

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

- 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”.

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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".

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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:

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Drawn	Checked	Date
JL	NM	22.03.2017
SM	NM	13.02.2017
SM	NM	13.02.2017
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 Approved for construction
- I Approved for construction
- M Approved for construction
- N Approved for construction
- O Approved for construction
- P Approved for construction
- Q Approved for construction
- R Approved for construction
- S Approved for construction
- T Approved for construction
- U Approved for construction
- V Approved for construction
- W Approved for construction
- X Approved for construction
- Y Approved for construction
- Z Approved for construction

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



Client: Sell and Parker Pty Ltd

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

SITE IMAGE

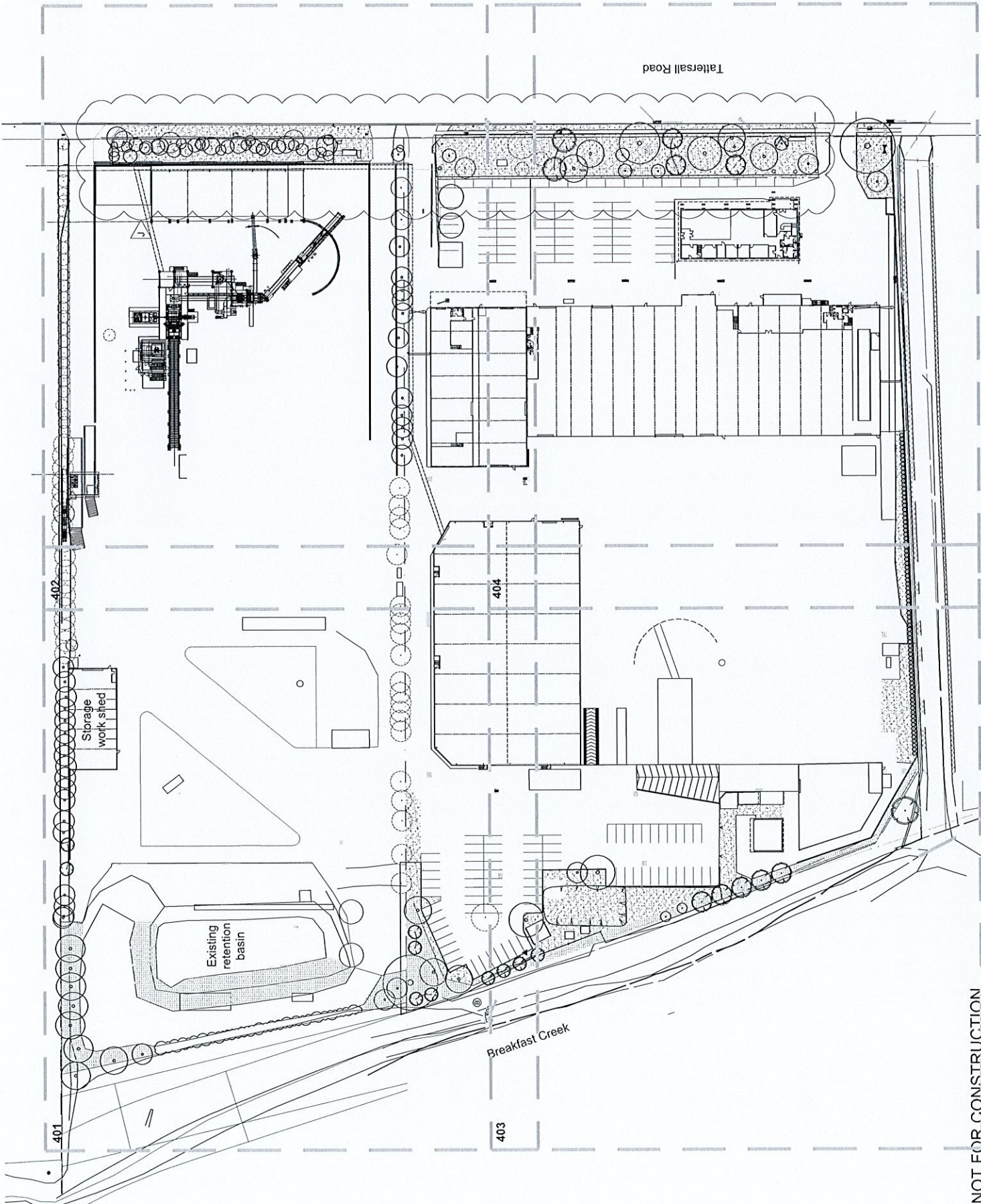


Level: 1 - 3d Project Close
Date: 17/02/2018
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CONSTRUCTION CERTIFICATE
Landscape Masterplan

Drawing Name:

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



NOT FOR CONSTRUCTION

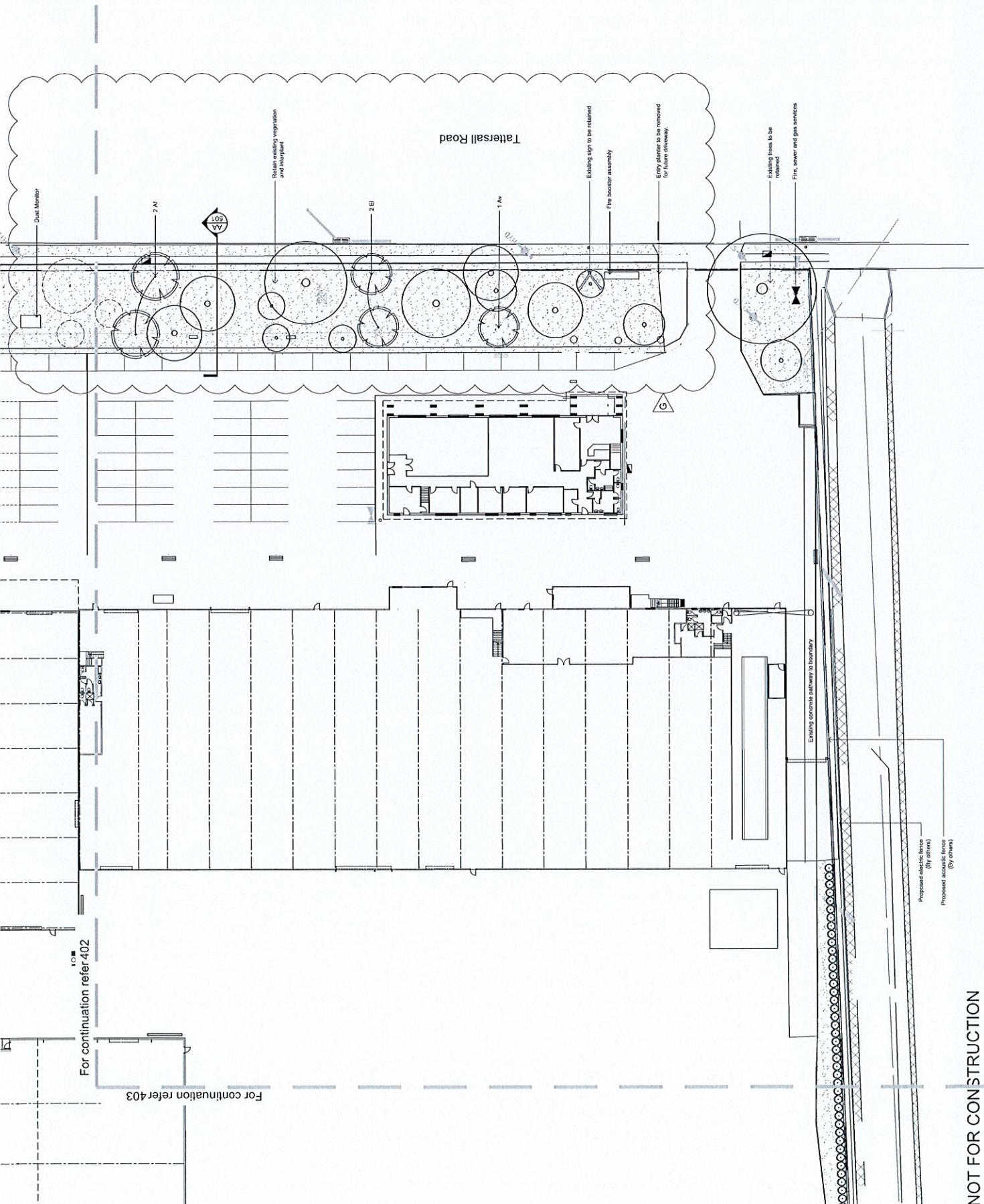
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The architect shall check and certify all work on site. Retaining work by others shall be undertaken at the discretion of the architect. Any alterations to the site plan shall be made in accordance with the site plan. Any proposed construction shall be in accordance with the site plan. The architect shall be responsible for ensuring that all work is completed in accordance with the site plan. The architect shall be responsible for ensuring that all work is completed in accordance with the site 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	17.03.2016
JW	NSW	13.02.2016
JW	NSW	13.02.2016
Drawn	Check	Date

- G LEC Amendments
- H Proposed Hatched
- E Existing Hatched
- D Construction Certificate
- C Construction Certificate
- B Construction Certificate
- A For Comment

- Notes: Retention restriction
- LEGEND
- Site boundary
 - Retain existing vegetation and hedges
 - Existing vegetation to be retained with additional replacement vegetation
 - Turf
 - Existing trees to be removed
 - Existing trees to be retained
 - 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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CONSTRUCTION CERTIFICATE
 Landscape Plan

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

For continuation refer 402

For continuation refer 403

NOT FOR CONSTRUCTION

