

Land and Environment Court New South Wales

Medium Neutral Citation:	Sell & Parker Pty Ltd v Minister for Planning [2017] NSWLEC 1586
Hearing dates:	Conciliation conference on 19 September & 17 October 2017
Date of orders:	19 October 2017
Decision date:	19 October 2017
Jurisdiction:	Class 1
Before:	Maston AC
Decision:	See (4) below
Catchwords:	DEVELOPMENT APPLICATION: conciliation conference; agreement between the parties; orders
Legislation Cited:	Land and Environment Court Act 1979
Category:	Principal judgment
Parties:	Sell and Parker Pty Ltd (ACN 000 101 315) (Applicant) Minister for Planning (Respondent)
Representation:	Mr J Johnson, Allens(Applicant) Ms L Sims, Department of Planning (Respondent)
File Number(s):	2017/126126
Publication restriction:	No

JUDGMENT

- 1 **COMMISSIONER:** In this matter, at or after a conciliation conference, an agreement under s 34(3) of the *Land and Environment Court Act 1979* (the Court Act) was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. As the presiding Commissioner, I was satisfied that the decision was one that the Court could have made in the proper exercise of its functions (this being the test applied by s 34(3) of the Court Act). As a consequence, s 34(3)(a) of the Act required me to “dispose of the proceedings in accordance with the decision”.

2

The Court Act also required me to “set out in writing the terms of the decision” (s 34(3) (b)). The orders made to give effect to the agreement constitute that document.

3 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any merit assessment of the issues that were originally in dispute between the parties.

4 The final orders to give effect to the parties’ agreement under s34(3) of the Land and Environment Court Act 1979 are:

(1) Leave is granted to the Applicant to rely on the following amended plans and documents:

Document	Revision Date	Prepared by: (consultant)
Drawing DA-1049-14 A101 Rev M	21/9/2017	Algorry Zappia and Associates Pty Ltd
Drawing DA-1049-14 A301 Rev H	27/9/2017	Algorry Zappia and Associates Pty Ltd
Drawing 14023-16-001-FH-01 Rev P4	25/9/2017	MJ Harvey and Associates Pty Ltd
Drawing SS15-3178-000-I	22/9/2017	Site Image (NSW) Pty Ltd
Drawing SS15-3178-101-J	22/9/2017	Site Image (NSW) Pty Ltd
Drawing SS15-3178-401-G	15/8/2017	Site Image (NSW) Pty Ltd
Drawing SS15-3178-402-I	22/9/2017	Site Image (NSW) Pty Ltd
Drawing SS15-3178-403-G	15/8/2017	Site Image (NSW) Pty Ltd
Drawing SS15-3178-404-G	22/9/2017	Site Image (NSW) Pty Ltd
Drawing SS15-3178-501-I	22/9/2017	Site Image (NSW) Pty Ltd
Town Planning Report	29/9/2017	Tim Ward (Ethos Urban)
Acoustic Report	25/9/2017	Renzo Tonin and Associates

(2) The Applicant is to pay the Respondent's costs thrown away by reason of the amended plans and documents listed above under section 97B of the *Environmental Planning and Assessment Act 1979* as agreed or assessed.

- (3) The appeal is upheld.
- (4) Modification application No. SSDMod 16_8001, is approved, subject to the conditions set out in Annexure "A".

.....

John Maston

Acting Commissioner of the Land & Environment Court of NSW

[Annexure A \(75.7 KB, pdf\)](#)

[Plans \(8.24 MB, pdf\)](#)

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Decision last updated: 03 November 2017

ANNEXURE A

Sell and Parker Pty Limited v Minister for Planning

SCHEDULE 1

Application No:	SSD 5041
Applicant:	Sell and Parker Pty Ltd
Consent Authority:	Land and Environment Court of NSW
Development:	Increasing the processing capacity of the existing metal recycling facility, including reconfiguration and expansion of the facility into the adjoining site at 23-43 Tatersall Road, Kings Park.
Date of Original Consent:	12 November 2015
Modification:	SSD 5041 MOD 1- the modification includes amendments to the site layout, design of buildings and structures and alterations and additions to existing buildings and structures

SCHEDULE 2

This consent is modified as follows:

In Schedule 1

1. In the table of definitions, insert the following definitions in alphabetical order:

Expanded Operations	The point at which the site receives or processes in excess of 90,000 tonnes per calendar year of waste
FRNSW	Fire and Rescue New South Wales
NCC	National Construction Code
Waste	As defined in the POEO Act In Schedule 2
2. Delete and replace Condition A2 as follows:
 - A2. The Applicant shall carry out the Development in accordance with the:
 - (a) EIS prepared by ERM dated July 2014;
 - (b) Response to Submissions report prepared by ERM dated 7 January 2015;
 - (c) Supplementary Response to Submissions prepared by Mecone dated 30 June 2015;

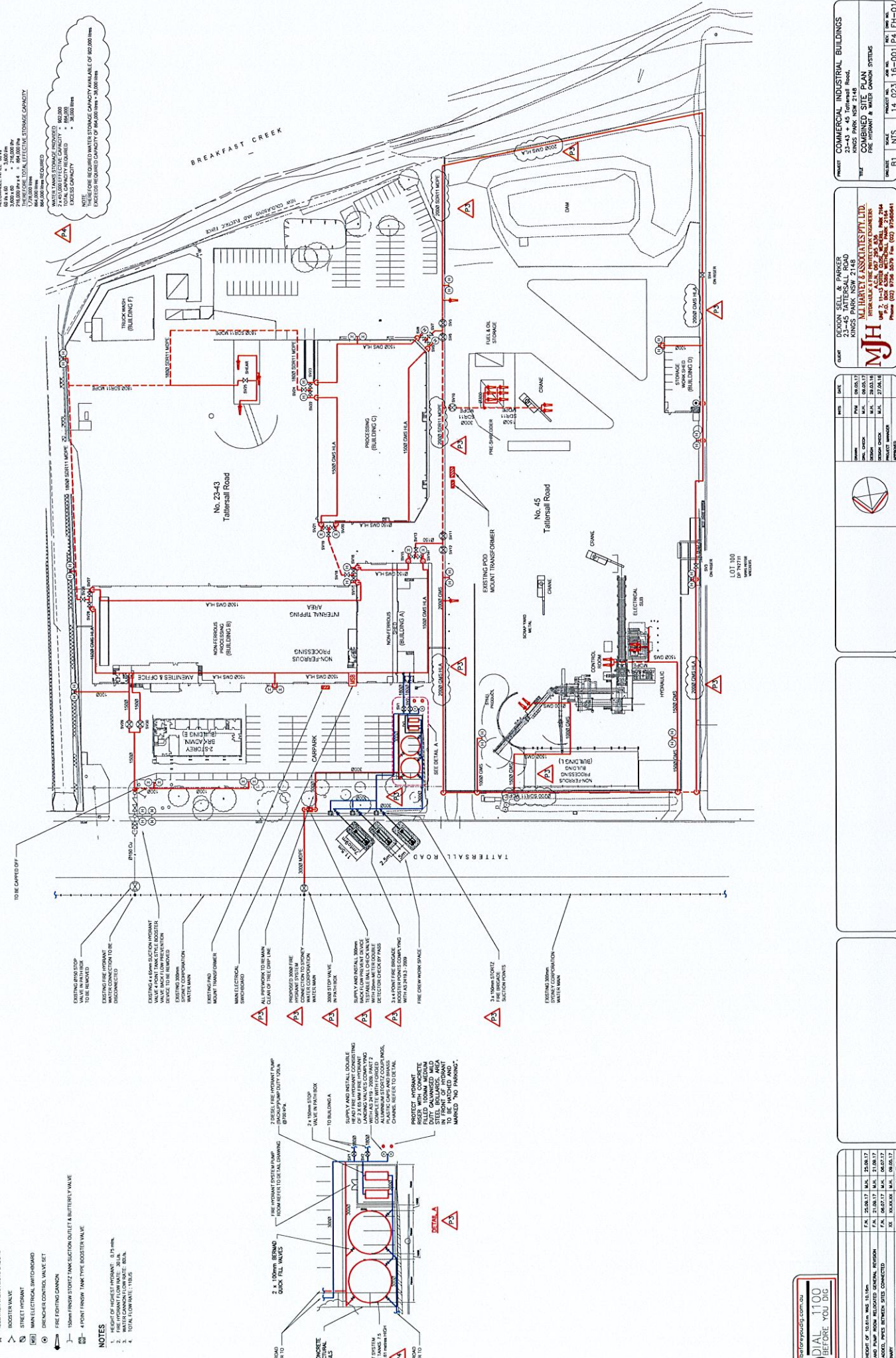
- (d) Supplementary Response to Submissions prepared by Sell and Parker Pty Ltd dated 3 September 2015;
 - (e) Site layout plans and drawings (See Appendix A);
 - (f) Management and Mitigation Measures (see Appendix B);
 - (g) Modification Application SSD 5041 MOD 1 and accompanying document titled *Statement of Environmental Effects 23-43 and 45 Tattersall Road, Kings Park* dated August 2016 prepared by Higgins Planning, additional information from Higgins Planning dated 22 December 2016, further additional information from Allens and Linklaters dated 9 February 2017 and the Town Planning Report prepared by Ethos Consulting on 29 September 2017.
3. Insert Condition B35A as follows:
- B35A. Prior to:
- (i) expanded operations;
 - (ii) the issue of an Occupation Certificate; or
 - (iii) the date being 6 months after the determination of MOD 1 by the Land and Environment Court,
- (whichever is sooner), the Applicant must ensure that an appropriate sprinkler system and smoke detection system have been installed within the floc storage area in Building C to the satisfaction of FRNSW.
4. Insert Condition E35B as follows: B35B
- Prior to:
- (i) expanded operations;
 - (ii) the issue of an Occupation Certificate; or
 - (iii) the date being 7 months after the determination of MOD 1 by the Land and Environment Court,
- (whichever is sooner), the Applicant must ensure that all fire safety measures required by the NCC for Buildings A, B, & C (as shown on drawing 14023-16-001-FH-01 Rev P4) have been installed and verified through a Fire Safety Audit in accordance with Australian Standard 4655 – Fire Safety Audits, to the satisfaction of FRNSW.
5. Delete Condition B19(viii) and replace as follows:
- (viii) installation of appropriate dust screens at the property boundary and replacement of dust screens and shade cloths at the Tattersall Road boundary of the 45 Tattersall Road site.

6. Replace all drawings in Appendix A with the following:

WATER STORAGE CAPACITY IN ACCORDANCE WITH CLAUSE 4.2 OF AS 2419 2005 PART 1

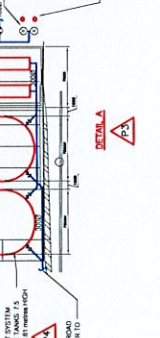
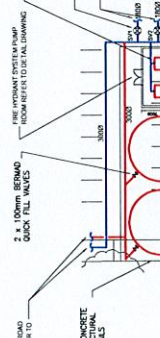
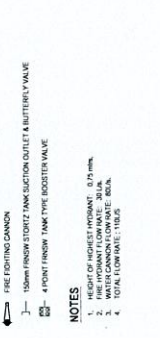
REQUIRED STORAGE: 720000 LITRES
 420000 M³ + 170000 TOTAL STORAGE
 AVAILABLE M³: 80 TN
 80 x 4 L³ = 32000 L³
 24000 M³ + 420000 M³ = 444000 M³
 170000 M³ + 444000 M³ = 614000 M³
 614000 M³ > 420000 M³ REQUIRED
 THEREFORE REQUIRED WATER STORAGE CAPACITY AVAILABLE OF 602000 M³
 EXCESS CAPACITY: 12000 M³

NOTE: THESE REQUIRED WATER STORAGE CAPACITY AVAILABLE OF 602000 M³
 EXCESS CAPACITY OF 12000 M³



- LEGEND**
- ⊕ 30mm FIRE HOSE REEL
 - ⊙ ⊙ DOUBLE FIRE HYDRANT
 - ⊗ ISOLATION VALVE IN GROUND
 - ⊗ ISOLATION VALVE ABOVE GROUND
 - ⊗ ROOSTER VALVE
 - ⊗ STREET HYDRANT
 - ⊗ MAIN ELECTRICAL SWITCHBOARD
 - ⊗ FIRE FIGHTING CANNON
 - ⊗ FIRE FIGHTING CANNON
 - ⊗ 4 POINT FLOW/TANK TYPE ROOSTER VALVE
 - ⊗ 4 POINT FLOW/TANK TYPE ROOSTER VALVE

- NOTES**
1. HEIGHT OF HIGHEST HYDRANT: 0.75 mms.
 2. WATER CANNON LOW VALVE: 1000 L/min.
 3. WATER CANNON LOW VALVE: 1000 L/min.
 4. TOTAL FLOW RATE: 1000 L/min.



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NO.	DESCRIPTION	ISSUED BY	APPROVED BY
PA	25.08.17	M.H.	25.08.17
PK	25.08.17	M.H.	25.08.17
PL	06.07.17	M.H.	06.07.17
PM	06.07.17	M.H.	06.07.17
PN	06.07.17	M.H.	06.07.17
PO	06.07.17	M.H.	06.07.17
PP	06.07.17	M.H.	06.07.17
PQ	06.07.17	M.H.	06.07.17
PR	06.07.17	M.H.	06.07.17
PS	06.07.17	M.H.	06.07.17
PT	06.07.17	M.H.	06.07.17

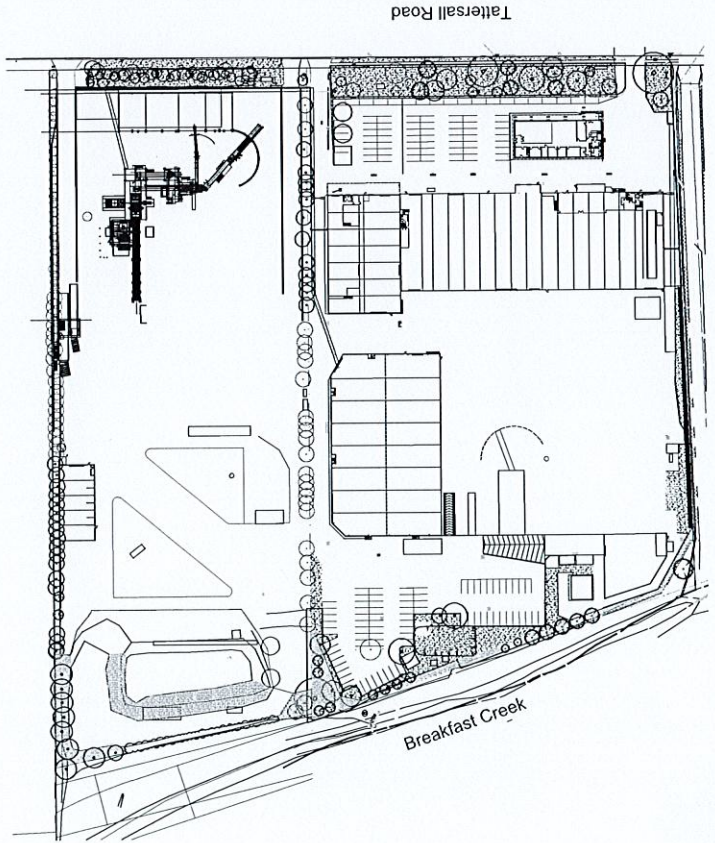
NO.	DATE	DESCRIPTION
1	06.07.17	ISSUED FOR PERMIT
2	25.08.17	ISSUED FOR PERMIT
3	27.08.16	ISSUED FOR PERMIT

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COMMERICAL INDUSTRIAL BUILDINGS
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PROPOSED ALTERATIONS TO EXISTING RECYCLING CENTRE 23-43 & 45 TATTERSALL RD, KINGS PARK LANDSCAPE

DRAWINGS	DWG NO.	DRAWING TITLE	SCALE
	000	COVERSHEET	N/A
	101	LANDSCAPE MASTERPLAN	1:500
	401	LANDSCAPE PLAN	1:250
	402	LANDSCAPE PLAN	1:250
	403	LANDSCAPE PLAN	1:250
	404	LANDSCAPE PLAN	1:250
	501	LANDSCAPE DETAILS	AS SHOWN



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Rev	Date	Description
1	22.08.2017	Issue for construction
2	15.08.2017	Revised layout
3	15.08.2017	Revised layout
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99	15.08.2017	Revised layout
100	15.08.2017	Revised layout

LEGEND

- I LCC Intersections
- H Revised Curbs
- G Revised Footpaths
- E Revised Driveways
- C Construction Conditions
- B General Features
- F Proposed Footpaths
- M Proposed Masonry
- Other Check 1 Date

Key Plan:



Client:
Sell and Parker Pty Ltd

Project:
Proposed Alterations to
Existing Recycling Center
23 & 45 Tattersall Rd, Kings Park

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CONSTRUCTION CERTIFICATE
 Drawing Name:
Coversheet

Scale:
Job Number:
Drawing Number:
Sheet:
SS15-3178
000 1

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Drawn	Checked	Date
JL	NM	22.03.2017
SM	NM	23.03.2017
SM	NM	13.03.2017
SM	NM	31.01.2017
JL	NM	18.12.2016
JL	NM	18.12.2016
SM	NM	04.10.2016
SM	NM	17.02.2016
JW	NM	17.02.2016
JW	NM	17.02.2016

- J LEC Amendments
- A Approved for construction
- C Approved for construction
- H Revised for the services
- I Updated landscaping
- E Updated landscaping
- D Construction certificate
- B General Remarks
- A For Comment
- None Revision Description

LEGEND

- - - Site Boundary
- - - Existing vegetation to be retained, with additional landscape vegetation
- - - Turf
- - - Existing tree to be removed
- - - Existing tree to be retained
- - - Proposed tree planting

Key Plan:



Client: Sell and Parker Pty Ltd

Project: Proposed Alterations to Existing Recycling Center
23 & 45 Tattersall Rd, Kings Park

SITE IMAGE

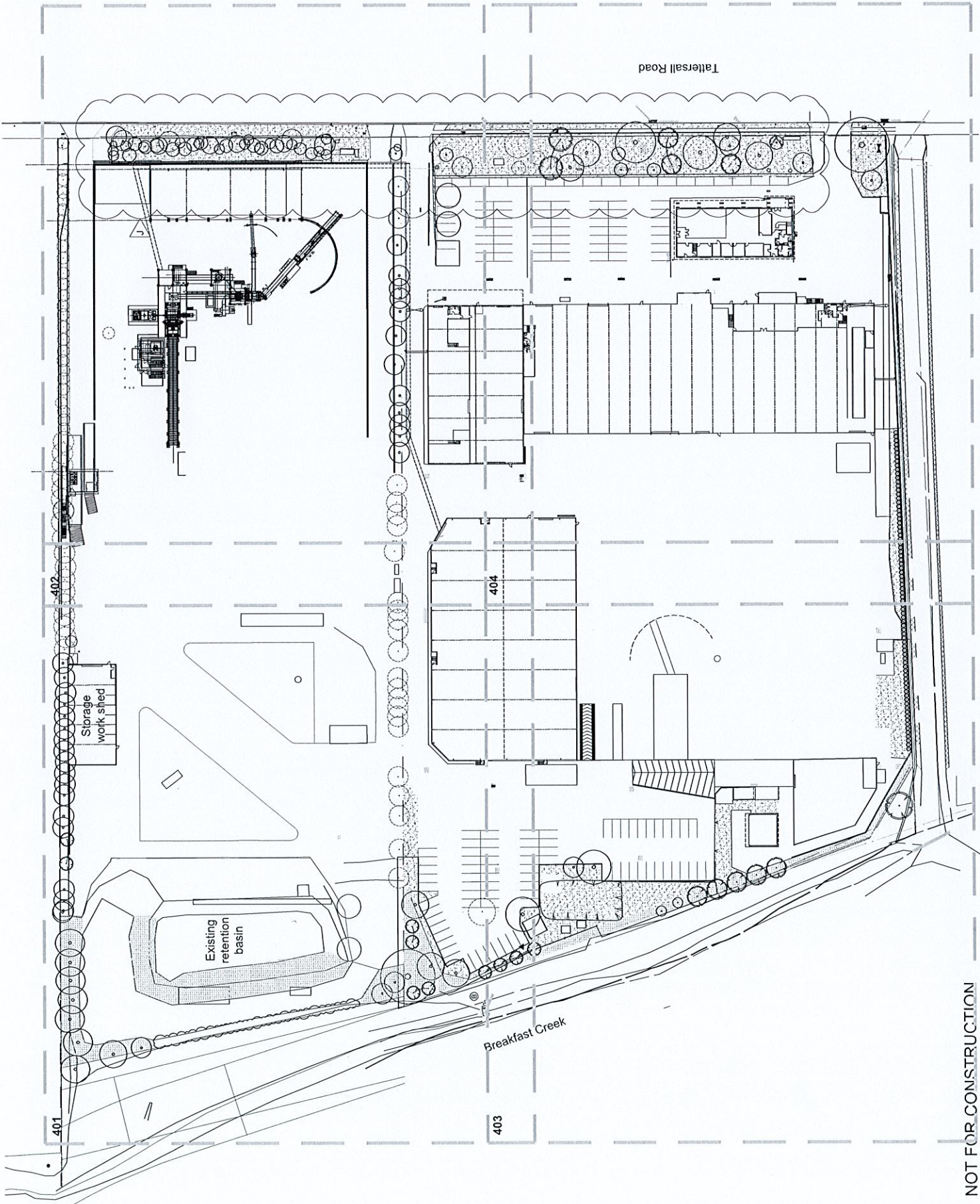
Level: 1 - 2d Site Plan
Date: 17/02/16
Author:
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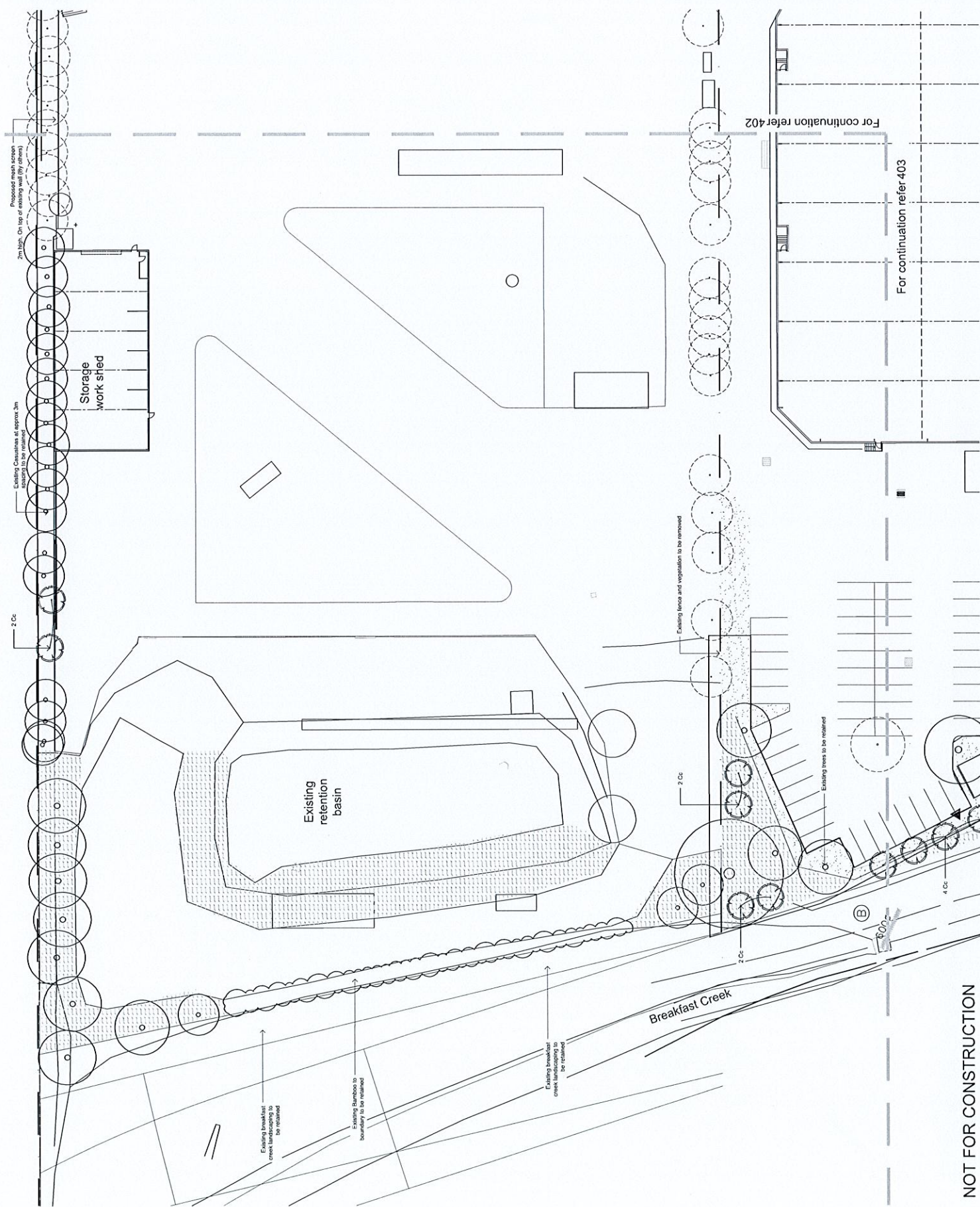
Landscape Masterplan

Scale: 1:500 @ A1
Job Number: SS-15-3178
Drawing Number: 101 J



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LEGEND

- Site Boundary
- Existing vegetation to be retained with additional margin/retention vegetation
- Turf
- Existing area to be removed
- Existing area to be retained
- Proposed new planting

REVISIONS

ID	DATE	DESCRIPTION
JD	15/03/2017	Final Design
JD	15/03/2017	Final Design
JM	15/03/2016	Final Design
SM	04/03/2016	Final Design
JM	17/03/2016	Final Design
JM	17/03/2016	Final Design
JM	17/03/2016	Final Design

Drawn: Check Date

CLIENT
Sell and Parker Pty Ltd

PROJECT
Proposed Alterations to Existing Recycling Center
23 & 45 Tattersal Rd, Kings Park

DESIGNER
SITE IMAGE
Landscape Architects

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CONSTRUCTION CERTIFICATE
Landscape Plan

Drawing Name:

Scale: 1:250 @ A1
Job Number: SS15-3178
Drawing Number: 401 G



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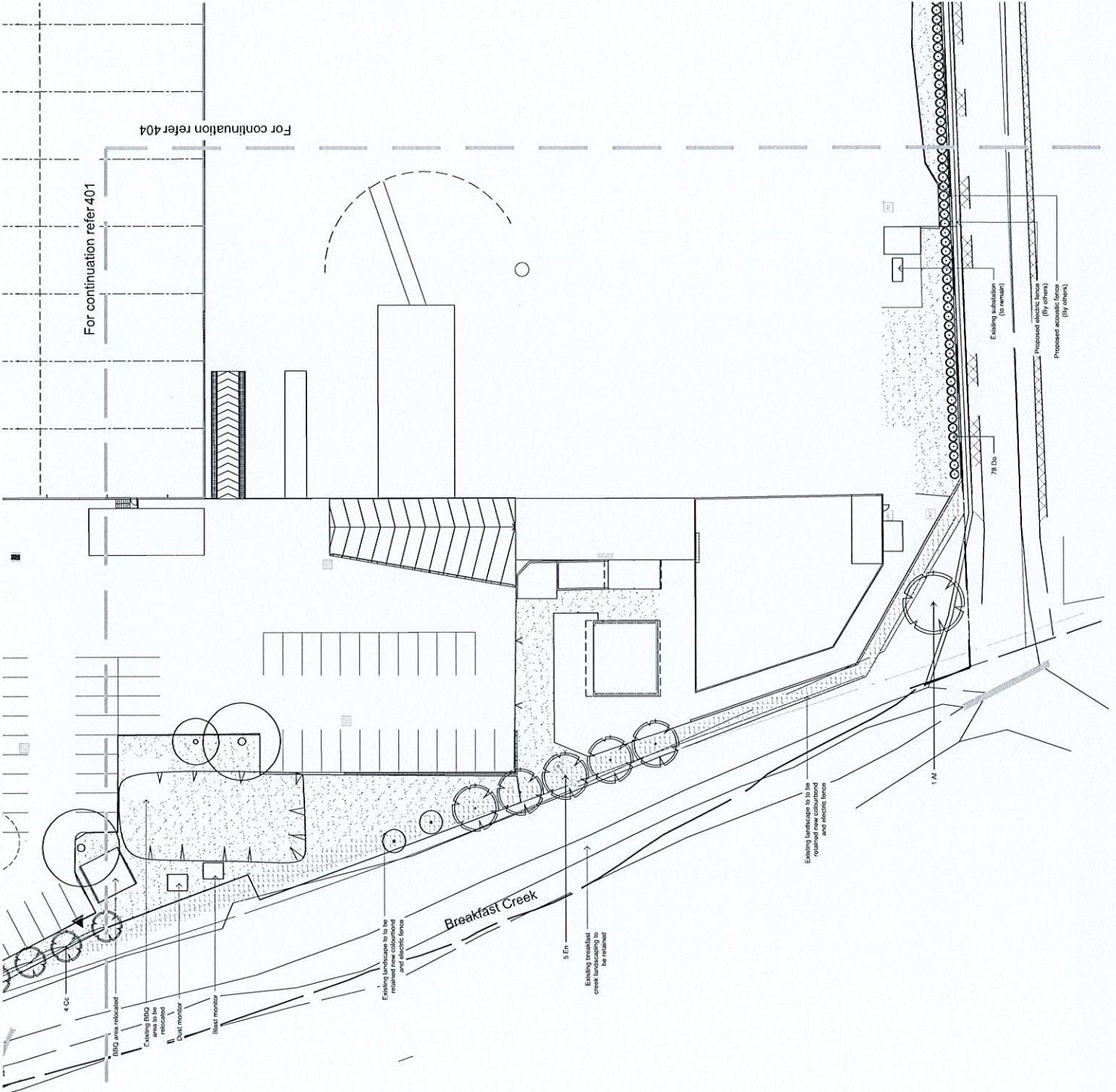
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JD	NM	15.03.2017
JD	NM	16.03.2017
JD	NM	16.03.2017
SM	NM	04.03.2016
SM	NM	04.03.2016
JW	NM	17.03.2016
JW	NM	17.03.2016
Other	Check	2006

LEGEND

- Site Boundary
- Existing vegetation to be retained, with additional irrigated vegetation
- Existing tree to be retained
- Existing tree to be removed
- Proposed tree planting



Client: Sell and Parker Pty Ltd

Project: Proposed Alterations to Existing Recycling Center
23 & 45 Tattersall Rd, Kings Park

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CONSTRUCTION CERTIFICATE
Landscape Plan

Scale: 1:250 @ A1
Job Number: SS15-31178
Drawing Number: 403 G

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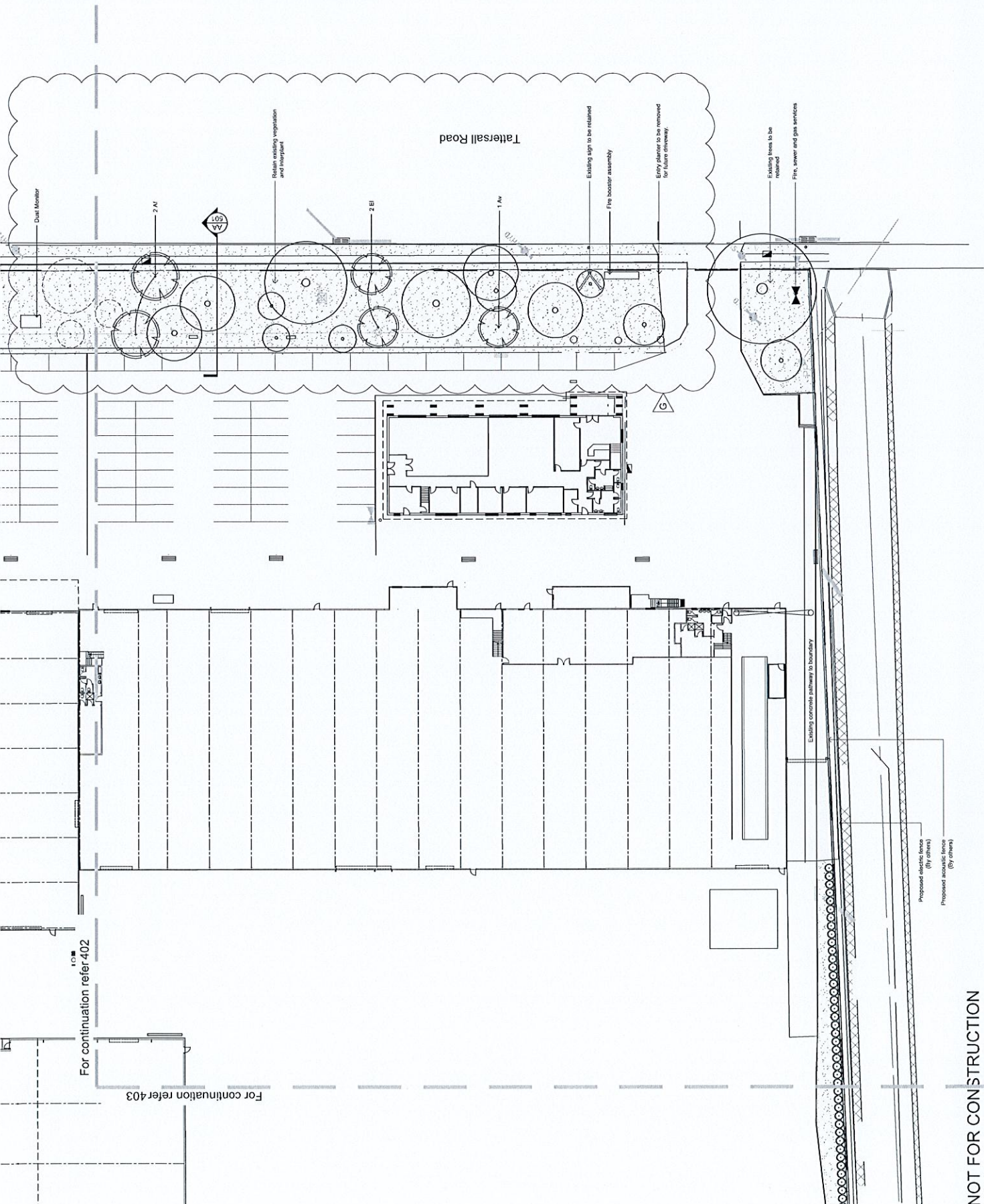
The architect shall check and verify all work on site. Retaining work by others shall be confirmed by the architect. Any observations are to be noted on the drawings. The architect shall be responsible for ensuring that the construction work is carried out in accordance with the approved construction plan. The architect shall be responsible for ensuring that the construction work is carried out in accordance with the approved construction plan.

JD	NSW	22.08.2017
JD	NSW	19.08.2017
JD	NSW	13.03.2016
SM	NSW	04.10.2016
SM	NSW	04.10.2016
JW	NSW	17.03.2016
JW	NSW	13.02.2016
JW	NSW	13.02.2016
Drawn	Check	Date

- G LEC Amendments
- H Hatched
- E Hatched
- D Hatched
- C Hatched
- B Hatched
- A Hatched

LEGEND

[Symbol]	Site boundary
[Symbol]	Existing vegetation to be retained
[Symbol]	Existing vegetation to be removed
[Symbol]	Proposed new planting
[Symbol]	Existing trees to be retained
[Symbol]	Existing trees to be removed
[Symbol]	Proposed new planting



Client: Sell and Parker Pty Ltd

Project: Proposed Alterations to Existing Recycling Center 23 & 45 Tattersall Rd, Kings Park

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Landscaping Architects

CONSTRUCTION CERTIFICATE
 Landscape Plan

Scale: 1:250 @ A1
 Job Number: SS15-3178
 Drawing Number: 404 G

NOT FOR CONSTRUCTION

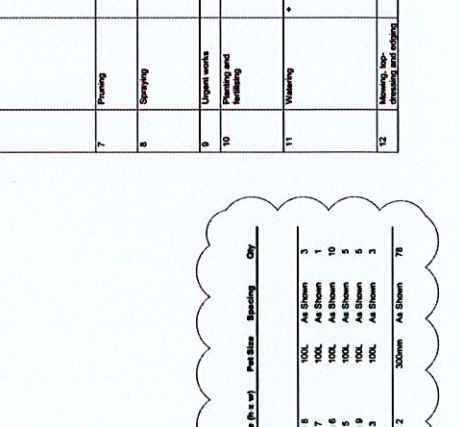
LEGEND

1	ERC	Excavation
2	20	20mm concrete
3	50	50mm concrete
4	100	100mm concrete
5	150	150mm concrete
6	200	200mm concrete
7	250	250mm concrete
8	300	300mm concrete
9	350	350mm concrete
10	400	400mm concrete
11	450	450mm concrete
12	500	500mm concrete
13	550	550mm concrete
14	600	600mm concrete
15	650	650mm concrete
16	700	700mm concrete
17	750	750mm concrete
18	800	800mm concrete
19	850	850mm concrete
20	900	900mm concrete
21	950	950mm concrete
22	1000	1000mm concrete

Table	ACTIVITY	FREQUENCY	SW	W	M	S	SA	ACTION
1	Logbook	1 Week	1	2	3	4	5	Complete a logbook every 10 weeks at site and fill in every 10 weeks. The logbook entries. Upon request, make the logbook available for inspection. The logbook entries should be provided to the Contract Administrator on a monthly basis. Please note that maintenance work when problems are identified should result in the contractor being notified immediately. All maintenance work should be completed within 14 days of notification. A record of all maintenance work should be maintained for all materials and a minimum of 5 years after the completion of works or until the contract has been terminated. The logbook should be used for all materials and a minimum of 5 years after the completion of works or until the contract has been terminated. The logbook should be used for all materials and a minimum of 5 years after the completion of works or until the contract has been terminated.
2	Plant replacement	1 Week	1	2	3	4	5	Inspect and replace failed plants within 2 weeks of observation of failure. Identify and location of new plants and location of new plants.
3	Mulch	1 Week	1	2	3	4	5	Inspect and replace mulch within 1 week of observation. Prior to phoshy cover mulch is to be applied to the soil and then plants mulch. Do not disturb major plant roots while in the soil. Do not disturb major plant roots while in the soil. Do not disturb major plant roots while in the soil. Do not disturb major plant roots while in the soil. Do not disturb major plant roots while in the soil. Do not disturb major plant roots while in the soil.
4	Emson contact	1 Week	1	2	3	4	5	Inspect every 10 weeks and report any weeds or pests. Maintain emson control devices as necessary. Emson control devices should be inspected for additional weeds or pests. Emson control devices should be inspected for additional weeds or pests. Emson control devices should be inspected for additional weeds or pests. Emson control devices should be inspected for additional weeds or pests. Emson control devices should be inspected for additional weeds or pests. Emson control devices should be inspected for additional weeds or pests.
5	Shades and fire	1 Week	1	2	3	4	5	Inspect every 10 weeks, only if necessary. Shades and fire should be inspected for additional weeds or pests. Shades and fire should be inspected for additional weeds or pests. Shades and fire should be inspected for additional weeds or pests. Shades and fire should be inspected for additional weeds or pests. Shades and fire should be inspected for additional weeds or pests. Shades and fire should be inspected for additional weeds or pests.
6	Weed and rubbish removal	1 Week	1	2	3	4	5	Inspect and remove weeds immediately upon observation. Leave no weeds on site. Weed and rubbish removal should be inspected for additional weeds or pests. Weed and rubbish removal should be inspected for additional weeds or pests. Weed and rubbish removal should be inspected for additional weeds or pests. Weed and rubbish removal should be inspected for additional weeds or pests. Weed and rubbish removal should be inspected for additional weeds or pests. Weed and rubbish removal should be inspected for additional weeds or pests.
7	Pruning	1 Week	1	2	3	4	5	Inspect every 2 weeks and prune as necessary to remove dead wood. Pruning should be inspected for additional weeds or pests. Pruning should be inspected for additional weeds or pests. Pruning should be inspected for additional weeds or pests. Pruning should be inspected for additional weeds or pests. Pruning should be inspected for additional weeds or pests. Pruning should be inspected for additional weeds or pests.
8	Spraying	1 Week	1	2	3	4	5	Inspect every 2 weeks and apply as necessary to control weeds or pests. Spraying should be inspected for additional weeds or pests. Spraying should be inspected for additional weeds or pests. Spraying should be inspected for additional weeds or pests. Spraying should be inspected for additional weeds or pests. Spraying should be inspected for additional weeds or pests. Spraying should be inspected for additional weeds or pests.
9	Light works	1 Week	1	2	3	4	5	Complete within 1 week (7 days) of observation. Light works should be inspected for additional weeds or pests. Light works should be inspected for additional weeds or pests. Light works should be inspected for additional weeds or pests. Light works should be inspected for additional weeds or pests. Light works should be inspected for additional weeds or pests. Light works should be inspected for additional weeds or pests.
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11	Watering	1 Week	1	2	3	4	5	Water plants and ensure necessary watering. Watering should be inspected for additional weeds or pests. Watering should be inspected for additional weeds or pests. Watering should be inspected for additional weeds or pests. Watering should be inspected for additional weeds or pests. Watering should be inspected for additional weeds or pests. Watering should be inspected for additional weeds or pests.
12	Mowing, top-dressing and edging	1 Week	1	2	3	4	5	Mow lawn and ensure necessary mowing. Top-dressing and edging should be inspected for additional weeds or pests. Top-dressing and edging should be inspected for additional weeds or pests. Top-dressing and edging should be inspected for additional weeds or pests. Top-dressing and edging should be inspected for additional weeds or pests. Top-dressing and edging should be inspected for additional weeds or pests. Top-dressing and edging should be inspected for additional weeds or pests.

LEGEND

Maintenance Schedule



Symbol	Botanic Name	Common Name	Mature Size (h x w)	Plant Size	Spacing	Qty
TREES						
A1	<i>Albizia julibrissin</i>	Rough-Barked Apple	20 x 6	100L	As Shown	3
A2	<i>Allocasuarina verticillata</i>	Crushing She-Oak	8 x 7	100L	As Shown	1
A3	<i>Casuarina cunninghamiana</i>	River She-Oak	20 x 6	100L	As Shown	10
A4	<i>Encasuarina cunninghamiana</i>	Edna Oak	7 x 5	100L	As Shown	5
B1	<i>Encasuarina acutata</i>	Water Paperbark	12 x 9	100L	As Shown	1
B2	<i>Encasuarina acutata</i>	Water Paperbark	6 x 3	100L	As Shown	3
BAMBOO						
D1	<i>Dendrocalamus glaberrimus</i>	Guest Tower Bamboo	18 x 2	300mm	As Shown	78

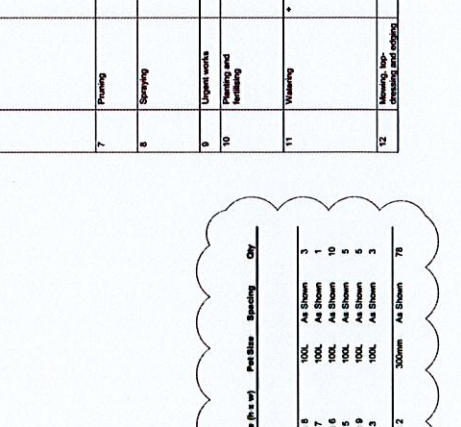
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LEGEND

1	ERC	Excavation
2	20	20mm concrete
3	50	50mm concrete
4	100	100mm concrete
5	150	150mm concrete
6	200	200mm concrete
7	250	250mm concrete
8	300	300mm concrete
9	350	350mm concrete
10	400	400mm concrete
11	450	450mm concrete
12	500	500mm concrete
13	550	550mm concrete
14	600	600mm concrete
15	650	650mm concrete
16	700	700mm concrete
17	750	750mm concrete
18	800	800mm concrete
19	850	850mm concrete
20	900	900mm concrete
21	950	950mm concrete
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Client: Sell and Parker Pty Ltd

Project: Proposed Alterations to Existing Recycling Center 23 & 45 Tattersall Rd, Kings Park



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www.sellandparker.com.au
Sales@sellandparker.com.au
Site@sellandparker.com.au

CONSTRUCTION CERTIFICATE
Landscape Details

Drawn by: Name
Date:
Checked by: Name
Date:
501 1