represent and warrant that they are:

- (a) the owners of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 5.1 of this deed,

and legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 5.1(a) to assist, cooperate and otherwise do all things necessary for the Landowners to comply with their obligations under this clause 5.

5.5 Caveat

- (a) The Landowner acknowledges and agrees that:
 - (i) the Minister and Nominee are deemed to have acquired, and the Landowner is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act and consequently the Minister and Nominee have a sufficient interest in the Land in respect of which to lodge with the LPI a caveat notifying that interest; and
 - (ii) it will not object to the Minister or Nominee lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by the Minister or Nominee;
 - (iii) it will indemnify and keep indemnified the Minister or Nominee, as the case may be, against all Claims made against the Minister or Nominee including, without limitation, Claims made by the Landowner or any other person who has an estate or interest in any part of the Land registered under the Real Property Act, by virtue of or in connection to the Minister or Nominee lodging a caveat in the relevant folio of the Register for the Land.
- (b) The Minister must, at the Landowner's cost (with any such cost to be reimbursed to the Minister promptly on demand), lodge with the LPI a withdrawal of caveat in respect of all the Land within 5 Business Days after the Developer provides the Development Contribution or if the Minister or Nominee compulsorily acquires any interest in the Land in accordance with clause 4 of Schedule 4.

6. Dispute Resolution

6.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 6.

6.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

6.3 Attempt to resolve

On receipt of notice under clause 6.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution procedures such as mediation, expert evaluation or other techniques agreed by them.

6.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 6.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such procedures,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

6.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 6.2 then any party which has complied with the provisions of this clause 6 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

6.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 6 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 6 for any purpose other than in an attempt to settle the dispute.

6.7 No prejudice

This clause 6 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

7. GST

7.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

7.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

7.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

7.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 7.4.

7.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (the **GST Amount**), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister or Transferee (or Nominee, as the case may be) as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Minister.

7.6 Non monetary consideration

Clause 7.5 applies to non-monetary consideration.

7.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 7.5 the Developer will assume the Minister is not entitled to any input tax credit.

7.8 No merger

This clause will not merge on completion or termination of this deed.

8. Assignment and transfer

8.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of their rights or obligations under this deed, the Developer and the Landowners must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Developer's or Landowners' rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required in order to perform the Developer's or Landowners' obligations under this deed insofar as those obligations have been novated to the Incoming Party; and
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Developer or the Landowners.

- (b) The Developer and the Landowners will pay the Minister's reasonable legal costs and expenses incurred under this clause 8.1.

8.2 Landowners' right to transfer Land

- (a) The Landowners must not sell or transfer to another person (**Proposed Transferee**) the whole or part of any part of the Land.
- (b) Notwithstanding clause 8.2(a), the Landowners may sell or transfer the whole or any part of the Land to a Proposed Transferee if prior to the proposed sale or transfer the Landowners:
 - (i) satisfy the Minister, acting reasonably, that the Proposed Transferee has sufficient assets, resources and expertise required in order to perform any of the remaining obligations of the Landowners under this deed or satisfy the Minister, acting reasonably, that the Landowners will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) where relevant, procure the execution of an agreement by the Proposed Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Proposed Transferee agrees to comply with the terms and conditions of this deed as though the Proposed Transferee were the Landowners; and
 - (iii) satisfy the Minister, acting reasonably, that they are not in material breach of their obligations under this deed.
- (c) The Landowners will pay the Minister's reasonable legal costs and expenses incurred under this clause 8.2.
- (d) This clause 8.2 does not apply to the transfer of the Riparian Land to the Minister in accordance with the requirements of clause 2 of Schedule 4.

9. Capacity

9.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

9.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

10. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents and Subdivision Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development;

- (iii) a forecast in relation to the anticipated progression and completion of the Riparian Land Subdivision;
 - (iv) a compliance schedule showing the details of the Development Contribution provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
 - (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

11. General Provisions

11.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

11.2 Variation

This deed must not be varied except by a later written document executed by all parties.

11.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

11.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

11.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,
 expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

11.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

11.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

11.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

11.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

11.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

11.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

11.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

11.13 No fetter

Nothing in this deed shall be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

11.14 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

11.15 Expenses and stamp duty

- (a) The Developer and the Landowners must pay their own, the Minister's and each Transferee's or Nominee's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.

- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer and the Landowners must provide the Minister with bank cheques in respect of the Minister's costs and each Transferee's and Nominee's costs pursuant to clauses 11.15(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

11.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia; or
 - (iv) in the case of a notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted but if the transmittal is recorded by the sending party's facsimile machine as after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iv) sent by email:
 - (A) before 5 pm on a Business Day, on that Day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 93F of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
Planning instrument and/or development application – (section 93F(2)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) No
Description of land to which this deed applies – (section 93F(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 93F(3)(b))	See definition of Development, clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(c))	Not Applicable
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(d))	See Schedule 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(e))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(f))	The application of section 94EF of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(3)(g))	No, benefits are not to be taken into consideration in determining a development contribution under section 94 of the Act.
Mechanism for Dispute Resolution – (section 93F(3)(h))	See clause 6
Enforcement of this deed – (section 93F(3)(i))	See clause 4
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 11.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 5)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see Schedule 4)

Schedule 2

Address for Service (clause 1.1)

Minister	
Contact:	The Secretary
Address:	Department of Planning and Environment 23-33 Bridge Street SYDNEY NSW 2000
Facsimile No:	(02) 9228 6455
Developer	
Contact:	Georgie Kennett – General Manager
Address:	Cambridge Avenue, Glenfield NSW 2167
Facsimile No:	(02) 9601 8901
Email	georgie@glenfieldwaste.com
Landowners	
J.C. & F.W Kennett Pty Limited (ACN 000 346 216)	
Contact:	Georgie Kennett – General Manager
Address:	Cambridge Avenue, Glenfield NSW 2167
Facsimile No:	(02) 9601 8901
Email	georgie@glenfieldwaste.com
Figela Pty Ltd (ACN 003 179 986)	
Contact:	Georgie Kennett – General Manager
Address:	Cambridge Avenue, Glenfield NSW 2167
Facsimile No:	(02) 9601 8901
Email	georgie@glenfieldwaste.com
Helen Louise Kennett	
Contact:	Helen Louise Kennett
Address:	443 Luddenham Road, Luddenham NSW 2745
Facsimile No:	(02) 9601 8901
Email	Not Applicable

Schedule 3

1. Land (clause 1.1)

Lot	Deposited Plan	Folio Identifier	Landowner
3	736881	3/736881	Figela Pty Ltd (ACN 003 179 986)
3	735524	3/735524	Figela Pty Ltd (ACN 003 179 986)
103	1143827	103/1143827	Figela Pty Ltd (ACN 003 179 986)
1	113201	1/113201	J.C. & F.W. Kennett Pty Ltd (ACN 000 346 216)
2	333578	2/333578	J.C. & F.W. Kennett Pty Ltd (ACN 000 346 216)
91	1155962	91/1155962	J.C. & F.W. Kennett Pty Ltd (ACN 000 346 216)
104	1143827	104/1143827	J.C. & F.W. Kennett Pty Ltd (ACN 000 346 216)
5	833516	5/833516A, 5/833516B and 5/833516C	Figela Pty Ltd (ACN 003 179 986), J.C. & F.W. Kennett Pty Ltd (ACN 000 346 216) and Helen Louise Kennett

2. Riparian Land (clause 1.1)

Column 1	Column 2
Riparian Land	Minimum size
1. Part Lot 3 Deposited Plan 736881 marked "G" on the Riparian Land Plan	1.329 hectares
2. Part Lot 3 Deposited Plan 736881 marked "F" on the Riparian Land Plan	5,800 square metres
3. Part Lot 3 Deposited Plan 736881 marked "E" on the Riparian Land Plan	2.203 hectares
4. Part Lot 2 Deposited Plan 333578, part Lot 1 Deposited Plan 113201 and part Lot 91 Deposited Plan 1155962 marked "B" on the Riparian Land Plan	1.981 hectares
5. Part Lot 5 Deposited Plan 833516 marked "D" on the Riparian Land Plan	647.3 square metres
6. Part Lot 5 Deposited Plan 833516 marked "CC" on the Riparian Land Plan	1,376 square metres
7. Part Lot 5 Deposited Plan 833516 marked "BB" on the Riparian Land Plan	8,681 square metres

8.	Part crown road known as "Reserve Road" and marked "ROAD CLOSURE" on the Riparian Land Plan (Crown Road)	1,223 square metres
9.	Part Lot 104 Deposited Plan 1143827 and Part Lot 103 Deposited Plan 1143827 and marked "AA" on the Riparian Land Plan	3.470 hectares

Schedule 4

Development Contribution (clause 3)

1. Development Contribution

- (a) The Developer undertakes to make the following Development Contribution:

Development Contribution	Timing	Manner of Delivery
The Developer must transfer the Riparian Land to the Minister or his or her nominee.	By the Riparian Land Transfer Date.	In accordance with the process set out in clause 2 of this Schedule 4.

- (b) Notwithstanding the minimum size described in column 2 of the table in clause 2 of Schedule 3 (**Minimum Size**) for each parcel of Riparian Land described in column 1 of the table in clause 2 of Schedule 3, the Developer may, in the case of each of the parcels marked "AA", "BB", "CC" and "D" on the Riparian Land Plan (**Relevant Parcel**), transfer the Relevant Parcel to the Minister subject to an increase or reduction of the Minimum Size provided that, in the case of a reduction of the Minimum Size of the Relevant Parcel:
- (i) the Minimum Size of the Relevant Parcel is reduced by no more than 10% of the Minimum Size for the Relevant Parcel; and
 - (ii) the Developer provides evidence in writing to the Minister's satisfaction which demonstrates that the reduction of the Minimum Size of the Relevant Parcel is reasonably required to accommodate the Rail Link.

2. Transfer of Riparian Land

2.1 Contamination

- (a) The Developer must, within 6 months of the Commencement Date, obtain at its cost and provide to the Minister a report prepared by a Contamination Consultant in respect of the Riparian Land which:
- (i) identifies the nature and extent of any Contamination on the Riparian Land;
 - (ii) identifies any works which are required to be undertaken on the Riparian Land to make it suitable for the purposes of passive public recreation; and
 - (iii) is addressed to the Minister.
- (b) Not more than one month prior to the date on which the Developer proposes to transfer the Riparian Land to the Minister or Nominee, the Developer must, at its cost, obtain and provide to the Minister:
- (i) a further contamination report prepared by a Contamination Consultant which:
 - (A) confirms the nature and extent of any Contamination on the Riparian Land; and

- (B) outlines any works which have been undertaken on the Riparian Land for the purposes of making it suitable for the purposes of passive public recreation; and
- (ii) a Site Audit Report and Site Audit Statement from a Site Auditor in respect of the Riparian Land which:
 - (A) state that the Riparian Land is suitable or will be suitable for the purposes of passive public recreation as at the Riparian Land Transfer Date;
 - (B) are addressed to the Minister; and
 - (C) are otherwise on terms satisfactory to the Minister (acting reasonably).
- (c) If the Developer does not comply with clause 2.1(b), the Minister may:
 - (i) refuse to accept the transfer of the Riparian Land; and
 - (ii) without limiting the Developer's obligations under clause 2.1(b), require that the Developer undertake works, at the Developer's cost and within a timeframe determined by the Minister (acting reasonably), so as to enable the Developer to comply with clause 2.1(b),

in which case the Developer must comply with the Minister's requirements.
- (d) If the Minister is satisfied that the Developer has complied with its obligations under clauses 2.1(a) and 2.1(b), the Minister will notify the Developer in writing within 15 Business Days of the Minister being so satisfied. For the avoidance of doubt, any failure by the Minister to provide a notice in accordance with this clause 2.1(d) does not affect the Developer's obligation to transfer the Riparian Land to the Minister or Nominee in accordance with clause 2.2 of this Schedule 4.

2.2 Transfer of Riparian Land

- (a) The Developer agrees not to transfer or otherwise deal with the Riparian Land prior to the transfer of the Riparian Land to the Minister or Nominee unless:
 - (i) the Minister has consented in writing to the transfer or dealing (such consent not to be unreasonably withheld); and
 - (ii) the Developer complies with clause 8.2(b) of this deed.
- (b) In order to give effect to the transfer of the Riparian Land to the Minister or Nominee in accordance with clause 1 of this Schedule 4 there must be a Riparian Land Subdivision.
- (c) Within 3 weeks of any Subdivision Certificate being issued for the Subdivision Plan for the Riparian Land Subdivision (**Riparian Subdivision Plan**), the Developer must, at its cost, lodge the Riparian Subdivision Plan for registration with the appropriate Authority and promptly notify the Minister of such lodgement.
- (d) The Developer must, following receipt of notification that the Riparian Subdivision Plan has been registered and not less than 3 weeks prior to the Riparian Land Transfer Date, serve a Transfer on the Minister or Nominee with the relevant certificates of title and in circumstances where:
 - (i) the Riparian Land is free from any encumbrances other than the Agreed Encumbrances; or

- (ii) relevant discharges in registrable form are also served on the Minister or Nominee at the same time in relation to any encumbrances other than the Agreed Encumbrances.
- (e) The Developer must immediately comply, or procure compliance, with any requisitions raised by the Registrar-General in relation to the transfer of the Riparian Land.
- (f) The Developer will pay all rates and taxes owing in respect of the Riparian Land up to and including the date of transfer of the Riparian Land after which the Minister or Nominee will be liable.
- (g) Subject to clause 2.1(b) of this Schedule 4, the Developer must, from the Commencement Date not undertake any action or activity, prior to the Transfer being registered that will have a detrimental effect on the conservation values of the Riparian Land except where the Developer is:
 - (i) directed to undertake such action or activity by another government agency or instrumentality (such as the Rural Fire Service);
 - (ii) maintaining existing access and existing tracks; or
 - (iii) otherwise required by law to undertake such an action or activity including in order to comply with any conditions of a Development Consent or any order made under the Act in respect of the Land.

2.3 Agreed Encumbrances

- (a) In complying with clause 2.2(d) above, and subject to clause 2.3(b) below, the Developer may permit easements which would burden the Riparian Land or any part of it to be registered, where those easements are required:
 - (i) in order to comply with the conditions of any environment protection licence within the meaning of the *Protection of the Environment Operations Act 1997* in connection with the Development;
 - (ii) in connection with a Development Consent issued in respect of the SIMTA Development Application; or
 - (iii) in connection with any other authority or licence granted by an Authority in relation to the Development.
- (b) In respect of easements referred to in clause 2.3(a) above, the Developer must no later than 20 Business Days prior to the lodgement of any easement or encumbrance in respect of the Riparian Land for registration:
 - (i) provide the Minister with a draft of the instrument creating the proposed encumbrance (**Draft Instrument**); and
 - (ii) comply with any directions of the Minister (acting reasonably) as to the terms of any Draft Instrument provided within 15 Business Days of the date on which the Minister is provided with the Draft Instrument in accordance with clause 2.3(b)(i).
- (c) If requested by the Minister, the Developer agrees to grant easements for access to the Riparian Land:
 - (i) in favour of the Minister or any person nominated by the Minister;
 - (ii) which burden all or part of the Land; and

(iii) on terms acceptable to the Minister, acting reasonably,

(Access Easements).

- (d) The Developer must take all necessary steps to procure registration of the Access Easements within 20 Business Days of the date on which the Minister notifies the Developer that such Access Easements are required.
- (e) The Developer acknowledges and agrees that the Minister requires Access Easements to be granted which burden all or part of the Land marked "PROP RAIL" on the Riparian Land Plan such that there is continuity of access between the Riparian Land marked "BB" and the Riparian Land marked "CC" on the Riparian Land Plan:
 - (i) in favour of the Minister or any person nominated by the Minister; and
 - (ii) on terms acceptable to the Minister, acting reasonably.
- (f) To facilitate the grant of the Access Easements referred to in clause 2.3(e) of this Schedule 4, the Developer must provide the Minister with copies of the final plans relating to the Rail Link, as soon as reasonably practicable after such plans become available. At a minimum, such plans must show the design and location of the Rail Link.

2.4 Acquisition of Crown Road

- (a) In complying with clause 2.2 the Developer must as soon as reasonably practicable after the Commencement Date and prior to the Riparian Land Transfer Date:
 - (i) at its cost, make and pursue an application under section 34(1)(a) of the Roads Act to close the Crown Road (**Roads Act Application**); and
 - (ii) take all necessary steps to purchase the Crown Road following the closure of the Crown Road.
- (b) The Developer must notify the Minister in writing as soon as reasonably practicable and not less than 6 months prior to the Riparian Land Transfer Date:
 - (i) that the:
 - (A) Crown Road has been closed pursuant to the Roads Act Application; and
 - (B) Developer has purchased the Crown Road; or
 - (ii) that the:
 - (A) Roads Act Application has been unsuccessful; or
 - (B) Minister administering the *Crown Lands Act 1989* has not agreed to the sale of the Crown Road to the Developer,

in which case clause 2.4(c) of this Schedule 4 applies.
- (c) If the Developer provides a notice to the Minister in accordance with clause 2.4(b)(ii) of this Schedule 4, then the parties agree that, subject to the Developer having complied with the obligations in clauses 2.4(a) and (b) of this Schedule 4:
 - (i) the Developer will not be in breach of its obligations under this deed; and

- (ii) the Minister may, by providing notice in writing to the Developer, extend the time by which the Developer must transfer the Crown Road in accordance with clause 1 of this Schedule 4 (**Extension Notice**), in which case the Developer must:
 - (A) continue to pursue a Roads Act Application, whether it is the initial application lodged in accordance with clause 2.4(a)(i) of this Schedule 4 or a new application; and
 - (B) take all necessary steps to purchase the Crown Road following the closure of the Crown Road,

in accordance with this clause 2.4 and within the timeframe specified in the Extension Notice.

3. Biobanking Agreement

- (a) Subject to clause 3(b) below, the Developer may enter into a Biobanking Agreement in respect of some or all of the Riparian Land at any time prior to the Riparian Land Transfer Date.
- (b) Not less than 20 Business Days prior to entering into any Biobanking Agreement, the Developer must:
 - (i) provide the Minister with a draft of the Biobanking Agreement; and
 - (ii) comply with any directions of the Minister (acting reasonably) as to the terms of the Biobanking Agreement provided to the Developer within 15 Business Days of the date on which the Minister is provided with a copy of the draft Biobanking Agreement in accordance with this clause.

4. Compulsory acquisition

- (a) The Developer expressly agrees that clause 4(b) and clause 4(c) of this Schedule 4 operate, to the extent necessary, as a deed poll in favour of the relevant Nominee.
- (b) If the Developer does not:
 - (i) procure the transfer of all or part of the Riparian Land in accordance with clause 2.2 of this Schedule 4; and/or
 - (ii) grant the Access Easements in accordance with clause 2.3(c), clause 2.3(d) and clause 2.3(e) of this Schedule 4,

then the Developer consents to the relevant Nominee compulsorily acquiring the relevant Riparian Land and/or Access Easements in accordance with the Just Terms Act for the amount of \$1.
- (c) The Developer agrees that:
 - (i) clause 4(b) of this Schedule 4 is taken to be an agreement between the Developer and the relevant Nominee for the purpose of section 30 of the Just Terms Act; and
 - (ii) in clause 4(b) of this Schedule 4, the Developer has agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

- (d) If a Nominee must pay compensation under Part 3 of the Just Terms Act to any person, other than the Developer, in accordance with the compulsory acquisition arrangements under clause 4 of this Schedule 4, including but not limited to circumstances where the Landowner is no longer the owner of the Land and the Minister has acquired the Access Easements, the Developer must reimburse the amount of that compensation to that Nominee on request.
- (e) On the date that the Riparian Land is acquired by the relevant Nominee (**Acquisition Date**), the Developer must provide an indemnity to the relevant Nominee, under which the Developer also agrees to keep the relevant Nominee indemnified, against all claims made against the relevant Nominee as a result of any contamination that is required by an Authority to be cleaned up over the whole or any part of the Riparian Land, but only in relation to contamination that existed on or before the Acquisition Date.
- (f) The Minister acknowledges and agrees that if the Minister or Nominee compulsorily acquires the Riparian Land in accordance with this clause 4, the Minister will consent or procure the consent of the Nominee to the creation of agreed encumbrances on the Riparian Land in accordance with clause 2.3(a) of this Schedule 4, provided that the Developer:
 - (i) complies with clause 2.3(b) of this Schedule 4; and
 - (ii) will be responsible for the reasonable expenses of the Minister or Nominee incurred in relation to the creation of any such agreed encumbrances.

Schedule 5

Security terms (clause 4)

1. Developer to provide Security

- (a) In order to secure the performance of the Developer's obligations under this deed the Developer has agreed to provide the Bank Guarantee.
- (b) The Bank Guarantee must:
 - (i) name the "Minister for Planning" and the "Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries; and
 - (ii) not have an expiry date.

2. Security

- (a) At the time the Developer signs this deed, the Developer must provide the Bank Guarantee to the Minister having a face value amount of \$100,000.00 (**Security Amount**) in order to secure the performance of the Developer's obligations under this deed.
- (b) From the Commencement Date until the date that the Minister is satisfied (acting reasonably) that the Development Contribution has been provided and the Developer has satisfied all of its obligations under this deed, the Minister is entitled to retain the Bank Guarantee.

3. Claims under Bank Guarantees

- (a) The Minister may:
 - (i) call upon the Bank Guarantee where the Developer has failed to comply with any of its obligations under this deed; and
 - (ii) retain and apply such monies towards any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Bank Guarantee the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Bank Guarantee.
- (c) If:
 - (i) the Minister calls upon the Bank Guarantee; and
 - (ii) applies all or part of such monies towards any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Bank Guarantee in accordance with clause 3(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Bank Guarantee to ensure that at all times until the date that the Bank Guarantee is released in accordance with clause 4 of this Schedule 5, the Minister is in possession of a Bank Guarantee for a face value equivalent to the Security Amount.

4. Release of Security

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Bank Guarantee; and
- (b) the whole of the monies secured by the Bank Guarantee has not been expended and the monies accounted for in accordance with clause 2 of this Schedule 5,

then the Minister will promptly return the Bank Guarantee (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be), to the Developer.

Execution page

Executed as a deed

Signed, sealed and delivered for and on behalf
of the **Minister for Planning**, in the presence of:

.....
Signature of witness


.....
Signature of the Minister for Planning or
delegate


.....
Name of witness in full

.....
Name (Minister for Planning or delegate)

.....
Address of witness

Executed by L A Kennett Enterprises Pty Ltd
(ACN 001 587 588) in accordance with
section 127 of the Corporations Act:


.....
Signature of Director

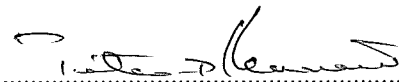
PK 
.....
Signature of Director/Secretary

LACHLAN ARTHUR KENNETT.
.....
Name of Director

PK PETER DAVID KENNETT
.....
Name of Director/Secretary

Executed by Figela Pty Ltd (ACN 003 179 986)
in accordance with section 127 of the
Corporations Act:


.....
Signature of Director

PK 
.....
Signature of Director/Secretary

LACHLAN ARTHUR KENNETT
.....
Name of Director

PK PETER DAVID KENNETT
.....
Name of Director/Secretary

Executed by J.C. & F.W. Kennett Pty Ltd (ACN
000 346 216) in accordance with section 127 of
the Corporations Act:

L.A. Kennett

Signature of Director

LACHLAN ARTHUR KENNETT

Name of Director

PX Peter D Kennett

Signature of Director/Secretary

PX PETER DAVID KENNETT

Name of Director/Secretary

Signed sealed and delivered by Peter David Kennett
as attorney for Helen Louise Kennett under
registered power of attorney Book 4654 No. 467
dated 27-08-2016 in the presence of:

PX Lyn Hendry

Signature of witness

Lyn Hendry

Name of witness in full

24/22 Fisher Road Dee Why

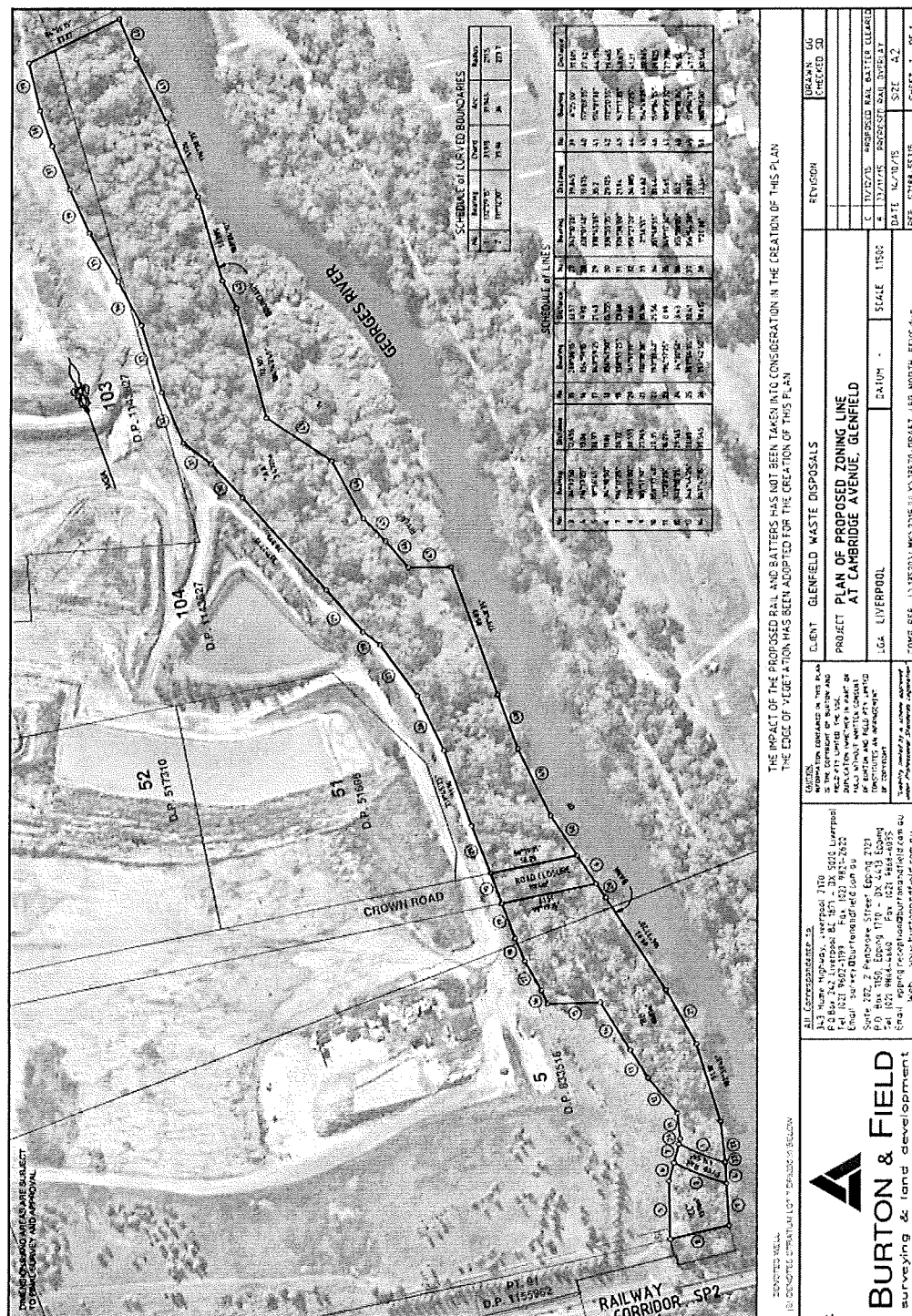
Address of witness

Peter D Kennett

Signature of attorney

By executing this deed the attorney states
that the attorney has received no notice of
revocation of the power of attorney

Annexure A - Riparian Land Plan



Minister for Planning/delegate

Figela Pty Ltd (director)

L A Kennett Enterprises Pty Ltd (director)

Witness

Figela Pty Ltd (director/secretary)

L A Kennett Enterprises Pty Ltd
(director/secretary)

Helen Louise Kennett

J.C. & F.W. Kennett Pty Ltd (director)

Witness

J.C. & F.W. Kennett Pty Ltd
(director/secretary)

2) DENOTES STRATUM LOT 7 DENOTES MILEWAY
 (M) DENOTES STRATUM LOT 8 DENOTES MILEWAY
 (O) TRANCHESION LINE CASEMENT VARIABLE WITH TRANCHION

