

Settlement Agreement

Parties

1. **Body Corporate 463208** and owners of Units 1 – 8, 19 Nga Mahi Road, Sockburn
2. **Body Corporate 467074** and owners of Units 9 – 19, 19 Nga Mahi Road, Sockburn
(together the **Bodies Corporate**)
3. **CBC Construction 2010 Limited**, company number 2744423 (**CBC**)

(the **Parties**)

Background

- A. The Bodies Corporate are bodies corporate for the two unit title developments comprising Units 1-8 and 9-19, together with the common property, at 19 Nga Mahi Road, Sockburn.
- B. CBC constructed the buildings, common property and improvements at 19 Nga Mahi Road in the latter part of 2012 and 2013 for Units 1-8 and 2014 for Units 9-19 (together the **Buildings**).
- C. A dispute has arisen. Inter alia, the Bodies Corporate allege CBC were negligent when constructing the Buildings and that the Buildings contain defects (**Defects**). The Bodies Corporate have sought recovery for what they say are the costs to remediate the Defects. CBC has accepted responsibility for some of the Defects (the Bodies Corporate's claim in relation to the exterior cladding of the buildings) but denies liability for the balance of the Defects.

(together the **Dispute**)
- D. In November 2023, the Bodies Corporate issued proceedings against CBC in the Christchurch District Court under CIV 2023-009-2735 (the **Proceeding**).
- E. Following mediation, the parties have agreed, in principle, to settle the Dispute and the Proceeding. The terms of settlement are recorded in this Agreement.

Agreement

By this Agreement, the Parties agree that:

Payment for External Joinery

1. CBC will pay, and the Bodies Corporate will accept, in respect of the external joinery defects the sum of \$40,000.00 plus GST, to the Bodies Corporate (**External Joinery Payment**) on the conditions now set out.
2. The External Joinery Payment will be made by bank transfer to the trust account of Maciaszek Brown Lawyers of Christchurch, instructed for the Bodies Corporate within 3 working days of CBC receiving notification under clause 5 below that the Bodies Corporate have both ratified this Agreement.

Exterior cladding works

3. CBC agrees to arrange for, carry out and be responsible for (to the standard of a prudent and reasonable contractor) remedial works to rectify the defects to the exterior cladding on all elevations of the Buildings (the **Exterior Remedial Works**). The Bodies Corporate will facilitate CBC having access to the Buildings for the purposes of inspection, scope preparation and any other matter necessary for the performance of the Exterior Remedial Works on the following terms:
- a. The Exterior Remedial Works are strictly limited to:
 - i. those described in items 1, 2 and 5a of Waterproofing Concepts' pricing proposal, Quote 4648, Rev 2, dated 20 June 2023 (copy held by all parties); and
 - ii. the removal of presently existing signage from individual units, and reinstatement or replacement of that signage as required (depending on whether the signage can be reinstated).
 - b. The Exterior Remedial Works will be performed at CBC's direction and cost.
 - c. The raking and re-sealing of horizontal and vertical junctions between Titan boards and junctions between Titan boards and concrete panels will be carried out strictly in accordance with Sika product data sheets, technical guidelines and application instructions for the specific Sika sealant products selected and applying good trade practice.
 - d. The sole determining factor as to whether a sign needs to be reinstated or replaced, will be the extent to which that sign is actually damaged during the course of removal and/or storage and whether such damage is reasonably repairable to its pre-removal condition.
 - e. CBC will engage Waterproofing Concepts to perform the Exterior Remedial Works as its sub-contractor. If Waterproofing Concepts is not able for any reason to perform the Exterior Remedial Works or it is not commercially viable to engage Waterproofing Concepts to perform the Exterior Remedial Works, another contractor of comparable expertise and experience should be engaged.
 - f. CBC may remove and reinstate any signage itself. CBC will engage as its subcontractor, S B Signs or another contractor to replace any signage that requires replacing. If it is not commercially viable to engage S B Signs, another contractor of comparable expertise and experience will be engaged to carry out these works.
 - g. The Exterior Remedial Works will commence on an agreed date between the Parties, before 30 September 2024 (unless both parties agree otherwise).



- h. CBC will coordinate with Mark Frame, on behalf of the Bodies Corporate, in relation to the timing of the reinstatement or replacement of signage to allow the Bodies Corporate to undertake painting works to the exterior cladding.
- i. No new signage is to be erected on any of the units until the Exterior Remedial Works have been completed.

Ratification by the Bodies Corporate

- 4. This Agreement is subject, as a condition subsequent, to ratification by resolution passed by each Body Corporate at Extraordinary General Meetings to be called and held for the specific purpose, within 15 calendar days of the date of this Agreement.
- 5. Upon ratification resolutions of the Bodies Corporate, written notice of such ratification will be given by the Bodies Corporate to CBC. In the event that ratification is not secured by one or both of the Bodies Corporate, then the Agreement will come to an end and the terms now set out will be of no effect.

Discontinuance of the Proceeding

- 6. Upon receipt of the External Joinery Payment in cleared funds, the Bodies Corporate will prepare and lodge a notice of discontinuance of the Proceeding. The parties agree that there are no issues as to costs in relation to the Proceeding.

No admission of liability

- 7. No party admits any fault or liability by entering into this Agreement.

Full and final settlement

- 8. Transfer and receipt of the External Joinery Payment and completion of the Exterior Cladding Works will constitute full and final settlement, discharge and release of all actions, claims or complaints that the Bodies Corporate have against CBC, arising out of or in any way connected with the construction of the buildings at 19 Nga Mahi Road, Sockburn. The Parties undertake not to pursue any action, claim or complaint against any other party, or any other person or entity, in relation to or arising in any way directly or indirectly out of the dispute, the proceeding, or in any way connected to the property.
- 9. This Agreement may be pleaded as a bar to, and as a complete and absolute defence to, any action, claim or complaint, which may at any time be taken by a party to this Agreement, or by any party claiming under or through a party to this Agreement in relation to, or in any way directly or indirectly connected with, the dispute, proceeding or the property.

Costs

- 10. The Parties agree to bear their own costs and disbursements associated with the settlement agreement, the mediation and the Proceeding.

Notices

11. The notices to be given by one party to the other pursuant to this Agreement, including a notice pursuant to clause 4 above, shall be given in writing by email as follows :

For Body Corporate 463208 : peter@macbrownlaw.co.nz

For Body Corporate 467074 : peter@macbrownlaw.co.nz

For CBC Construction 2010 Limited : panderson@clmlaw.co.nz

12. A notice is deemed to have been served when the sent email enters into the information system operated by the identified recipient, whether or not it is observed by that recipient.

Entire agreement

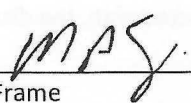
13. This settlement agreement contains the entire understanding between the Parties concerning the subject matter of the settlement agreement. It replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written between the Parties.

Confidentiality

14. The Parties and their legal advisers agree to keep the existence and terms of this settlement agreement as confidential and will not disclose such to any other person except :
- a. To facilitate performance of any obligation under this agreement to carry out building work or pay the costs of building work to remediate the Defective Works;
 - b. To legal advisers, accountants, auditors and insurers to whom the confidential obligations set out in this Agreement will extend;
 - c. To enforce the terms of the settlement agreement;
 - d. As required by law or with the prior written agreement of the Parties.
15. This Agreement may be signed in any number of counterparts which, taken together, will be deemed to constitute the same document. This Agreement comes into effect when all Parties have signed it.

Dated : 29th May 2024

Signed for and on behalf of
Body Corporate 463208


Mark Frame

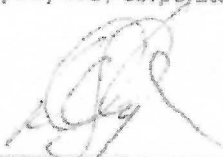
For Unit Owners 1-8 Nga Mahi Road





Ann Woods as manager
Skyway Body Corporate Services Limited

Signed for and on behalf of
Body Corporate 467074

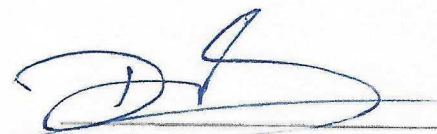


Ray McIntyre
For Unit Owners 9-19 Nga Mahi Road



Ann Woods as manager
Skyway Body Corporate Services Limited

Signed for and on behalf of
CBC Construction 2010 Limited



Drew Beekie
Director