



**Zella K. Phillips, B.A., LL.B.**

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**August 22, 2012**

**JOINT REPORT – OFFICE OF THE CAO AND CORPORATE SERVICES (LEGAL)  
CLOSED SESSION 2012-09 (Property Matter)**

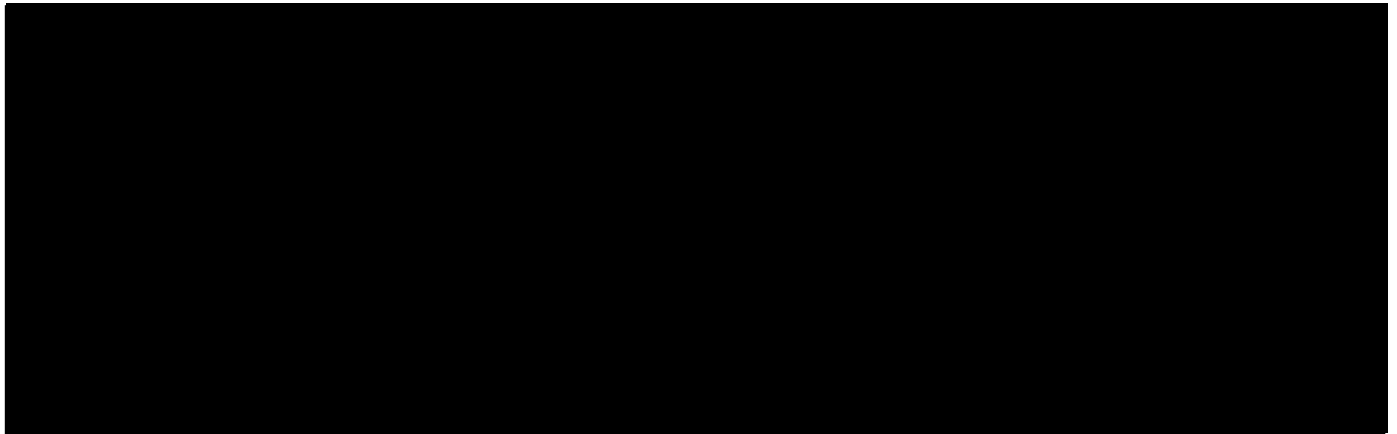
TO: Committee of the Whole (Closed Session)  
SUBJECT: Clocktower Inn and Proposed Land Exchange  
ORIGIN: Robert Shelton, CAO and Zella Phillips, Associate Solicitor

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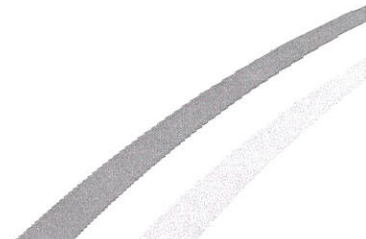
**RECOMMENDATIONS**

**THAT Joint Report – Office of the CAO and Corporate Services (Legal) Closed Session 2012-09 (Property Matter) dated August 22, 2012 be received and the following recommendations, be adopted:**

**1) THAT Council authorize staff to take all steps necessary to implement the following actions:**



- e) that the Chief Administrative Officer and the Director of Legal Services be authorized to take all necessary steps to prepare and execute all documents necessary to give effect to foregoing and required to transfer title to and acquire title of the lands to be exchanged with the Purchaser, and that the Associate Solicitor be authorized to electronically sign and register all transfer deeds of land and any required easements for municipal services;**
- 2) AND THAT Council enact the necessary bylaws and resolutions to give effect to the foregoing property transactions.**

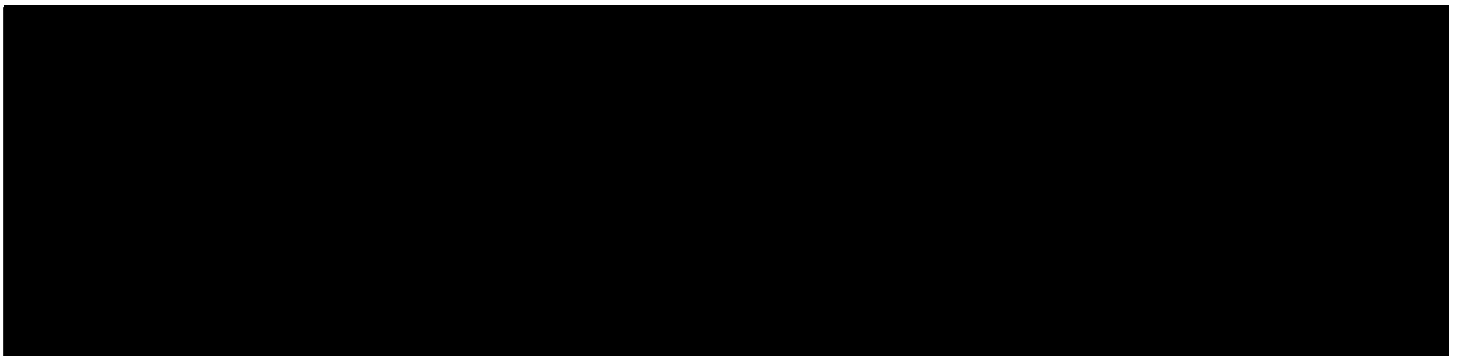
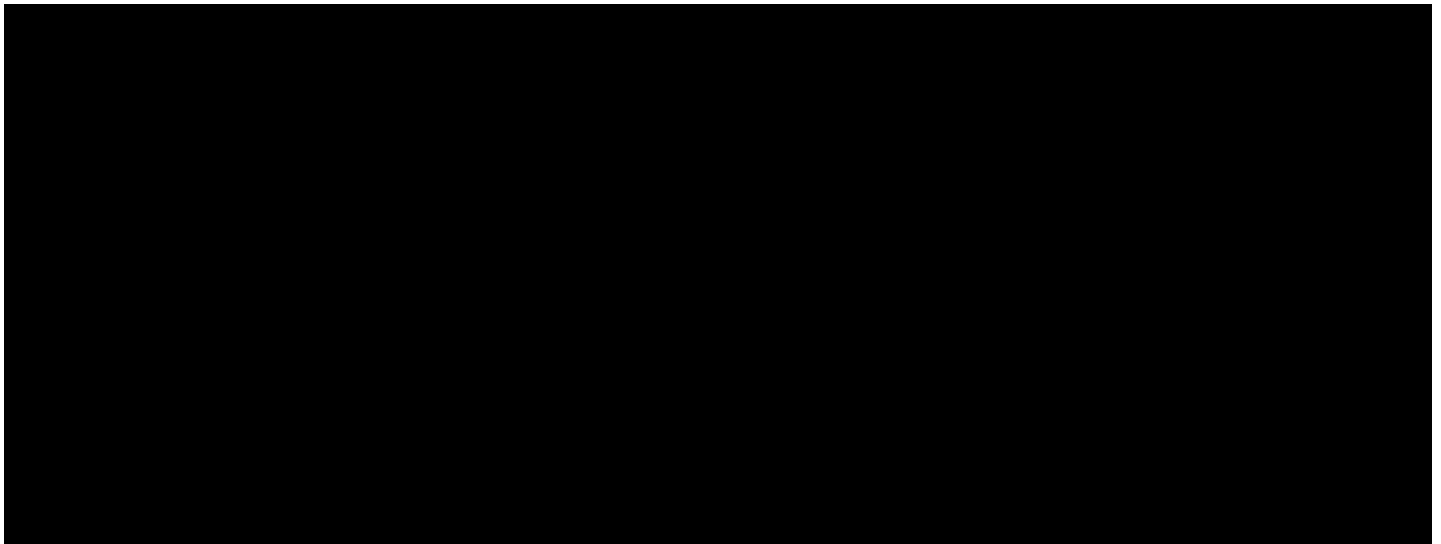


## **BACKGROUND**

As set out previously in Joint Report – Community Services (Planning and Building Services) and Corporate Services (Legal) Closed Session 2012-06 (Property Matter), the Forrest Group has previously been before Committee with various concepts for the redevelopment of the Clock Tower property in connection with adjacent Town-owned lands. At the Committee of the Whole meeting on April 30, 2012, and as set out in detail in the above-noted Report, staff advised Council about negotiations that took place in 2003 with the current owner of 184-194 Main Street South [REDACTED] for a proposed land exchange as part of the redevelopment of Market Square. The transfers negotiated as part of the Bryan land exchange are illustrated on Schedule “A”. Although the Town proceeded in good faith to meet its obligations in the land exchange that was negotiated between the Town and [REDACTED] the registration of the transfers required to complete the land exchange did not occur. As a result, the land comprising twelve (12) parking spaces used exclusively by [REDACTED] remains under Town ownership and Bryan’s parking encroaches on the Town’s land. As well, a portion of the land used by the Town to provide public parking within Market Square is currently owned by [REDACTED] and the Town is encroaching upon it.

The lands at 184-194 Main Street South have been conditionally purchased by the Forrest Group, and the Purchaser has been in detailed discussions with staff regarding a modified land exchange. The Purchaser is proposing a modified land exchange that would permit the rectification of the outstanding title issues in Market Square and facilitate the proposed redevelopment of both the current Clock Tower property and 184-194 Main Street South.

### **Modified Land Exchange Proposal**



**Staff's Response**

After the initial discussion with the Purchaser in April, a standard appraisal was obtained that valued the fair market value of the lands proposed to be exchanged. A second appraisal was obtained to establish the value of the surface and subsurface rights after the Purchaser proposed to stratify title of the lands to be exchanged, as this is a specialized form of appraisal. The purpose of the two appraisals was to assist staff with establishing the proper values and the issue of compensation.

Staff have calculated the value of the lands using the previous 2003 arrangement with Bryan deal as a base. Staff determined a base calculation has been performed as if the Town and Bryan had actually transferred the lands to each other in 2003 as originally intended. Under that notional scenario, the Town

The second appraisal produced a market value for the surface and subsurface rights to the lands as of July 1, 2012. The property was valued based on its contribution to the property at 194 Main Street, not based on being added to the larger site for the preliminary condominium development concept. The appraiser viewed this approach as the approach that would best represent the market value of the land as of July 1, 2012, given that it is unlikely that either piece of land could be developed independently on its own and the fact that the proposed development concept is only preliminary in nature and could either change or not proceed at all.

By obtaining the two appraisals and using the 2003 Bryan arrangement as a base, staff have been able to establish a "delta" representing the difference in value between the two land exchange proposals – the deal originally negotiated with Bryan, and the most recent proposal by the Purchaser. The difference in value is [REDACTED] as set out below.

**TOTAL AMOUNT OWING TO TOWN BY PURCHASER**

Staff are requesting authority to negotiate a price for the land exchange to be paid by PURCHASER for a minimum of [REDACTED]. The land exchange is necessary for the completion of the real estate deal between



Bryan and the Forrest Group. It will benefit the Town both immediately and in the long term by rectifying a longstanding title problem and adding additional public parking spots into the Market Square parking lot.

A summary of the key terms of the proposed Land Exchange Agreement is attached hereto as Schedule "C", for which staff are seeking approval from Council. These terms are currently being negotiated and will provide for the possibility that the development does not proceed.

### **BUSINESS PLAN AND STRATEGIC PLAN LINKAGES**

The completion of this land exchange facilitates the potential redevelopment of property in the downtown and aligns with the *Well-planned and connected* branch of the Vision.

### **CONSULTATION**

Due to the confidential nature of this proposal, consultation at this stage has been limited to the CAO, the Commissioner of Corporate Services, the Commissioner of Community Services, the Director of Planning and Building Services, the Assistant Director of Planning and Building Services, the Treasurer, and the Director of Legal Services/Municipal Solicitor.

### **HUMAN RESOURCES CONSIDERATIONS**

Not applicable.

### **BUDGET IMPACT (CURRENT AND FUTURE)**

If the difference in value is paid for the lands to be transferred in the land exchange, there will be a positive budget impact with additional revenue flowing to the Town.

### **CONTACT**

For more information on this report contact Zella Phillips, Associate Solicitor (905) 953-5300 ext. 2435; [zphillips@newmarket.ca](mailto:zphillips@newmarket.ca).

Respectfully submitted;



Robert Shelton  
Chief/Administrative Officer



Anita Moore  
Commissioner, Corporate Services

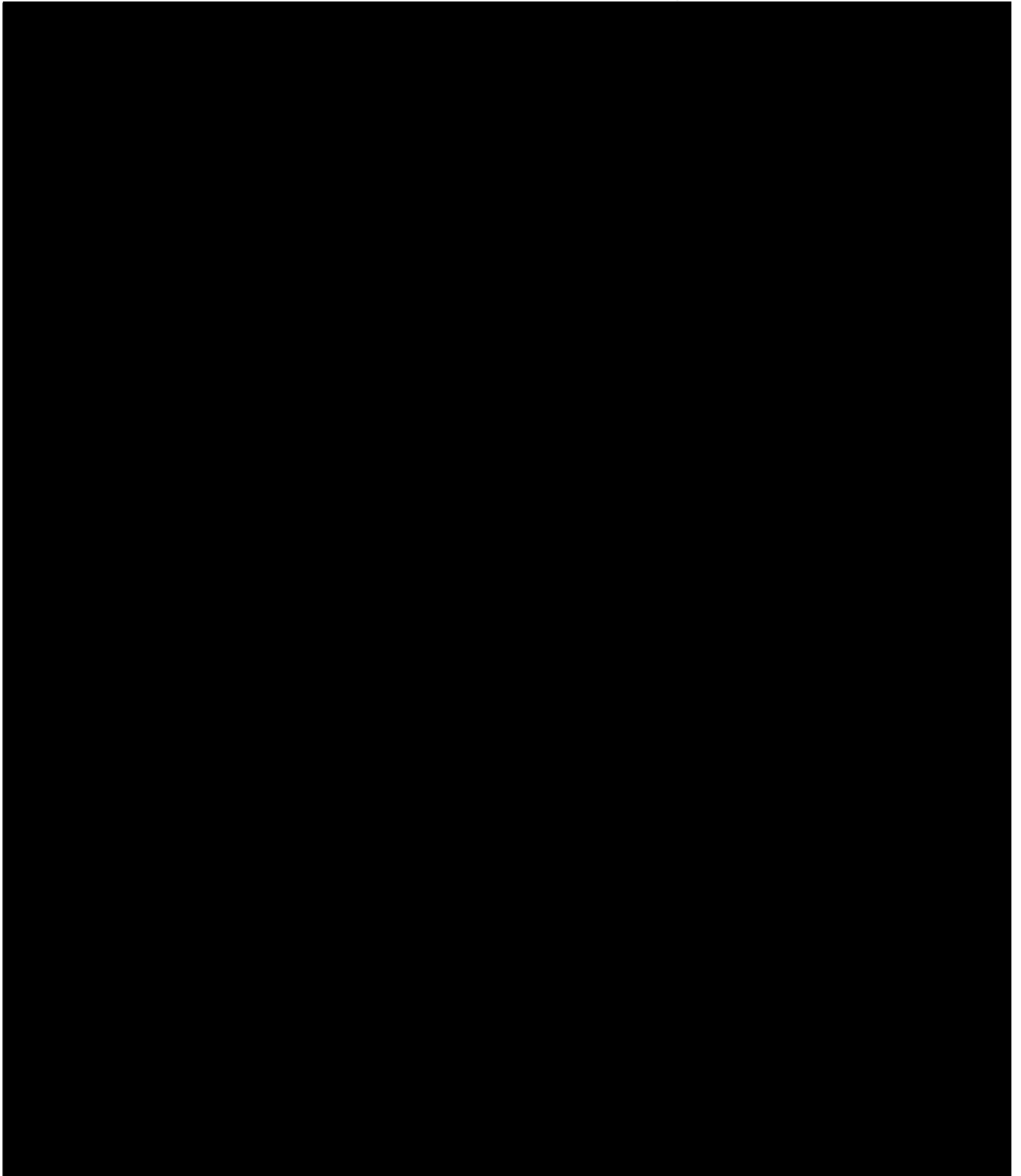


Esther Armchuk-Ball  
Director, Legal Services/Municipal Solicitor

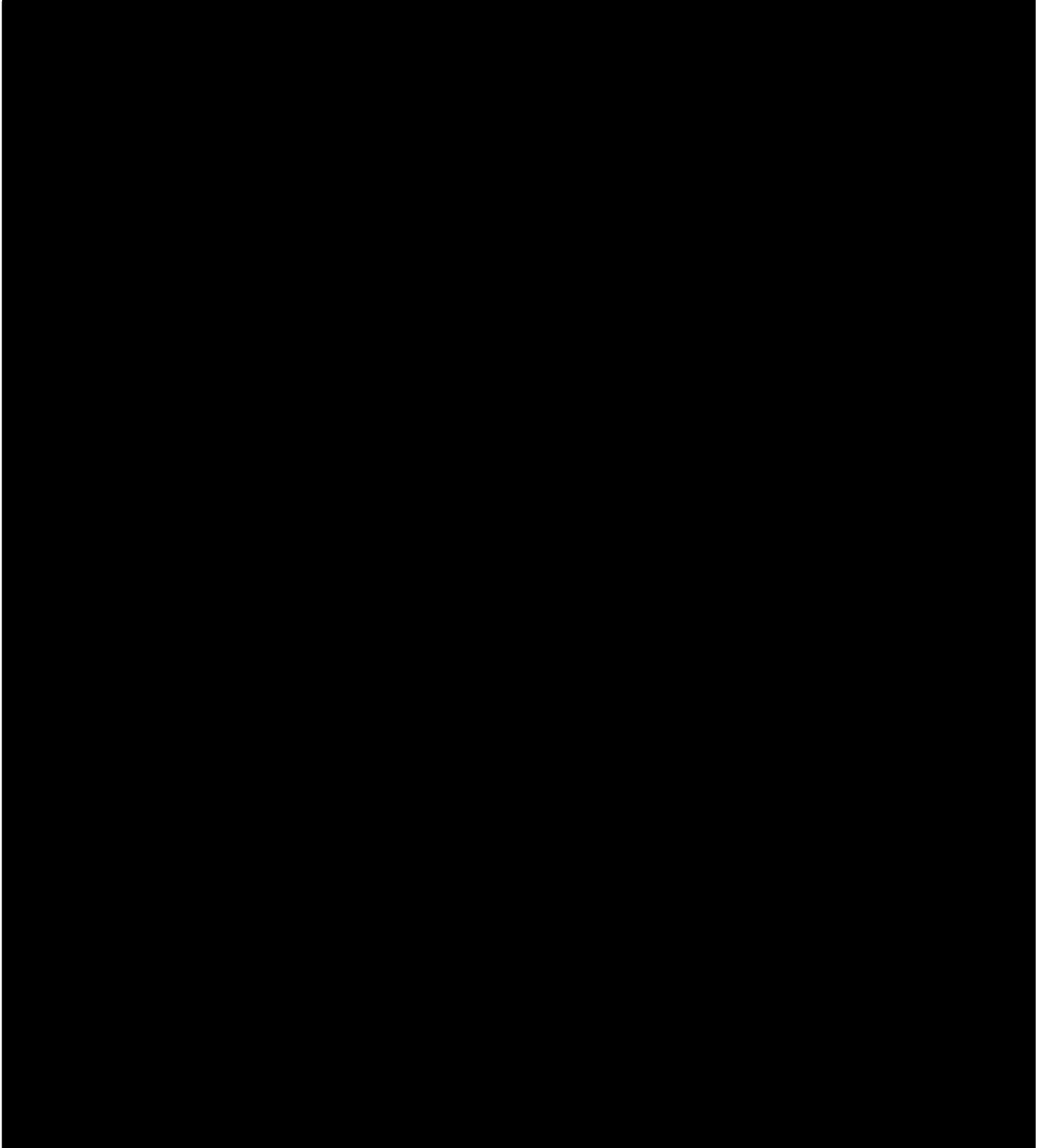


Zella Phillips  
Associate Solicitor

# SCHEDULE "A"



# SCHEDULE "B"



**SCHEDULE "C"**

**Key Terms of the Proposed Agreement – Negotiations Underway but not Completed**

