

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

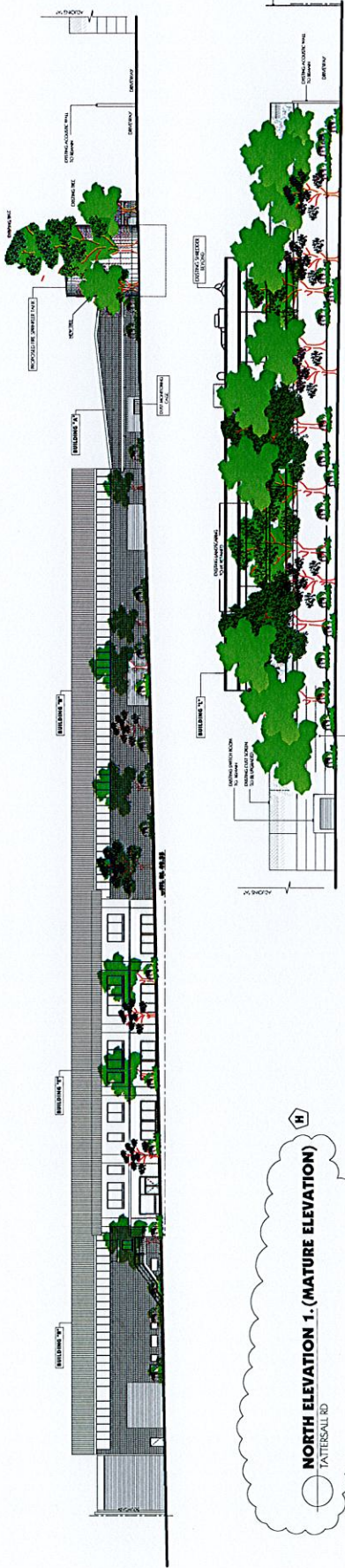
This consent is modified as follows:

In Schedule 1

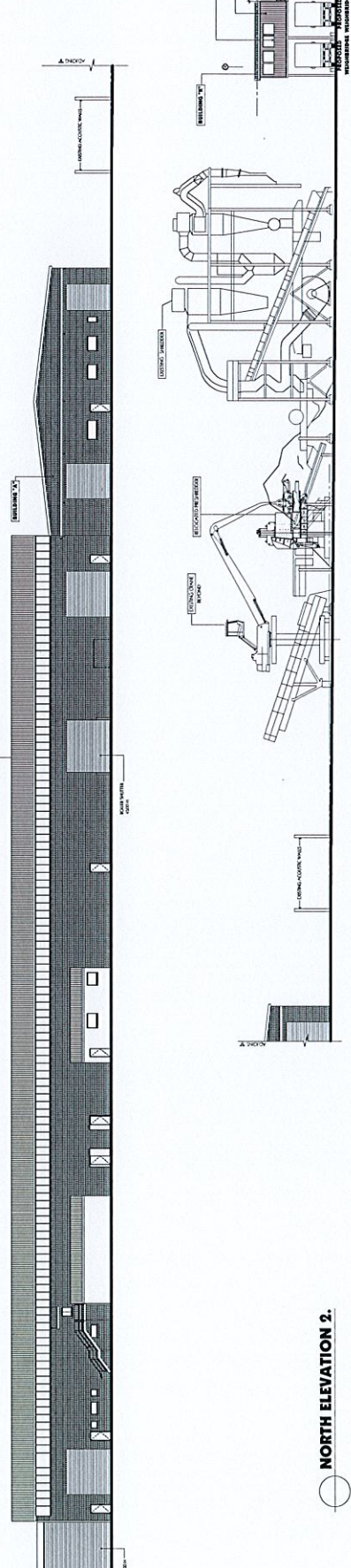
1. In the table of definitions, insert the following definitions in alphabetical order:
Expanded Operations The point at which the site receives or processes in excess of 90,000 tonnes per calendar year of waste
FRNSW Fire and Rescue New South Wales
NCC National Construction Code
Waste As defined in 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.

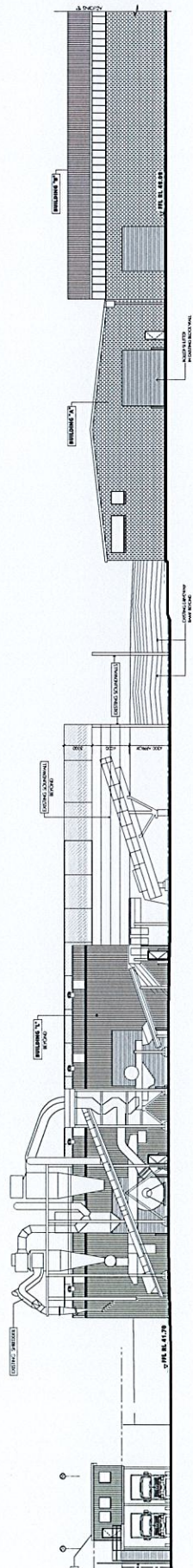
6. Replace all drawings in Appendix A with the following:



NORTH ELEVATION 1. (MATURE ELEVATION)
TATTERSALL RD



NORTH ELEVATION 2.



SOUTH ELEVATION 1

NO.	DESCRIPTION	DATE	GENERAL NOTES
A	FOR DIS. OF REVISIONS		
B	FOR DIS. OF REVISIONS		
C	FOR DIS. OF REVISIONS		
D	FOR DIS. OF REVISIONS		
E	FOR DIS. OF REVISIONS		
F	FOR DIS. OF REVISIONS		
G	FOR DIS. OF REVISIONS		
H	FOR DIS. OF REVISIONS		

PROJECT NO.	1049-14
DATE	DA
CLIENT	SELL & PARKER METAL
PROJECT NAME	P4744
PROJECT ADDRESS	LOT 2 DP550592 & LOT 5 DP7086, No 83 & 45 TATTERSALL RD, KINGS PARK
PROJECT TYPE	BUILDING CERTIFICATE APPLICATION
SCALE	ELEVATIONS & SECTIONS

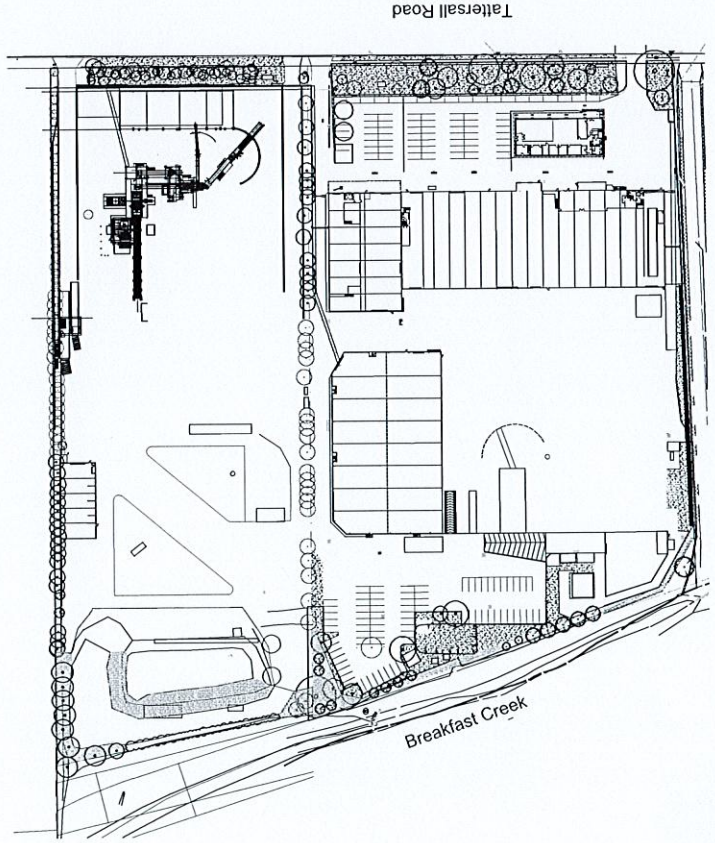
DATE	15/01/2014
DESIGNED BY	J. ZAPPA
DRAWN BY	C. ZAPPA
CHECKED BY	
DATE	15/01/2014
PROJECT NO.	1049-14
CLIENT	SELL & PARKER METAL
PROJECT NAME	LOT 2 DP550592 & LOT 5 DP7086, No 83 & 45 TATTERSALL RD, KINGS PARK
PROJECT TYPE	BUILDING CERTIFICATE APPLICATION
SCALE	ELEVATIONS & SECTIONS

ALGOBY ZAPPA & ASSOCIATES PTY. LTD.
CONSULTANTS IN ARCHITECTURE, CIVIL ENGINEERING & LANDSCAPE ARCHITECTURE
1/11 BERRY STREET, SYDNEY NSW 1570
TEL: 002 9337 9000 FAX: 002 9337 9003
WWW.AZAPPA.COM.AU

GENERAL NOTES
1. All dimensions are to be in accordance with the Australian Standard AS 1927.1.
2. All dimensions are to be in accordance with the Australian Standard AS 1927.1.
3. All dimensions are to be in accordance with the Australian Standard AS 1927.1.
4. All dimensions are to be in accordance with the Australian Standard AS 1927.1.
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9. All dimensions are to be in accordance with the Australian Standard AS 1927.1.
10. All dimensions are to be in accordance with the Australian Standard AS 1927.1.

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	15.08.2017	Final Design
2	15.08.2017	Final Design
3	15.08.2017	Final Design
4	15.08.2017	Final Design
5	15.08.2017	Final Design
6	15.08.2017	Final Design
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99	15.08.2017	Final Design
100	15.08.2017	Final Design

LEGEND

- I LCC Measurements
- H Revised Contour
- G Revised for the Services
- E Revised for the Services
- D Revised for the Services
- C Construction conditions
- B General Revision
- A Proposed Installation
- Note Revision Description

Key Plan:



Client:
Sell and Parker Pty Ltd

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

SITE IMAGE
Landscape Architects
Level 1, 15, South Street
Sydney NSW 2018
Australia
Tel: (61 2) 9633 2677
Fax: (61 2) 9633 2677
www.siteimage.com.au
Site Image Pty Ltd
ABN 62 742 282

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	13.02.2017
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 Checked for compliance
- H Handed for the services
- I Issued for construction
- E Elected for construction
- D Construction certificate
- B Approved for construction
- A For Construction
- 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 - 3d Site Image Client
Level: 2 - 3d Site Image Client
Level: 3 - 3d Site Image Client
Level: 4 - 3d Site Image Client
Level: 5 - 3d Site Image Client
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Level: 10 - 3d Site Image Client

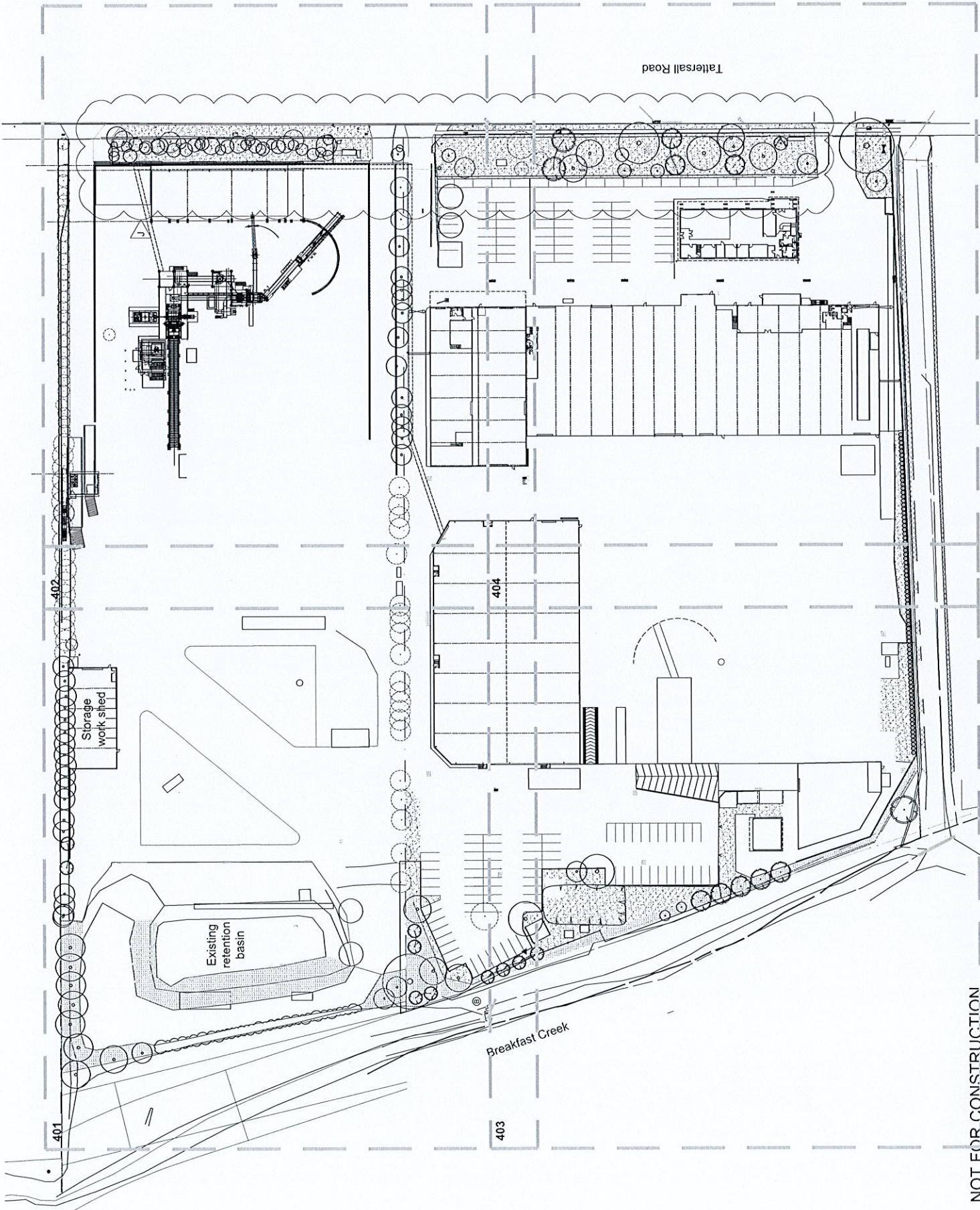


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CONSTRUCTION CERTIFICATE
Landscape Masterplan

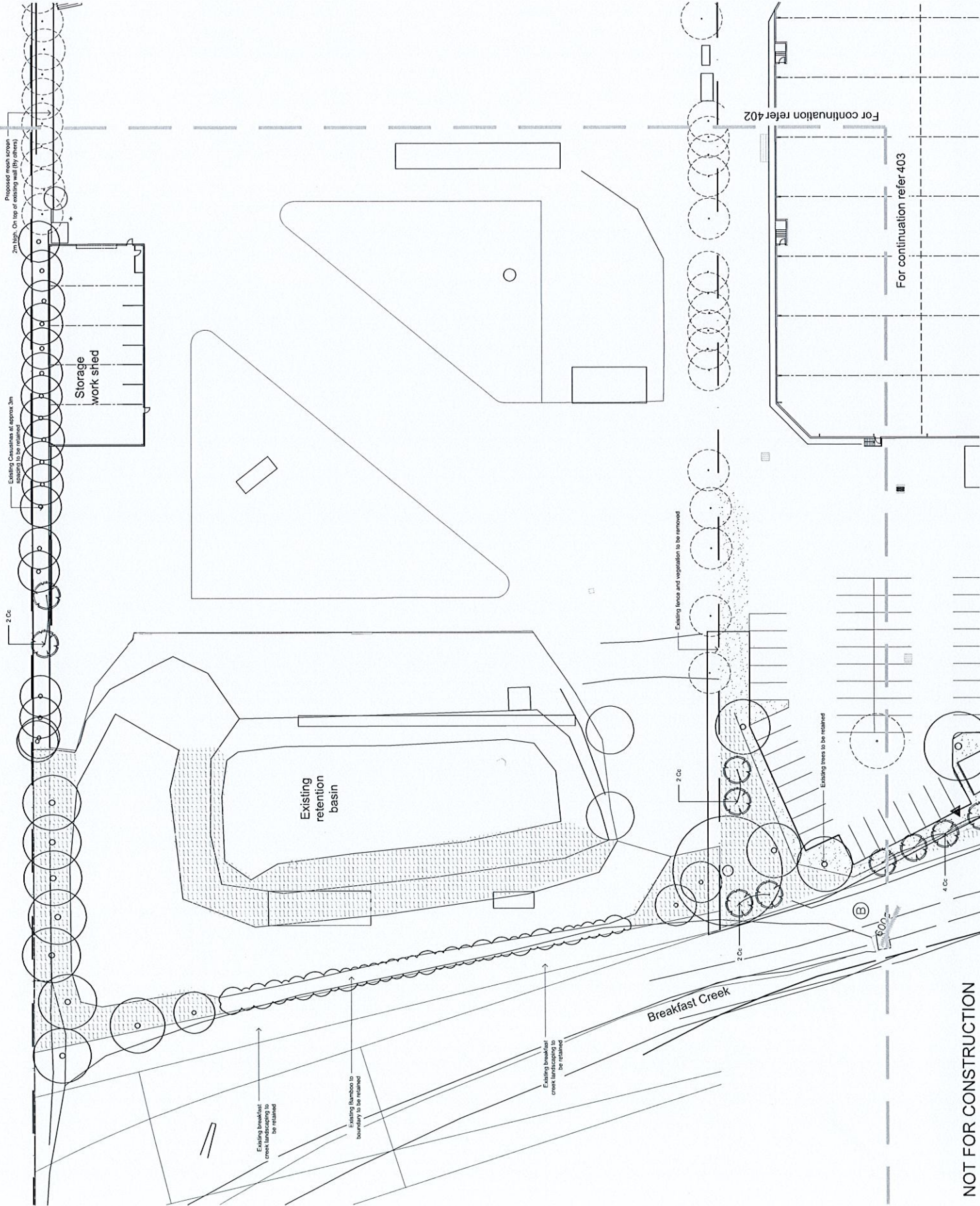
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Drawing Number: 101 J



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JD	NM	15.03.2017
JD	NM	15.03.2017
JD	NM	15.03.2016
SM	NM	04.03.2016
JD	NM	17.03.2016
JW	NM	17.03.2016
JW	NM	17.03.2016

Drawn: _____
Check: _____

- LEGEND**
- [Symbol] Site Boundary
 - [Symbol] Existing vegetation to be retained, with additional margin/retention vegetation
 - [Symbol] Turf
 - [Symbol] Existing tree to be removed
 - [Symbol] Existing area to be retained
 - [Symbol] Proposed tree planting



Client: Sell and Parker Pty Ltd

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

SITE IMAGE
Landscape Architects
Level 1, 55 Bruce Street
Sydney NSW 2008
Australia
Tel: (61) 2 9333 9600
www.siteimage.com.au
Site Image (NSW) Pty Ltd
ABN 44 631 262 380

CONSTRUCTION CERTIFICATE
Landscape Plan

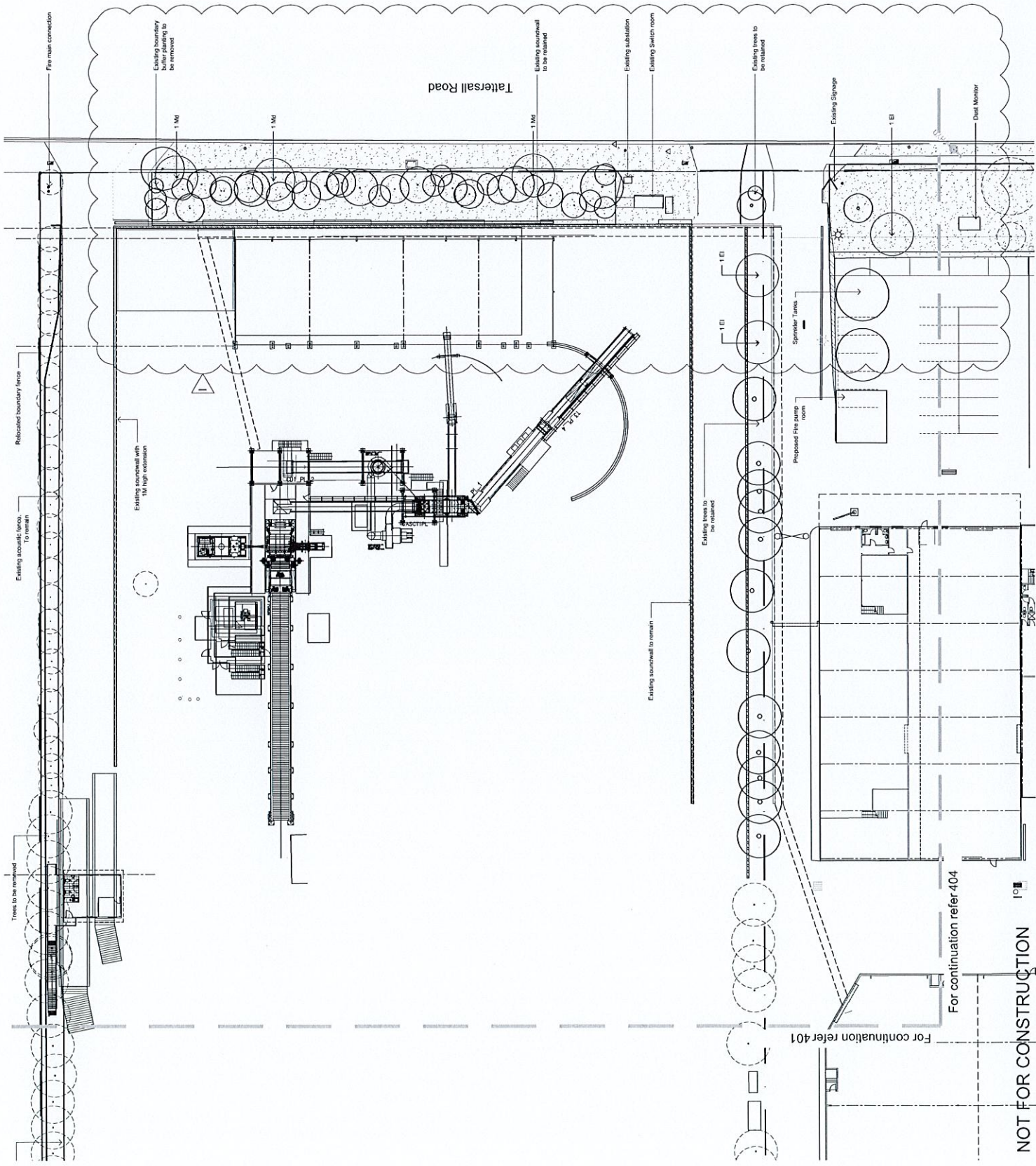
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Drawing Number: 401 G
Sheet: 401 G

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I L/C Approvals
 H Hatched for Fire Services
 SM SM 31.01.2017
 JD JD 16.02.2016
 SM SM 04.02.2016
 JW JW 17.03.2016
 JW JW 12.02.2016
 Other Check Date

LEGEND
 - - - - Site Boundary
 [---] Existing vegetation to be retained
 [---] New additional non-planted vegetation
 [---] Turf
 [---] Existing trees to be removed
 [---] Existing trees 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
 Landscape Architects
 15/17-15/19 Macquarie Street
 Sydney NSW 2000
 Ph: (61) 2 (0)2 9200
 www.siteimage.com.au
 Site Image (NSW) Pty Ltd
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Landscape Plan
 Drawing Name:
 Scale: 1:250 @ A1
 Job Number:
 SS15-3178
 Date:
 402 1

For continuation refer 404

For continuation refer 401

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The contractor shall check and verify all work on the construction site by other means (including the use of a total station) to ensure that the construction is in accordance with the drawings. Any discrepancies or omissions shall be reported to the architect immediately. The architect shall be responsible for the accuracy of the drawings. The contractor shall be responsible for the accuracy of the construction. The drawings are not to be used for any other purpose without the prior written permission of Site Image Pty Ltd.

JD	NM	15.03.2017
JL	NM	15.03.2017
JM	NM	15.03.2016
JN	NM	04.03.2016
JO	NM	04.03.2016
JP	NM	17.03.2016
JQ	NM	17.03.2016
JR	NM	17.03.2016
JS	NM	17.03.2016
JT	NM	17.03.2016
JU	NM	17.03.2016
JV	NM	17.03.2016
JW	NM	17.03.2016
JX	NM	17.03.2016
JY	NM	17.03.2016
JZ	NM	17.03.2016
Other	Check	0/0/0

LEGEND

- Site Boundary
- Existing vegetation to be retained, with additional irrigated 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

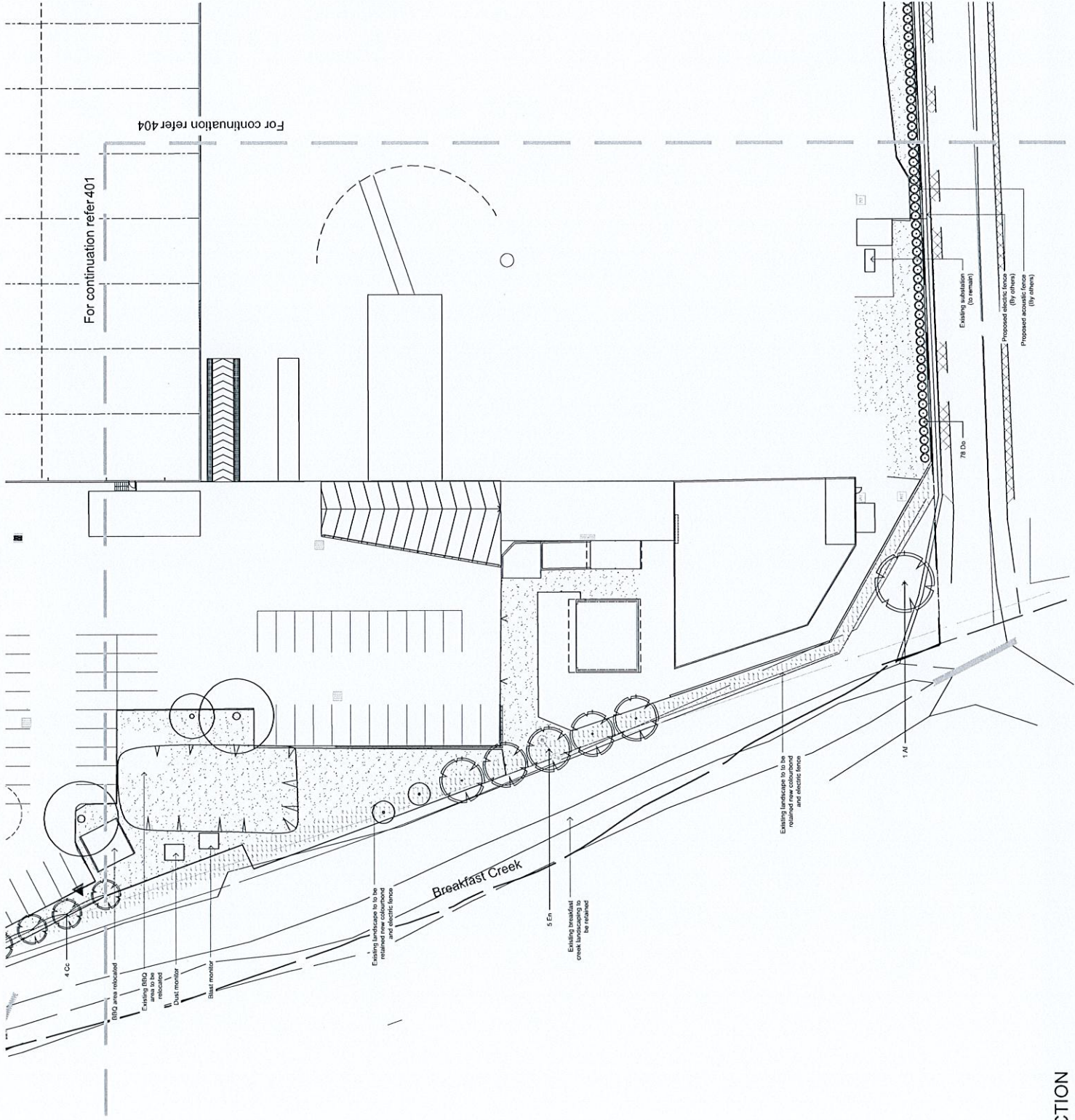
SITE IMAGE

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Australia
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Able to do: VU, JH

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CONSTRUCTION CERTIFICATE
Landscape Plan

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



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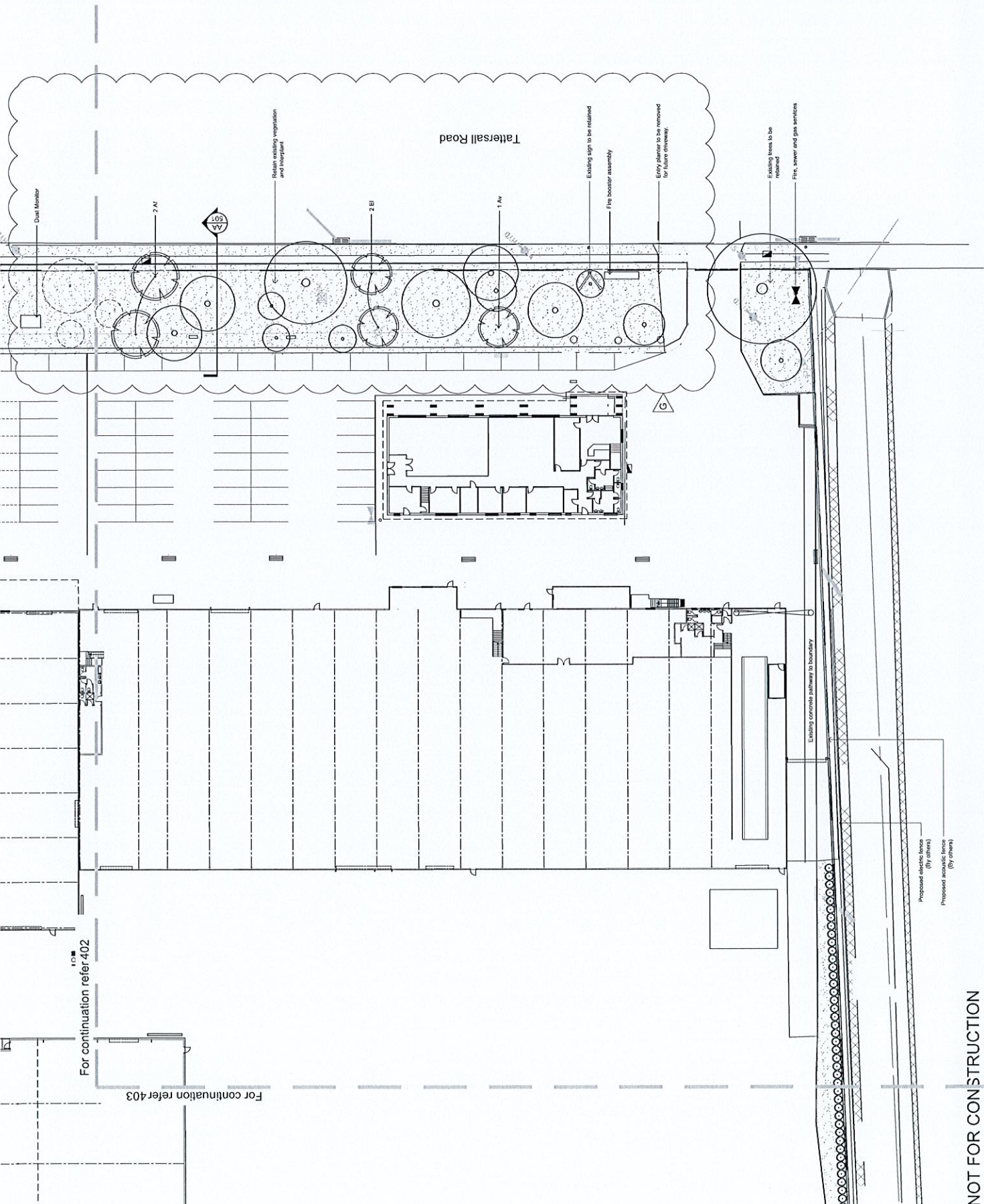
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JD	NS	22.08.2017
JD	NS	19.08.2017
JD	NS	13.03.2016
SM	NS	04.10.2016
SM	NS	04.10.2016
ZW	NS	17.03.2016
ZW	NS	13.02.2016
ZW	NS	13.02.2016
Drawn	Check	Date

- G LEC Amendments
- H Hatched
- E Hatched
- D Construction certificate
- S Site image (NSW) Pty Ltd
- A For Client
- Mean Revision description

LEGEND

- Site boundary
- Existing vegetation to be retained
- Existing vegetation to be removed
- Proposed new planting
- Existing tree to be retained
- Existing tree to be removed
- Proposed new planting



Client: Sell and Parker Pty Ltd

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



Level 1, 3rd Floor Street
 Australia
 Tel: 61 2 8322 5600
 Fax: 61 2 8322 5601
 www.siteimage.com.au
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 Australia 61 2 832 2800

CONSTRUCTION CERTIFICATE

Drawing Name: Landscape Plan

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

NOT FOR CONSTRUCTION

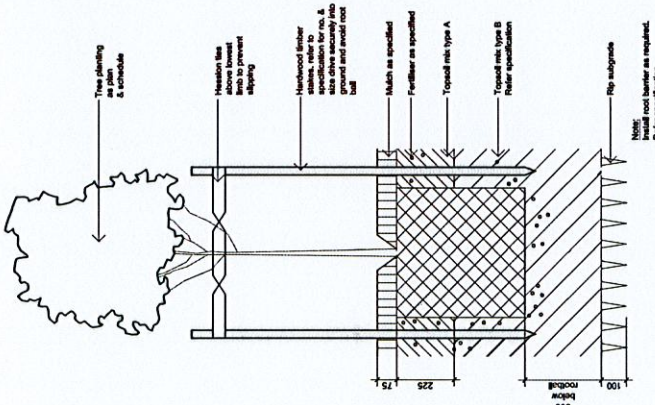
REV	DATE	BY	CHKD	DESCRIPTION
1	12/22/2017	SP	SP	Issue for Construction
2	12/22/2017	SP	SP	Issue for Construction
3	12/22/2017	SP	SP	Issue for Construction
4	12/22/2017	SP	SP	Issue for Construction
5	12/22/2017	SP	SP	Issue for Construction
6	12/22/2017	SP	SP	Issue for Construction
7	12/22/2017	SP	SP	Issue for Construction
8	12/22/2017	SP	SP	Issue for Construction
9	12/22/2017	SP	SP	Issue for Construction
10	12/22/2017	SP	SP	Issue for Construction
11	12/22/2017	SP	SP	Issue for Construction
12	12/22/2017	SP	SP	Issue for Construction

LEGEND

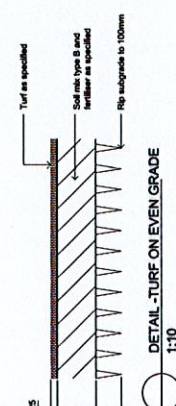
- 1. Soil replacement
- 2. Match
- 3. Erosion control
- 4. Slashes and ties
- 5. Weed and rubbish removal
- 6. Pruning
- 7. Spraying
- 8. Light work
- 9. Planting and fertilizing
- 10. Weeding
- 11. Mowing, top-dressing and edging

Maintenance Schedule

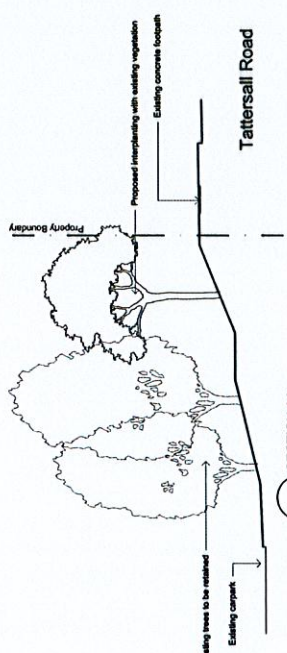
Table	ACTIVITY	FREQUENCY			ACTION
		W	M	Season	
1	Lookback	+	+	+	Conduct a lookback every 12 weeks at site and at least every 12 weeks. Upon request, make the lookback available for inspection. The lookback should be available to the Client/Adviser on a weekly basis. Please note that the lookback should not be used as a basis for any claims. The lookback should result in the identification of any maintenance work items. The lookback should result in the identification of any maintenance work items. The lookback should result in the identification of any maintenance work items.
2	Plant replacement	+	+	+	Inspect and replace dead plants within 2 weeks of observation of dead plants. Note the location and location of new plants. (plant) inspect and replace dead plants within 2 weeks of observation. Prior to planting new plants, the soil by topsoil layer must be inspected. Do not disturb major plant roots while they are being replaced. If it can be expected that plants will have significantly lower root volume after replacement, then the soil should be amended with a topsoil layer. This should be accomplished by a topsoil application of 8-12cm depth. The soil should be amended with a topsoil layer of 8-12cm depth. The soil should be amended with a topsoil layer of 8-12cm depth. The soil should be amended with a topsoil layer of 8-12cm depth.
3	Match	+	+	+	Inspect and replace dead plants within 2 weeks of observation. Prior to planting new plants, the soil by topsoil layer must be inspected. Do not disturb major plant roots while they are being replaced. If it can be expected that plants will have significantly lower root volume after replacement, then the soil should be amended with a topsoil layer. This should be accomplished by a topsoil application of 8-12cm depth. The soil should be amended with a topsoil layer of 8-12cm depth. The soil should be amended with a topsoil layer of 8-12cm depth. The soil should be amended with a topsoil layer of 8-12cm depth.
4	Erosion control	+	+	+	Inspect every 12 weeks and repair any erosion control devices as necessary. Maintain erosion control devices as necessary. Maintain erosion control devices as necessary. Maintain erosion control devices as necessary. Maintain erosion control devices as necessary.
5	Slashes and ties	+	+	+	Inspect every two weeks, cut and remove all dead plant material. Remove all dead plant material and tie up any dead branches. Remove all dead plant material and tie up any dead branches. Remove all dead plant material and tie up any dead branches. Remove all dead plant material and tie up any dead branches.
6	Weed and rubbish removal	+	+	+	Inspect and remove immediately upon observation. Leave no weeds on site. Remove all weeds and rubbish. Remove all weeds and rubbish. Remove all weeds and rubbish. Remove all weeds and rubbish.
7	Pruning	+	+	+	Inspect every 2 weeks and prune as necessary to remove dead wood. Prune all dead wood. Prune all dead wood. Prune all dead wood. Prune all dead wood.
8	Spraying	+	+	+	Inspect every 2 weeks and apply as necessary. Apply herbicide as necessary. Apply herbicide as necessary. Apply herbicide as necessary. Apply herbicide as necessary.
9	Light work	+	+	+	Complete within 1 week (7 days) of observation. Light work as necessary. Light work as necessary. Light work as necessary. Light work as necessary.
10	Planting and fertilizing	+	+	3m	Inspect every 2 weeks and remove any weeds and rubbish as they appear. Inspect every 2 weeks and remove any weeds and rubbish as they appear. Inspect every 2 weeks and remove any weeds and rubbish as they appear. Inspect every 2 weeks and remove any weeds and rubbish as they appear.
11	Weeding	+	+	+	Water when and where necessary every day at site and at least every 2 weeks. Weeding as necessary. Weeding as necessary. Weeding as necessary. Weeding as necessary.
12	Mowing, top-dressing and edging	+	+	6m	Water when and where necessary every day at site and at least every 2 weeks. Mowing as necessary. Mowing as necessary. Mowing as necessary. Mowing as necessary.



DETAIL - 75-200L TREE PLANTING ON GRADE
SCALE 1:10



DETAIL - TURF ON EVEN GRADE
SCALE 1:10



SECTION AA
SCALE 1:100

Symbol	Botanic Name	Common Name	Mature Size (h x w)	Pod Size	Spreading	Qty
TREES						
A1	<i>Albizia julibrissin</i>	Rough-Barked Apple	20 x 8	100L	As Shown	3
A2	<i>Allocasuarina verticillata</i>	Droping She-Oak	8 x 7	100L	As Shown	1
C1	<i>Casuarina cunninghamiana</i>	River She-Oak	20 x 6	100L	As Shown	10
B1	<i>Encasuarina macgregoriae</i>	Edna Dwarf	7 x 5	100L	As Shown	5
B2	<i>Encasuarina macgregoriae</i>	Water Paperbark	12 x 9	100L	As Shown	1
B3	<i>Encasuarina macgregoriae</i>	White Flowering Myrtle	6 x 3	100L	As Shown	3
B4	<i>BAMBUSO</i>	Cool Tower Bamboo	18 x 2	300mm	As Shown	78

Sell and Parker Pty Ltd
 Proposed Alterations to
 Existing Recycling Center
 23 & 45 Tattersall Rd, Kings Park
 SITE IMAGE
 Level 1, 34 Buxton Street
 Adelaide
 Tel: 08 2 822 0000
 www.sellandparker.com.au
 Sell and Parker Pty Ltd
 Adelaide SA 5000
CONSTRUCTION CERTIFICATE
 Landscape Details
 Scale: 1:250 @ A1
 Job Number: SS15-3178
 Date: 501 1