

## Land and Environment Court New South Wales

<b>Medium Neutral Citation:</b>	<b>Sell &amp; Parker Pty Ltd v Minister for Planning [2017] NSWLEC 1586</b>
<b>Hearing dates:</b>	Conciliation conference on 19 September & 17 October 2017
<b>Date of orders:</b>	19 October 2017
<b>Decision date:</b>	19 October 2017
<b>Jurisdiction:</b>	Class 1
<b>Before:</b>	Maston AC
<b>Decision:</b>	See (4) below
<b>Catchwords:</b>	DEVELOPMENT APPLICATION: conciliation conference; agreement between the parties; orders
<b>Legislation Cited:</b>	Land and Environment Court Act 1979
<b>Category:</b>	Principal judgment
<b>Parties:</b>	Sell and Parker Pty Ltd (ACN 000 101 315) (Applicant) Minister for Planning (Respondent)
<b>Representation:</b>	Mr J Johnson, Allens(Applicant) Ms L Sims, Department of Planning (Respondent)
<b>File Number(s):</b>	2017/126126
<b>Publication restriction:</b>	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:

<b>Document</b>	<b>Revision Date</b>	<b>Prepared by: (consultant)</b>
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**

<b>Application No:</b>	SSD 5041
<b>Applicant:</b>	Sell and Parker Pty Ltd
<b>Consent Authority:</b>	Land and Environment Court of NSW
<b>Development:</b>	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.
<b>Date of Original Consent:</b>	12 November 2015
<b>Modification:</b>	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:

SITE AREA	FLOOR AREAS	OFFICE NAME
DEVELOPMENT DATA		
15 473 918 approx.		
BUILD A*	1275 SQM	74 405
BUILD B*	5102 SQM	438 107
BUILD C*	2921 SQM	
BUILD D*	1715 SQM	
BUILD E*	6274 SQM	
BUILD F*	1715 SQM	
BUILD G*	2715 SQM	
BUILD H*	1715 SQM	
BUILD I*	1715 SQM	
BUILD J*	1715 SQM	
BUILD K*	5532 SQM	
TOTAL	18 977 SQM	646 348

CARPARKING REQUIRED	
TOTAL CAR PARK AREAS	18 977
TOTAL OFFICE AREAS	134
TOTAL CAR PARK AREAS	48
TOTAL	11

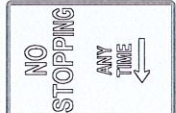
PROVIDED	
TOTAL	147

**LEGEND**

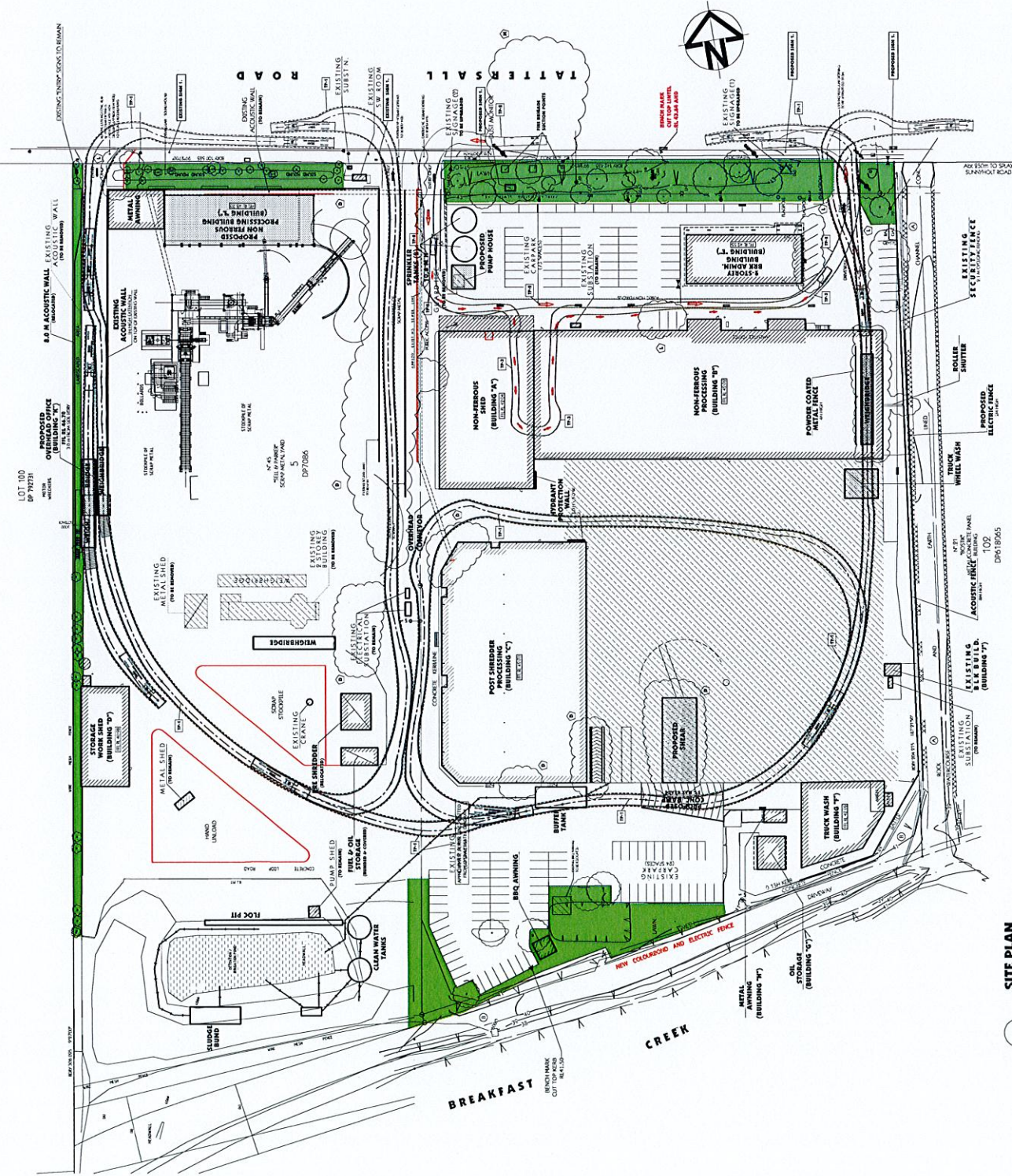
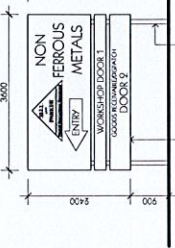
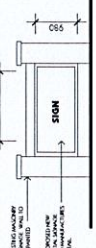
- EXISTING THINWALL TO BE REMOVED
- EXISTING THINWALL TO BE REPAIRED
- PROPOSED NEW STRUCTURE
- THINWALL TO BE REPAIRED
- THINWALL TO BE REPAIRED

**LEGEND**

- THINWALL TO BE REPAIRED
- THINWALL TO BE REPAIRED
- THINWALL TO BE REPAIRED
- THINWALL TO BE REPAIRED
- THINWALL TO BE REPAIRED



PROPOSED SIGN 1.



**SITE PLAN**

ALGOBY ZAPPAL & ASSOCIATES PTY. LTD.  
 15/51 LINDA STREET, BUNNINGS NSW 2232  
 TEL: (02) 4237 3333 FAX: (02) 4237 3333  
 WWW.ALGOBYZAPPAL.COM.AU

DATE	15/01/2014
SCALE	1:500 (LAND)
DRAWN	J.DAWSON
CHECKED	J.DAWSON
CHECKED	J.DAWSON
DATE	15/01/2014
PROJECT No.	10493/14
DRAWN	DA

**PROPOSED ALTERATIONS TO EXISTING RECYCLING CENTRE**  
 LOT 2 DP550592 & LOT 5 DP7086, NO 83 & 45  
 TATTERSALL RD, KINGS PARK  
 SEL & PARKER METAL  
 THE DEVELOPMENT APPLICATION DA 10493/14  
 SITE PLAN





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

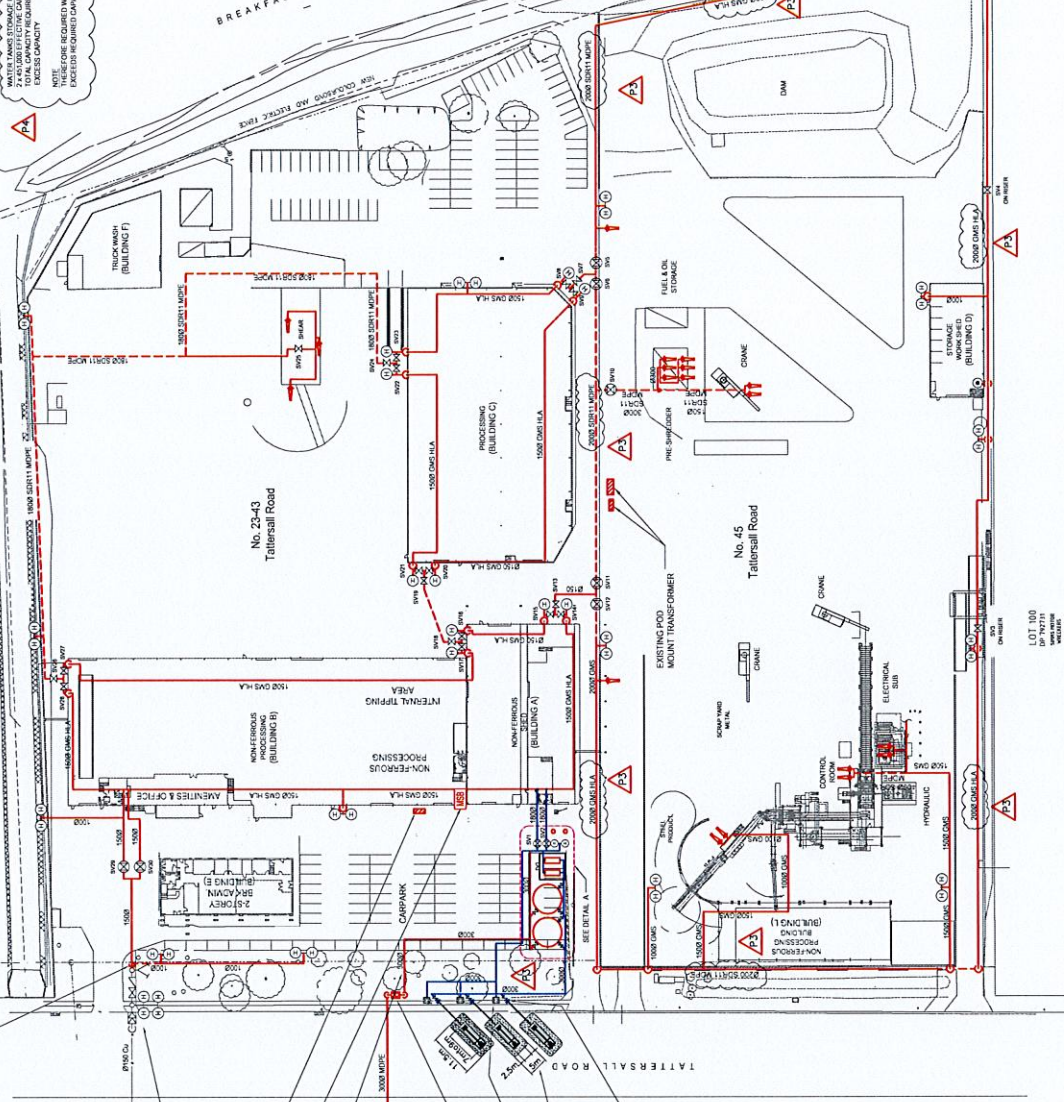
REQUIRED STORAGE: 800,000 L  
 7200 m<sup>3</sup> @ 0.5 m<sup>3</sup> / m<sup>2</sup> @ 1000 mm  
 420,000 m<sup>3</sup> @ 1.7 m<sup>3</sup> / m<sup>2</sup> @ 1000 mm

AVAILABLE WATER: 80 m<sup>3</sup>  
 80 m<sup>3</sup> @ 0.5 m<sup>3</sup> / m<sup>2</sup> @ 1000 mm  
 24,000 m<sup>3</sup> @ 1.7 m<sup>3</sup> / m<sup>2</sup> @ 1000 mm

EXCESS CAPACITY: 376,000 m<sup>3</sup>  
 376,000 m<sup>3</sup> @ 1.7 m<sup>3</sup> / m<sup>2</sup> @ 1000 mm

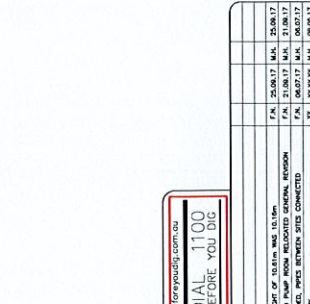
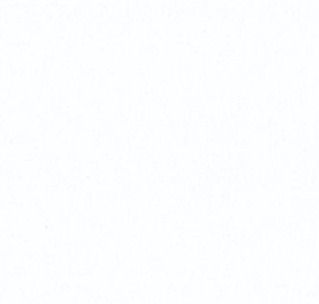
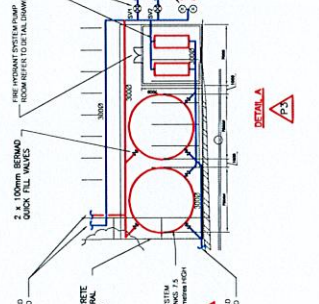
NOTE: THESE REQUIRED WATER STORAGE CAPACITY AVAILABILITY OF 802,000 LITRES EXCESS CAPACITY OF 376,000 LITRES.

NOTE: THESE REQUIRED WATER STORAGE CAPACITY AVAILABILITY OF 802,000 LITRES EXCESS CAPACITY OF 376,000 LITRES.



- LEGEND**
- ☉ 50mm FIRE HOSE REEL
  - ☉ DOUBLE FIRE HYDRANT
  - ⊗ ISOLATION VALVE IN GROUND
  - M ISOLATION VALVE ABOVE GROUND
  - ☉ ROOSTER VALVE
  - ☉ STREET HYDRANT
  - Ⓜ MAIN ELECTRICAL SWITCHBOARD
  - Ⓜ FIRE HYDRANT CANON
  - ☉ FIRE HYDRANT CANON
  - ☉ 4 POINT FINISH TANK TYPE ROOSTER VALVE
  - ☉ 4 POINT FINISH TANK TYPE ROOSTER VALVE

- NOTES**
1. HEIGHT OF HIGHEST HYDRANT @ 27 mms.
  2. WATER CANNON LOW VALVE: 100 mms.
  3. TOTAL FLOW RATE: 110 L/S.



100% INTERNAL ROAD BOUNDARY WATER TO SITE PLAN

2 x 100mm BERNOUILLI VALVES

100mm STOP VALVE IN BOX

200mm FLOW STOP TANK FUNCTION OUTLET & BUTTERFLY VALVE

100% INTERNAL ROAD BOUNDARY WATER TO SITE PLAN

2 x 100mm BERNOUILLI VALVES

100mm STOP VALVE IN BOX

200mm FLOW STOP TANK FUNCTION OUTLET & BUTTERFLY VALVE

100% INTERNAL ROAD BOUNDARY WATER TO SITE PLAN

2 x 100mm BERNOUILLI VALVES

100mm STOP VALVE IN BOX

200mm FLOW STOP TANK FUNCTION OUTLET & BUTTERFLY VALVE

100% INTERNAL ROAD BOUNDARY WATER TO SITE PLAN

PROJECT: COMMERCIAL INDUSTRIAL BUILDINGS  
 23-43 + 45 Tattersall Road,  
 TATTERSALL ROAD  
 TULLAGH  
 COMBINED SITE PLAN  
 FIRE HYDRANT & WATER CANON SYSTEMS

DATE: 14.02.16  
 PROJECT NUMBER: 14\_023\_16-001\_P4\_EH-01

CLIENT: DEON SELL & PARKER  
 23-45 TATTERSALL ROAD  
 TULLAGH  
 M.J. HARVEY & ASSOCIATES PTY LTD.  
 M.J. HARVEY & ASSOCIATES PTY LTD.  
 7/2-11-43 TULLAGH ROAD  
 TULLAGH, VIC 3048  
 Phone (03) 9758 8578 Fax (03) 97588841

DATE: 14.02.16  
 PROJECT NUMBER: 14\_023\_16-001\_P4\_EH-01

NO.	DATE	DESCRIPTION
1	08.05.17	REVISED
2	28.03.18	REVISED
3	27.08.18	REVISED

NO.	DATE	DESCRIPTION
1	08.05.17	REVISED
2	28.03.18	REVISED
3	27.08.18	REVISED

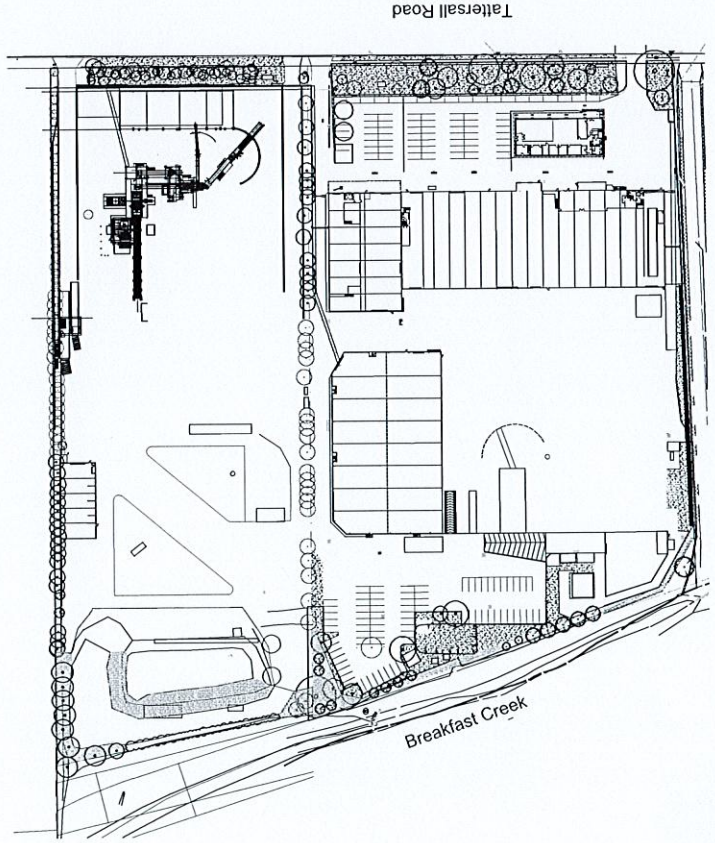
www.dialbeforeyoudig.com.au

**DIAL 1100 BEFORE YOU DIG**

NO.	DATE	DESCRIPTION	BY	APPROVED BY
PA	25.08.17	M.H.L.	08.05.17	
PK	25.08.17	M.H.L.	08.05.17	
PD	08.07.17	M.H.L.	08.05.17	
PE	08.07.17	M.H.L.	08.05.17	
PF	08.07.17	M.H.L.	08.05.17	
PG	08.07.17	M.H.L.	08.05.17	
PH	08.07.17	M.H.L.	08.05.17	
PI	08.07.17	M.H.L.	08.05.17	
PJ	08.07.17	M.H.L.	08.05.17	
PK	08.07.17	M.H.L.	08.05.17	
PL	08.07.17	M.H.L.	08.05.17	
PM	08.07.17	M.H.L.	08.05.17	
PN	08.07.17	M.H.L.	08.05.17	
PO	08.07.17	M.H.L.	08.05.17	
PP	08.07.17	M.H.L.	08.05.17	
PQ	08.07.17	M.H.L.	08.05.17	
PR	08.07.17	M.H.L.	08.05.17	
PS	08.07.17	M.H.L.	08.05.17	
PT	08.07.17	M.H.L.	08.05.17	

# 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
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99	15.08.2017	Final Design
100	15.08.2017	Final Design

**LEGEND**

- I LCC Recommendations
- H Revised Criteria
- G Revised for the Services
- E Revised for the Services
- D Revised for the Services
- C Construction conditions
- B General Remarks
- A Proposed Installation
- Other Check Date

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 42 742 282

**CONSTRUCTION CERTIFICATE**  
Drawing Name:  
Coversheet

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

NOT FOR CONSTRUCTION

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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

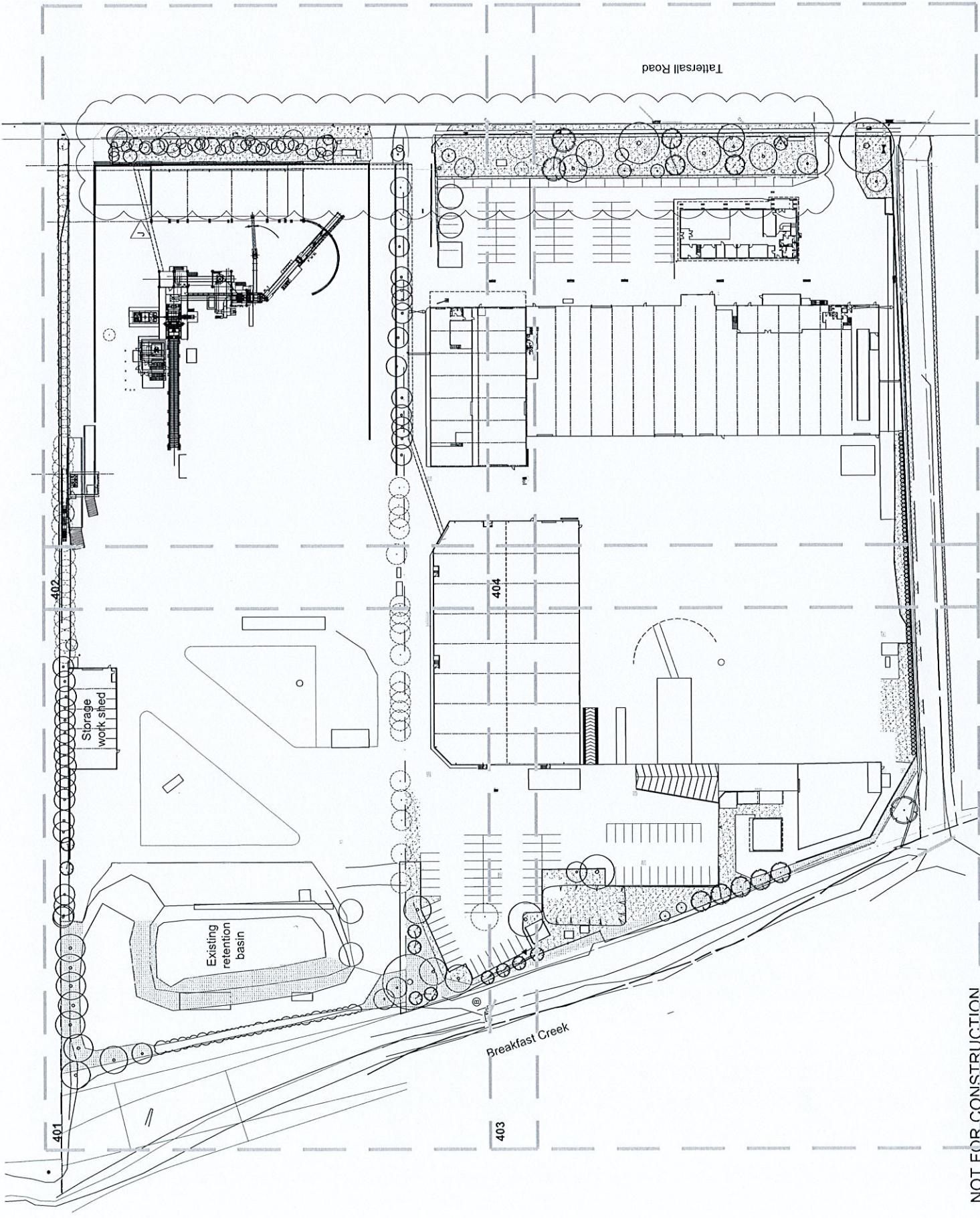
**SITE IMAGE**

Level: 1 - 3d Site Image Client  
Address: Kings Park, NSW  
Tel: (61 2) 8332 0000  
www.siteimage.com.au  
Site Image (NSW) Pty Ltd  
ABN 44 601 742 280



**CONSTRUCTION CERTIFICATE**  
Landscape Masterplan

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



NOT FOR CONSTRUCTION

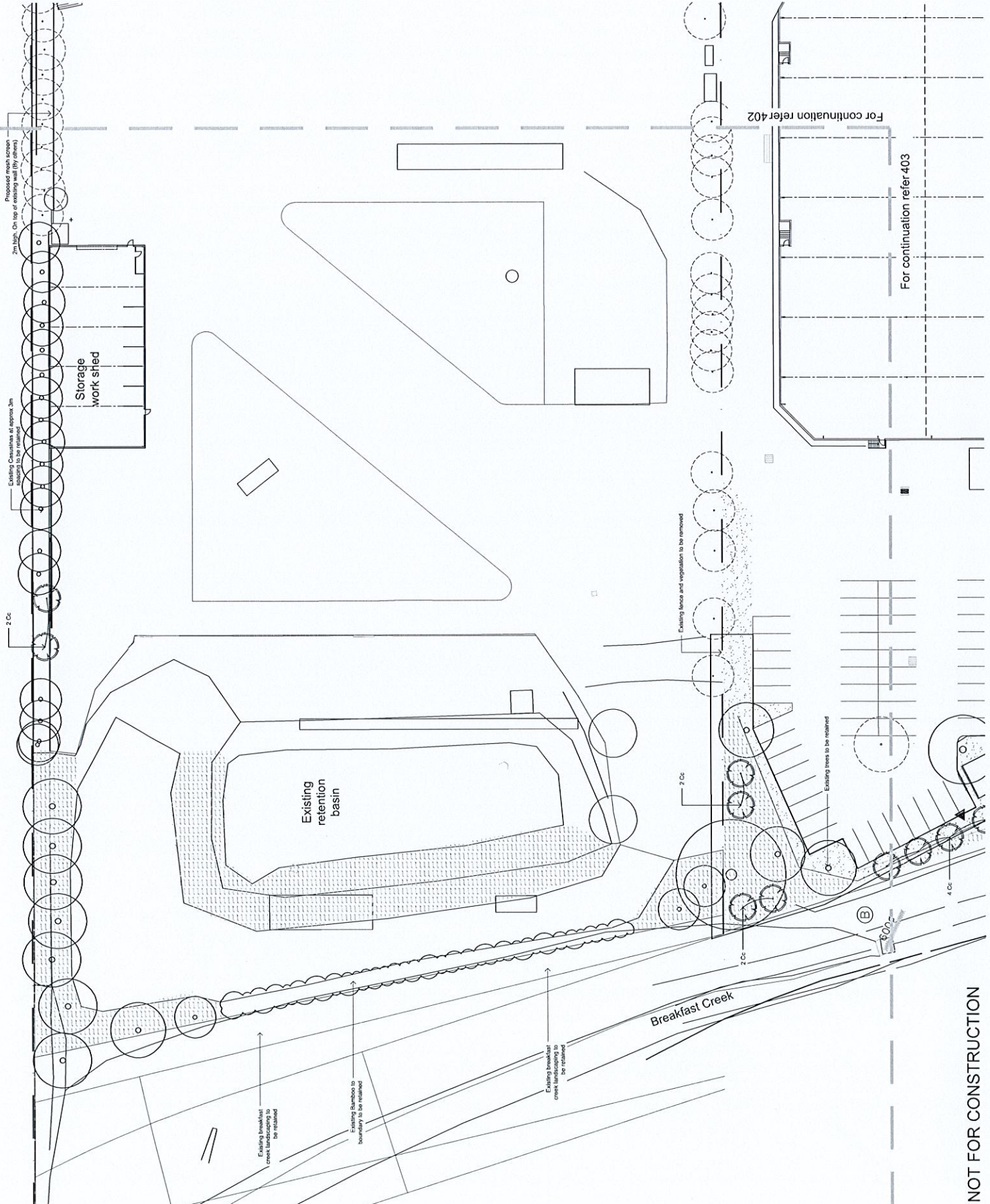
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 The contractor shall check all work against the relevant codes of practice and standards and shall be responsible for the accuracy of the information provided and shall be liable for any errors or omissions. Any information shown should be referred to the Landscaping Addendum for confirmation.

JL NM 15.03.2017  
 JH NM 18.11.2016  
 SD NM 18.12.2016  
 SM NM 04.03.2016  
 CR NM 04.03.2016  
 JW NM 17.03.2016  
 JW NM 17.03.2016  
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 JW NM 17.03.2016

Prepared: [initials]  
 Checked: [initials]  
 Approved: [initials]  
 Date: [initials]

**LEGEND**

- Site Boundary
- Existing vegetation to be retained
- Existing vegetation to be removed
- 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 Tattersal Rd, Kings Park

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 Fax: (61) 2 9332 6663  
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CONSTRUCTION CERTIFICATE  
 Drawing Name: Landscape Plan

Scale: 1:250 @ A1  
 Job Number: 401  
 Drawing Number: 401 G  
 Date: 15/03/2017

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- I LCC Approvals
- H Interest for Fire Services
- G Interest for Fire Services
- F Interest for Fire Services
- E Interest for Fire Services
- D Construction Certificate
- C Construction Certificate
- B General Functions
- A For Comments

**LEGEND**

- Site Boundary
- Existing vegetation to be retained
- Proposed tree planting
- Existing trees to be removed
- Existing trees to be retained
- Proposed tree planting



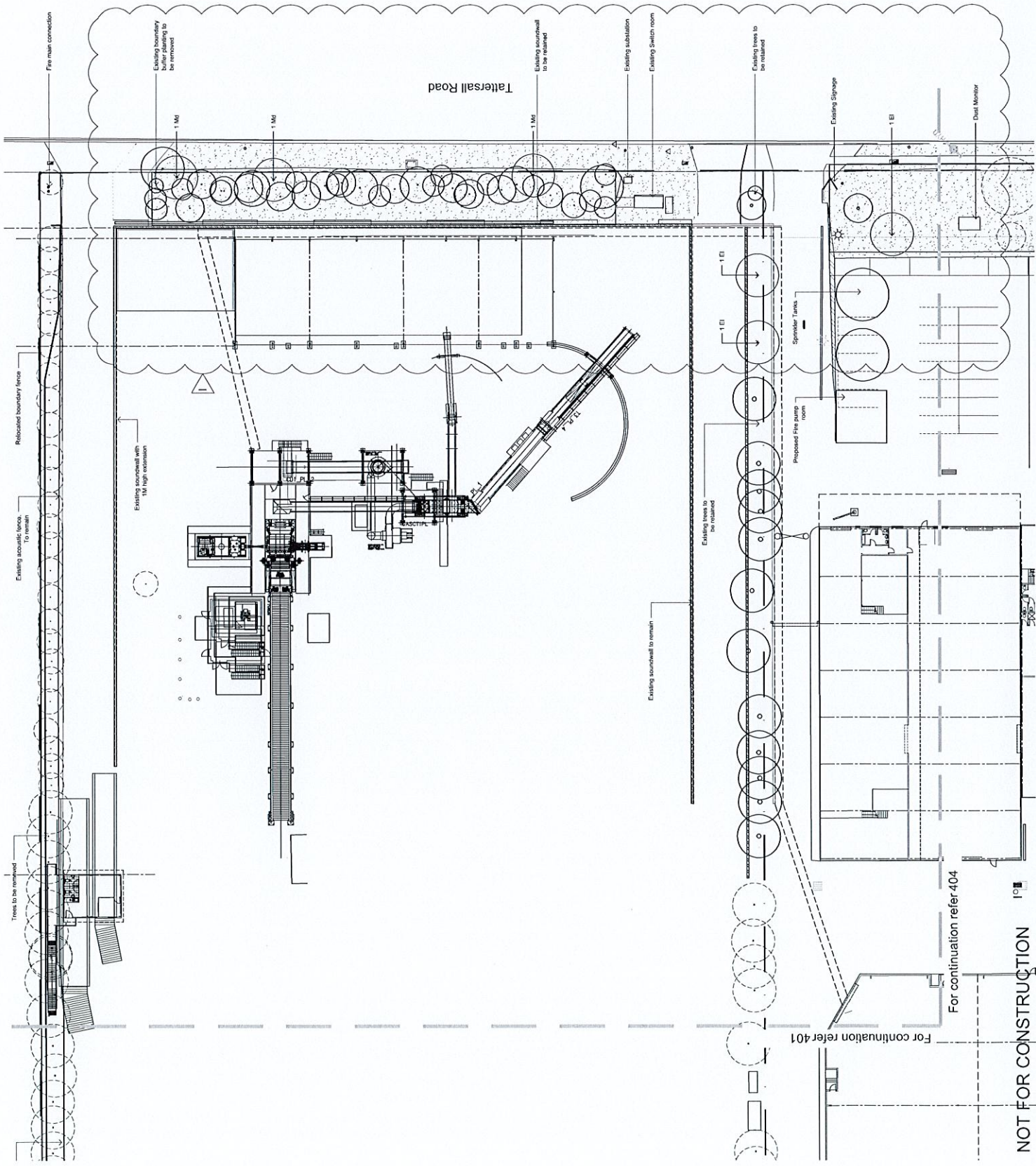
Client: Sell and Parker Pty Ltd

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

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 Sydney NSW 2000  
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 Site Image (NSW) Pty Ltd  
 ABL no 151 762 281

**CONSTRUCTION CERTIFICATE**  
 Landscape Plan

Scale: 1:250 @ A1  
 Job Number: SS15-3178  
 Drawing Number: 402 I



For continuation refer 404

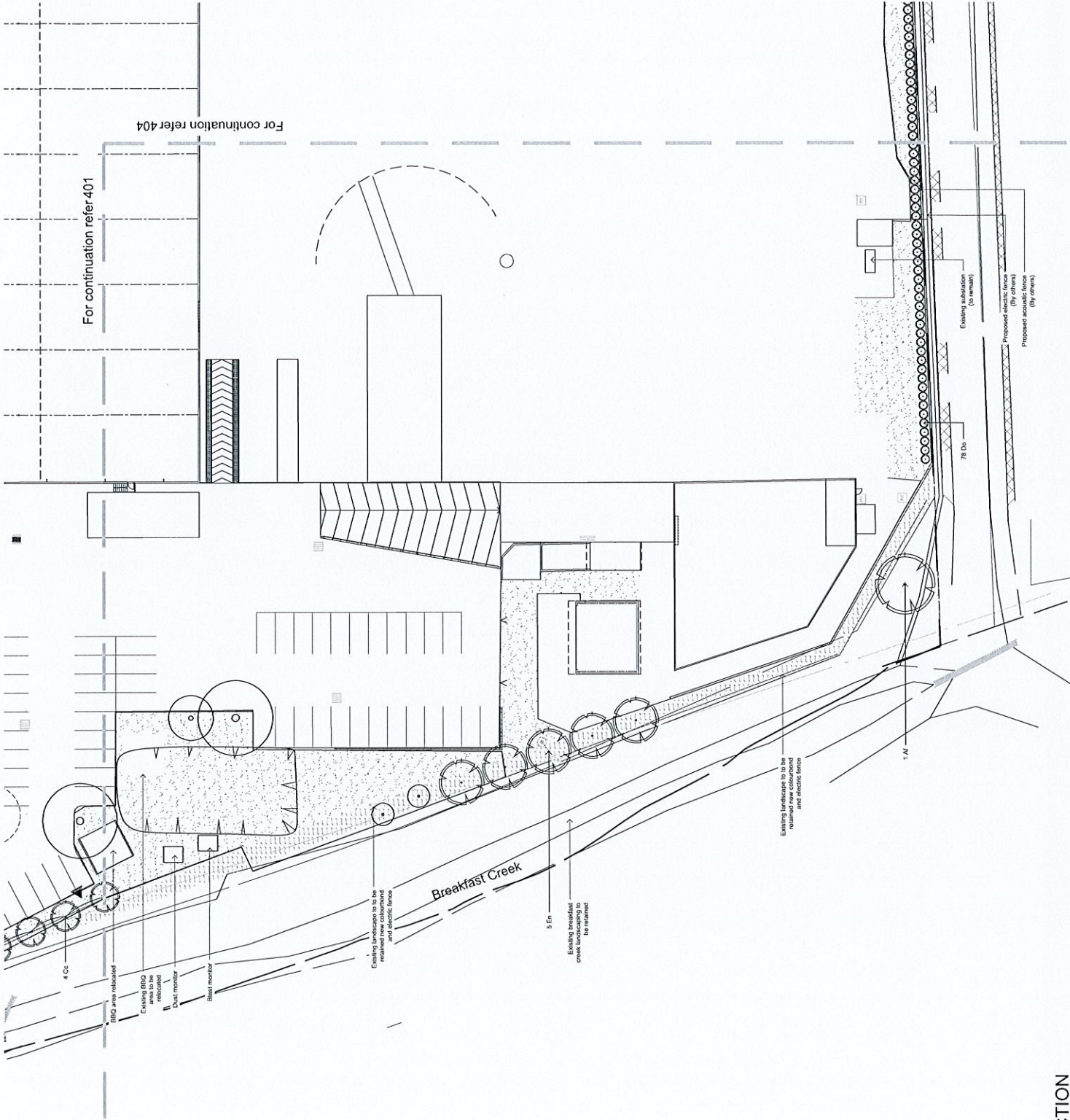
For continuation refer 401

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The contractor shall check and verify all work on the construction site for compliance with the relevant legislation. Any discrepancies or omissions shall be reported to the project manager immediately. The project manager shall be responsible for ensuring that the construction work complies with the relevant legislation. Any discrepancies or omissions shall be reported to the project manager immediately. The project manager shall be responsible for ensuring that the construction work complies with the relevant legislation.

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 15/03/2016



- 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 Tattersal Rd, Kings Park

**SITE IMAGE**

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 Adelaide SA 5000

**CONSTRUCTION CERTIFICATE**  
**Landscape Plan**

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

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The architect shall check and certify all work on site. Retaining work by others shall be confirmed by the architect. Any observations are to be noted on the drawing. Do not take the drawing as a final construction document. All work shall be subject to the Landscape Architect's confirmation.

JD	NSW	22.08.2017
JD	NSW	19.08.2018
JD	NSW	10.03.2018
SM	NSW	04.10.2018
SM	NSW	17.03.2018
JW	NSW	17.03.2018
JW	NSW	13.02.2018
DL	NSW	13.02.2018
DL	NSW	13.02.2018

G	LEC Amendments
E	Site Image (NSW) Pty Ltd
D	Site Image (NSW) Pty Ltd
C	Construction certificate
B	General conditions
A	For Client
DL	DL

**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

Scale: 1:250 @ A1

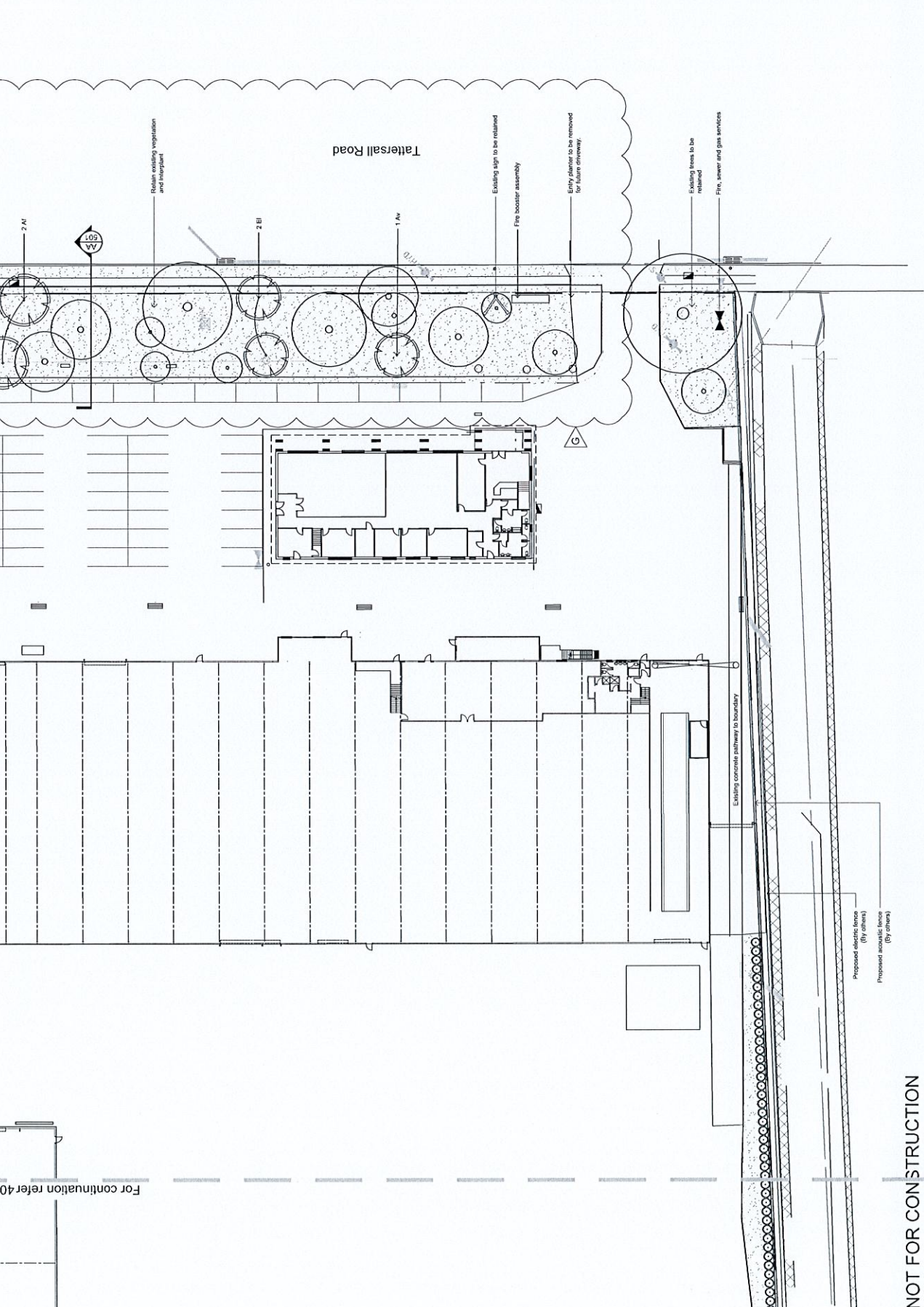
Job Number: SS15-3178

Drawing Number: 404 G

**SITE IMAGE**

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For continuation refer 403

For continuation refer 402

Proposed acoustic fence (by others)

Proposed acoustic fence (by others)

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