

HALIFAX

P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 14.1.4
Halifax Regional Council
October 2, 2018

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY:

Chief Administrative Officer, Jacques Dubé

DATE: August 8, 2018

SUBJECT: Temporary Construction Easement - PID 00053769, Wellington Street, Halifax -
Portion of Gorsebrook Park

ORIGIN

Request from RMP Consulting, on behalf of Gorsebrook Park Incorporated and Marco Maritimes Ltd., to use a portion of HRM property PID 00053769, Gorsebrook Park, for the purposes of a construction lay down area and crane removal.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter: s. 61:

...

(3) The property vested in the Municipality, absolutely or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise

...

(5) The municipality may:

...

(c) lease property owned by the Municipality at market value;

RECOMMENDATION

It is recommended that Halifax Regional Council authorize the Chief Administrative Officer to negotiate and enter into a temporary construction easement on the key terms and conditions set out in Table 1, including the proposed fee structure.

BACKGROUND

Proposal

Gorsebrook Park Incorporated is constructing a multi-unit dwelling on Wellington Street, Halifax. The subject site backs onto Gorsebrook Park. One of the park accesses is a walkway from Wellington Street that is immediately to the south of the subject site (Attachment A). As construction progresses, Gorsebrook Park Incorporated has asked HRM to grant it a temporary construction easement from August 2018 to December 2019, which would include:

- an area of the park that is behind the subject site, immediately to the west, that is approximately 43.15 by 4.57 metres in size; and
- an area of the park walkway, that is approximately 38.18 by 7.3 metres in size.

The company indicates that the easement is desired for safety and practical purposes and is to be used for matters that include fencing, access, the installation of a crane, and building material storage. The full request and rationale are found in the company's submission (Attachment B). As part of the proposal, the company indicates that it will reinstate the parkland and improve the pathway entrance.

In addition to the above-noted easement, the company is seeking a further allowance for a larger area, extending out from the site's property boundaries for up to five days, to allow for the dismantling and removal of an on-site crane. Through discussions with the developer it is understood that this may encompass an area that may be 7.3 metres from the western property line and occupy the entire walkway area.

Gorsebrook Park

Gorsebrook Park is 7.64 hectares in size and includes playgrounds, courts, a rink that is used for hockey and lacrosse, open fields, community gardens, ball fields, and a sports field. The land area includes two schools. The park's primary frontage is from Inglis Street and along Robie Street. In addition to the walkway to the south the subject site, there is another access from Wellington Street from Lundy's Lane, a street that is approximately 130 metres to the north.

DISCUSSION

Typical Construction Easements Approvals

HRM staff have previously entered into temporary construction easements without Regional Council's approval. Inherent with these is that they reflect circumstances where there is a practical need, such as where access is required to repair infrastructure. Other instances have been where municipal permits allow buildings to be constructed immediately to a municipal property boundary and where a limited encroachment of approximately one to two metres is considered by staff to be acceptable for safety purposes if it does not materially impact the functionality of municipal land such as a park.

The proposal from Gorsebrook Park Incorporated extends into the park by up to 7.3 and 4.57 metres for 14-16 months. Unlike other construction projects, the company is seeking to not only use the lands for excavation purposes, but also for the storage of construction equipment and materials on Municipal parkland. As this is beyond staff's normal approval of temporary construction easements and, in the absence of a Parkland Encroachment Policy and fee structure, it is being brought to Regional Council for consideration.

Municipal Approvals for the Building

On September 13, 2016, Halifax and West Community Council approved a development agreement to allow for the construction of the multi-unit building. It permits an underground parking garage to be constructed with no setback from property lines. However, it also contains the followings conditions:

- “3.5.1 (g) Where setbacks as referenced in Section 3.6, they are subject to a detailed review by the Development Officer in consultation with the Development Engineer to ensure compliance with all relevant building codes and by-laws. Any excavation, construction or landscaping will be carried out in a safe manner, **with the appropriate measures put into place to ensure the protection and preservation of the adjacent properties.**”
- 3.9.2 **The adjacent park land is identified as a non-disturbance area** and shall be protected by the Developer with a snow fence or other appropriate continuous physical barrier or delineation signage in the field prior to any site preparation (ie: tree cutting and excavation activity). The snow fence or other appropriate continuous physical barrier or delineation signage shall be maintained by the Developer for the duration of the construction.
- 3.9.3 **If trees are removed or tree habitat damaged beyond repair in the non-disturbance areas the Developer or land owner shall replace the trees** using the following calculation method:
- (a) Any tree removed smaller than 10' Diameter at Breast Height (DBH) must be replaced with a 60mm tree of the same species; and
 - (b) For any tree removed larger than 10' Diameter at Breast Height (DBH) the following formula must be used to determine the number of trees to be replaced (60mm divided into the diameter of the tree removed; the result is the number of trees to be replaced, i.e., if the result is 300mm at breast height then the result will be five (5) trees for replacement).”

The development agreement does not regulate the use of land beyond the subject site and therefore, an amendment is not required to allow the proposal. However, the terms of the development agreement reflect Community Council's expectation that construction was to have minimal impact upon the park, limited to the loss of trees that might conceivably occur with excavation that would compromise tree roots. These terms were agreed to by the developer and they are also reasonable given that building construction with no setbacks routinely occurs within the city.

Impact on Parkland

While the development agreement stated that the park was to be a non-disturbance area, the impact of temporary construction easement on the parkland is minimal and can be mitigated. The proposed easement would:

- to the west, occupy an area of lawn that will be approximately 14.4 metres from the end of the playing field; and
- to the south, occupy part of the current walkway area.

There will be no demonstrable impact on playing field activities as a result of the temporary construction easement. With a requirement that the developer install a temporary new path, there will continue to be access between Wellington Street and the park. In addition, the access from Lundy's Lane will continue to be available.

Terms and Conditions

In the absence of a Parkland Encroachment Policy, staff is recommending using the fee structure as per By-law E-200 respecting street encroachments upon, under or over a street, the developer will be subject to this by-law as they intend to encroach in Wellington Street for other aspects of the construction program. The fee structure for By-Law E-200 is as per Administrative Order 15, and is as follows:

Temporary Encroachments (temporary construction easements) shall be subject to a daily rental fee for the temporary use of the street or part thereof during construction at the following rate:

- \$0.30 per square metre for the travelled way;
- \$0.25 per square metre for the sidewalk between the curb and 2 metres back from the curb face, and;
- \$0.15 per square metre for the balance of the sidewalk and to the street line or property line which shall be payable monthly in advance, with the first month's payment due at the time the license is issued and subsequent payments being due one month from the time of the previous due date.

In this case staff is recommending charging \$0.25 per square metre, as the nature of the use of the subject portion of HRM property is that of a park, which is neither travelled way nor lesser used land.

The area of the proposed 14-16 month temporary construction easement would be approximately 475.9 square metres. Using a 30 days for an average month, the fee for the easement is estimated to be:

- $\$0.25 \text{ per sq. m.} \times 475.9 \text{ sq. m.} = \$118.98 \text{ per day, or } \$3,569.40 \text{ per 30-day month}$

With this, the total fee for a 14 month period (the least amount of time requested) is estimated to be:

- $\$3,569.40 \times 14 = \$49,971.60$

The area and fee calculation would be correspondingly adjusted to address the added area that would be required for the identified five day period. The 14-16 month time period is subject to adjustment depending on start date and construction scheduling.

Existing Temporary Encroachment

During the construction of Phase 1, an area of approximately two metres by 66 metres of the park was encroached upon by the developer for the purposes of erecting a fence for a safety buffer between the park and the foundation excavation area. This should have been the subject of an approved agreement, but was never secured by the developer. Using the same fee structure noted above, retro-active payment will be in addition to the payment for Phase 2.

Activities up to this point may have been noncompliant with the Municipal Parks By-Law which states "while in any park, no person shall do, cause or permit any of the following,...(a) add to, remove, destroy, defile, or damage any fauna or flora, or any park facility, structure, equipment, or sign". The recommended encroachment agreement may affect the Municipality's ability to successfully prosecute for the encroachment from the date of Council approval forward.

In addition to the fees for the temporary construction encroachment, the developer would be responsible for parkland reinstatement, tree planting pursuant to the clauses of the development agreement, and improvements to the pathway. The full proposed terms and conditions are contained in Table 1.

Table 1, Terms and Conditions

Property Address	PID 00053769, Wellington Street, Halifax (Portion of Gorsebrook Park)
Grantor	Halifax Regional Municipality
Grantee	Gorsebrook Park Incorporated
Proposed Use	Workplace health and safety buffer during foundation construction, laydown area, and crane removal
Work Period	14-16 months
Temporary Construction Easement Fee	\$0.25 per sq. m. per day @ 475.9sq. m. = \$118.98 per day; or \$3,569.40 per 30 day month; or \$49,971.60 per 14 month term
Agreement Area	475.9 sq. m.; Phase 2 construction (with minor adjustments pending detailed site review) Crane dismantle area for 5 day period (approximately 726 sq. m, with adjustments pending detailed site review)
Conditions	<ul style="list-style-type: none"> • Grantee to reinstate encroachment areas to like or better condition than before the construction, including any required tree replacement • Grantee to improve the walkway area to the south of the subject site pursuant to the plan • Planning and Development to monitor encroachment areas and time periods every three months to review and adjust fees accordingly • Wellington Street access to park to remain open to the Municipality and the public at large except for 5 days for crane removal only with 48 hours' written notice to the Municipality in advance of crane removal • Grantee, at its sole cost and expense to provide professional and responsible 24 hour security for all encroachment areas and insure safety to the public at large, including the Municipality's permitted occupants, servants, agents, employees, contractors and sub-contractors • Grantee to comply with all laws, including strict compliance with safety standards associated with maintaining and restoring a safe playground and related structures, if applicable • Grantee to release and indemnify the Municipality for all losses, claims, or expenses including without limitation, any legal challenge whatsoever made by third parties against the Municipality • Grantee to maintain in full force and effect insurance for hoist liability, builder's risk and wrap-up and comprehensive general liability insurance with respect to any use or occupancy of or all things on all or any part of the Municipality's lands adding the Municipality as an additional insured • Encroachment area only to be used for the Grantee's intended development on it lands known as 1048 Wellington Street, PID 00053512 • Grantee to install fencing as required by HRM • Grantee to keep the area clean and free from debris including dust mitigation • Grantee shall not store dangerous or hazardous substances and there shall be no refueling, maintenance or repairs to any equipment within the encroachment area, or any storage of

	<p>materials—solely for the use of a buffer</p> <ul style="list-style-type: none">• Obligations of the Grantee shall be joint and several with Marco Maritimes Limited or the main contractor and project manager• An allowance for bonding for the completion any work, typically landscaping, that cannot be completed due to time of year and weather conditions.
--	---

Gorsebrook Park Plan and Future Improvement

As part of the Parks and Recreation Capital Budget and Business Plan, a park plan is to be developed for Gorsebrook Park. From this, new capital projects within the park might be expected. While the fees from the temporary construction easement would not be specifically earmarked for any specific future capital projects within the park, they would in general help to offset any such future expenditures

FINANCIAL IMPLICATIONS

The proceeds from the Temporary Construction Easement will be deposited into W400-5151 – Lease Revenue. The financial implications of assessing this proposal and entering into and administering a temporary construction easement fall within municipal operating budgets. All other costs, including fees, will borne by the developer.

RISK CONSIDERATION

Any risks associated with the temporary construction activity would be borne by the developer and would be addressed through the agreement with the municipality.

COMMUNITY ENGAGEMENT

There was no formal community engagement associated with the review of the temporary construction easement proposal.

ENVIRONMENTAL IMPLICATIONS

Any environmental issues associated with the construction are addressed through municipality's various construction permits.

ALTERNATIVES

1. Regional Council may choose not to grant the temporary construction easement that is sought by the developer. In addition to not allowing the area sought by the developer, staff would action to remove the existing encroachment onto the park.
2. Regional Council may choose to grant a temporary construction easement that is of a lessor area than that which is sought be the developer.

ATTACHMENTS

Attachment A Site Plan of Proposed Temporary Construction Easement
Attachment B Gorsebrook Park Incorporated submission

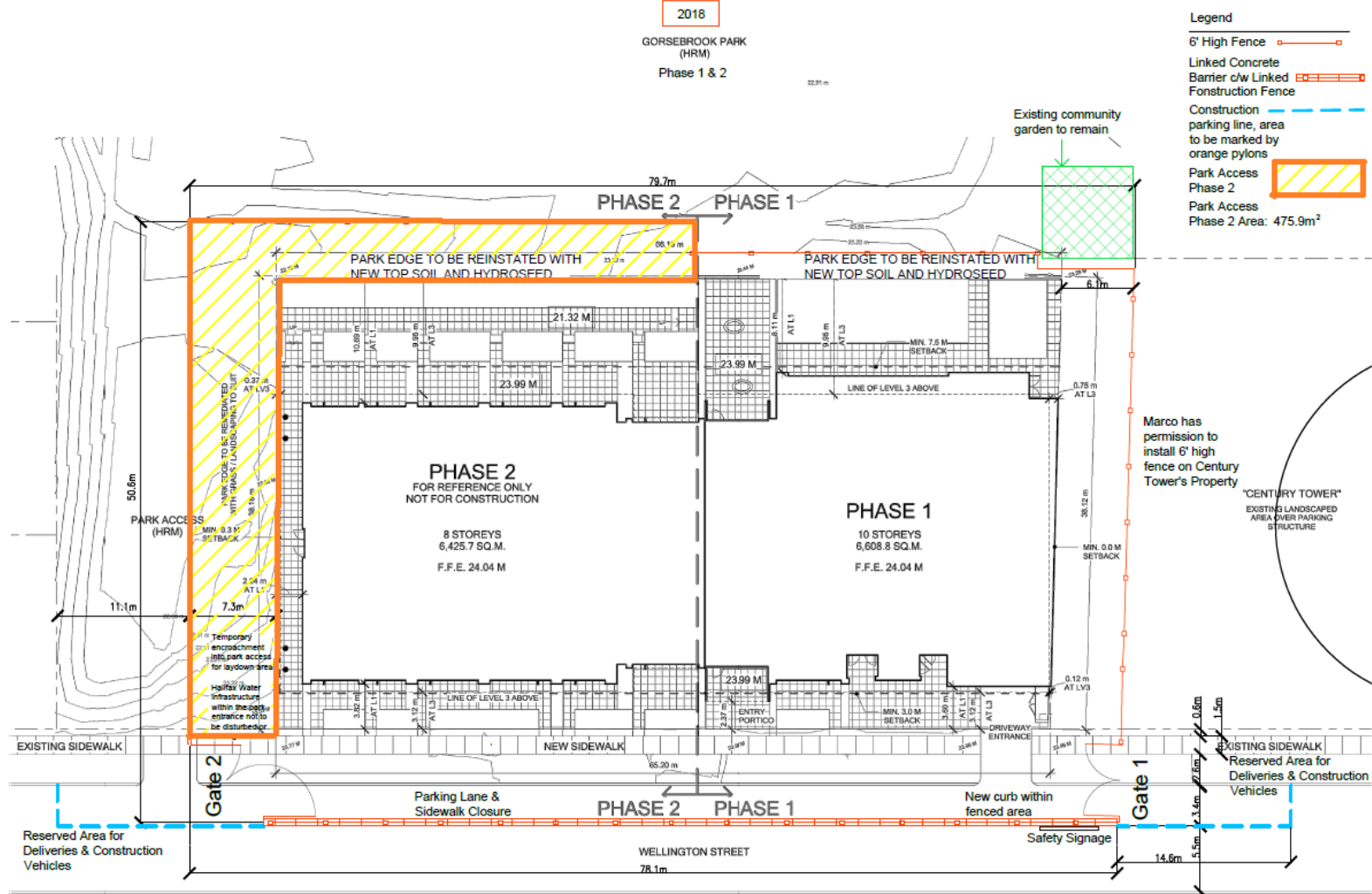
A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Richard Harvey, Manager, Policy and Planning, Parks and Recreation 902.476.5822

Tom Crouse, Acquisition & Disposal Manager, Corporate Real Estate, Finance and Asset Management 902.490.5931

HALIFAX

ATTACHMENT 'A' TEMPORARY CONSTRUCTION EASEMENT – PID 00053769 WELLINGTON STREET – GORSEBROOK PARK SITE PLAN



June 25, 2018

Halifax Regional Municipality
Planning and Development
PO Box 1749
Halifax, Nova Scotia
B3J 3A5

Attention: Ashley Blissett, P.Eng.

Dear Ashley,

Re: Application for a Temporary Construction Encroachment on a Portion of Gorsebrook Park.

RMP Consulting is applying, on behalf of Gorsebrook Park Inc. and Marco Maritimes Ltd., for a temporary construction encroachment on a portion of Gorsebrook Park. The requested encroachment is to ensure public and occupational safety, minimize potential problems and reduce the overall inconvenience and disruption to the public during the construction of Phase 2 of the Goresbrook Park Condominiums.

The construction project is located at 1034 Wellington St and borders Gorsebrook Park on the south and west, Wellington St on the east and Century Tower on the north. The developer and contractor are requesting a temporary construction encroachment of 7.3 meters on Gorsebrook Park along the southern property boundary and 4.57 meters along the western property boundary as illustrated in attachment A. The requested encroachment would be required for a period of 14-16 months commencing on our about August 2018 and ending on or about December 2019.

The portion of the park that would be subject to the temporary encroachment is currently not utilized for active recreation and is generally in an unimproved state. Upon the expiry of the encroachment Marco Maritimes Limited will provide improvements to the parkland which will include reinstatement of disturbed areas with topsoil and sod and replanting of any damaged trees and vegetation. In addition, the park access which currently has a steep grade will be regraded to a more gentle slope and finished with a gravel walkway, topsoil and hydro-seed as per attachment B. During the construction period safe access will be maintained to the park at all times.

It is important to note that once construction of phase 2 begins in the summer of 2018, access around the building will be cut off as a result of excavation and the installation of the phase 2 building foundation and structure. Without permitted temporary access onto parkland it will be

impossible to safely build the exterior building envelope on the South and West side of the project.

To avoid multiple street closures during the construction of phase 2 and to further the creation of a safe work environment for the workers and public the easement would be utilized for the following purposes.

- The placement of concrete forms and a concrete pumping truck during the construction of the structure.
- Access for zoom booms, forklifts and scaffolding during the installation of windows, insulation, brick, siding, railings and roofing.
- Access for loading of mechanical, electrical and architectural materials onto the building floors.
- Access for offloading trucks in a controlled environment off street and away from pedestrian traffic.
- Access for offloading and storage of brick and mortar as well as other materials destined to be installed on the building facades
- Providing an additional buffer for public safety and allowing a safe area for the construction workers to perform their work.

At the completion of phase 2 a temporary encroachment, as illustrated in attachment C, will be required for 5 days to safely remove the crane as there will not be sufficient available area on the property with the completed building structure in place. Removal of the crane from Wellington St would require extensive street closure and add significant risk to the safety of the workers and public due to the presence of utilities and proximity of dwellings. The temporary encroachment would allow for the most expeditious removal of the crane with the least risk and inconvenience to the public.

To facilitate removal of the crane, grading of the existing path adjacent to 134 Wellington St would be improved to permit the mobile crane and flatbed trucks to access the area of the park behind the Gorsebrook Park Condominiums. The area from Wellington St into the park would be regraded to allow the access and result in an improved access to the park for the public. Once the crane is removed, the path will be topped with crusher dust to enhance the pedestrian access and all other disturbed areas will be reinstated with topsoil and hydro-seed to insure complete grass coverage. The end result will be a safer and more aesthetically pleasing entrance to the park from Wellington St.



In summary, the requested temporary encroachment will further the safety of the public and workers during the construction and reduce the overall inconvenience to the public by reducing the number of trucks, congestion and delays on Wellington St.

We trust the information we have provide is suitable for moving forward with requesting Regional Council consider granting the requested temporary construction encroachment but should you need any additional details please let us know.

Sincerely
RMP Development Consulting Limited

Original Signed

Robert MacPherson, P.Eng.
President

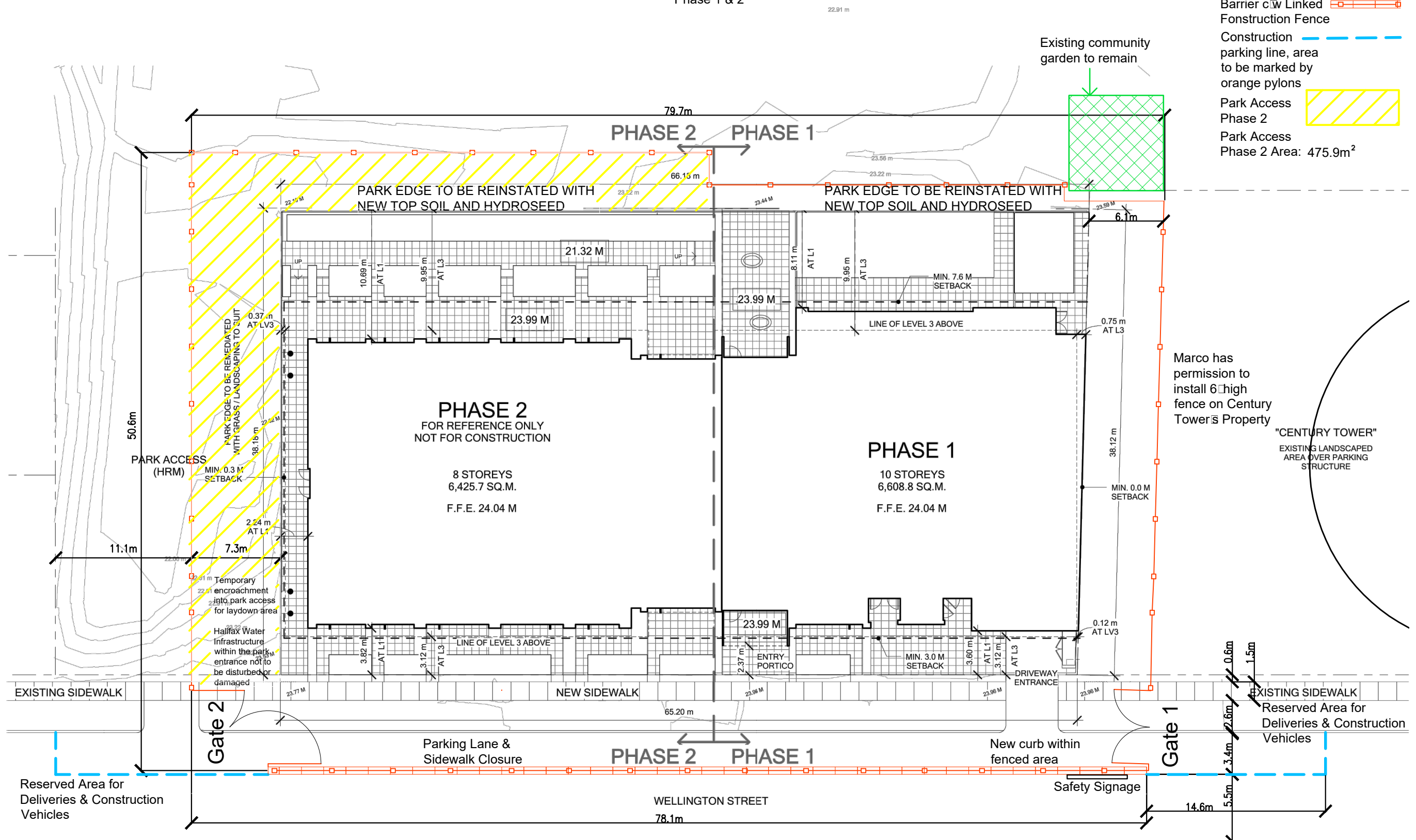
cc David Wex, Taya Cook, Jeremy Stewart

2018

GORSEBROOK PARK (HRM)
Phase 1 & 2

Legend

- 6' High Fence
- Linked Concrete Barrier c/w Linked Construction Fence
- Construction parking line, area to be marked by orange pylons
- Park Access Phase 2
- Park Access Phase 2 Area: 475.9m²



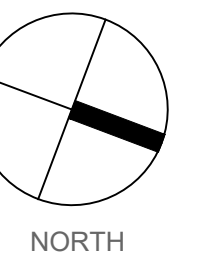
REVISIONS

NO.	DESCRIPTION	BY	DATE
1	For Review	CB	2018-02-28

NOTES

- ALL CONSTRUCTION TO MEET ALL APPLICABLE CODES, STANDARDS, BY-LAWS, ETC.
- DO NOT SCALE THIS DRAWING FOR CONSTRUCTION PURPOSES. USE FIGURED DIMENSIONS AS NOTED.
- ALL DIMENSIONS AND CONDITIONS TO BE VERIFIED ON SITE. ALL DISCREPANCIES ARE TO BE REPORTED TO THE ARCHITECT AND AGREED UPON BEFORE PROCEEDING.

PACKAGE:



NORTH

CONSULTANT:

UPLAND
 Planning and Design Studio
 1 902 423 0649 uplandstudio.ca

STAMP

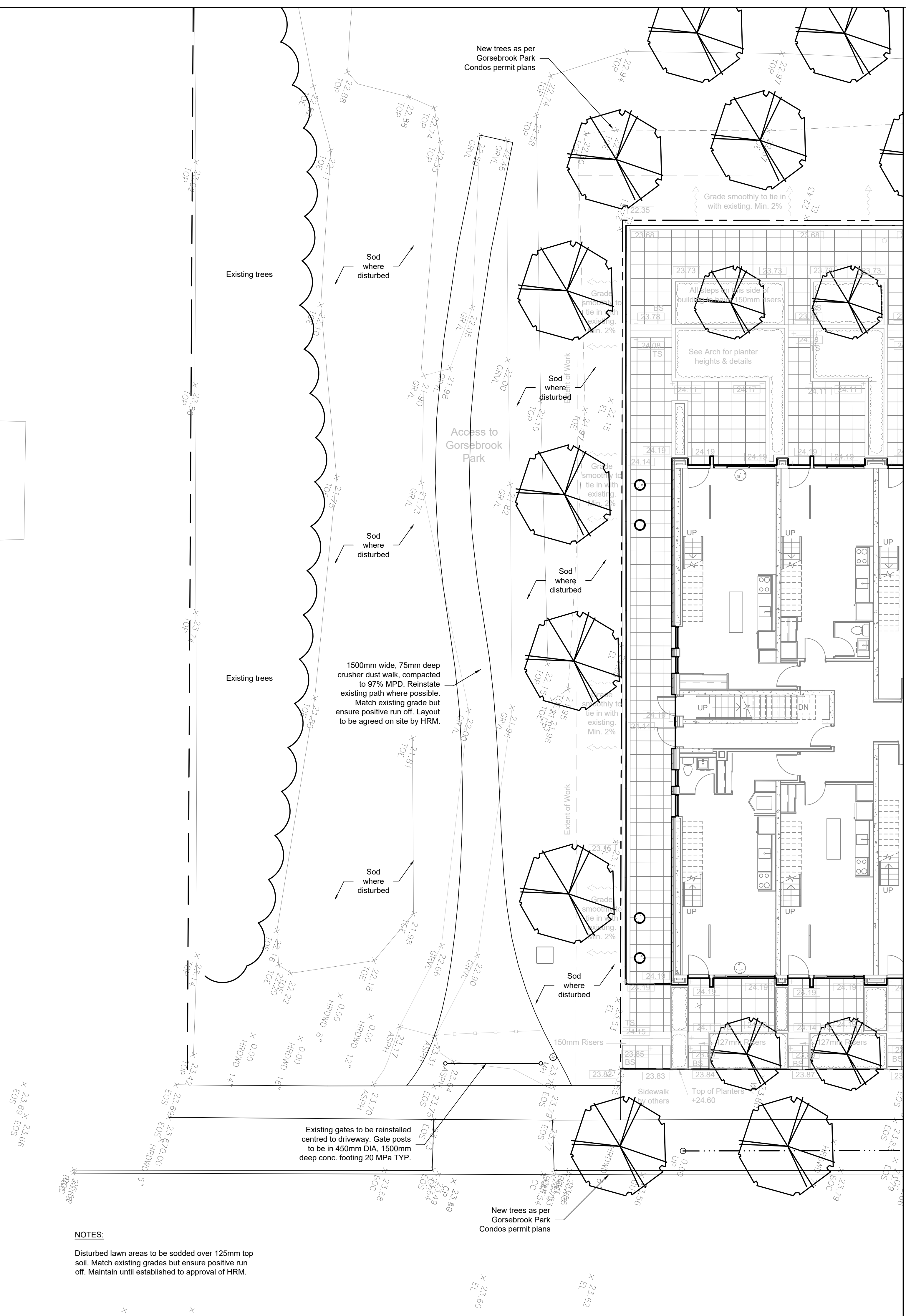
MICHAEL
NAPIER
ARCHITECTURE
 www.mnarch.ca + 902.455.5522

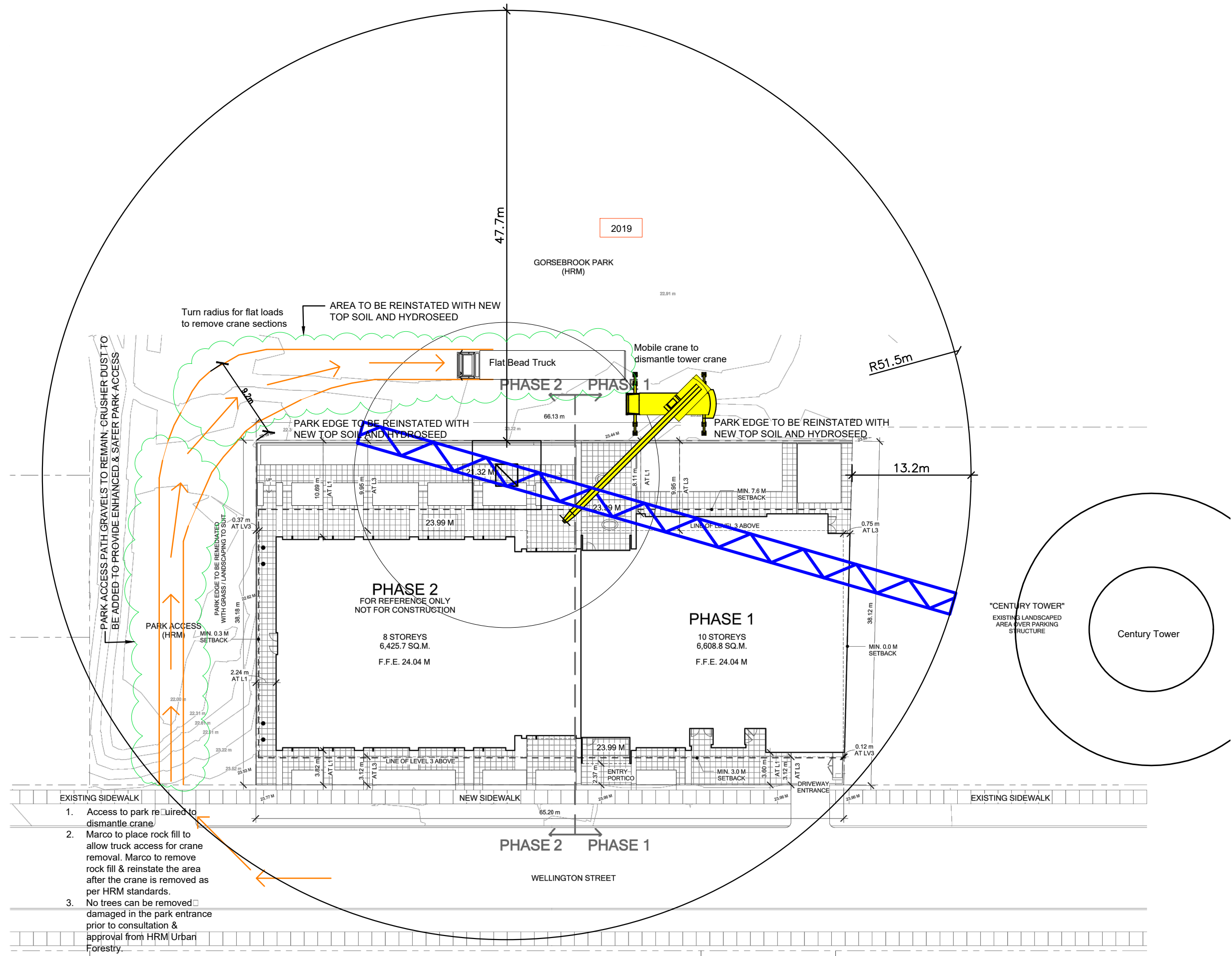
TITLE:
GORSEBROOK PARK
 HALIFAX NS

DRAWING:
Park Entrance

DRAWN: UPLAND
 ISSUE DATE: 02-28-2018
 SCALE: 1:100

DRAWING NUMBER:
LSKI





1. Access to park required to dismantle crane
2. Marco to place rock fill to allow truck access for crane removal. Marco to remove rock fill & reinstate the area after the crane is removed as per HRM standards.
3. No trees can be removed damaged in the park entrance prior to consultation & approval from HRM Urban Forestry.