BODY CORPORATE 66017 (ANZAC House)
2024 Extraordinary General Meeting Minutes

Held in the Corporate Risks Limited Boardroom, 6th Floor, 181 Willis Street, Te Aro, Wellington. On Tuesday 12 November, commencing 1.00pm

1. Welcome and introduction.

Russell Joseph, ANZAC Chair, introduced himself and welcomed all attendees.

2. Registration of attendees and confirmation of quorum including proxies.

PRESENT: As per attendance list, **8** of the Body Corporate's **11** units were present in person or by proxy representing **73**% of the Body Corporate. Quorum was achieved.

Geline Owezarek *(Astra Healthcare)*	Unit 5
Paul Cheng *(P & B Cheng)*	Unit 6
Danny Nelson *(RNZ RSA)*	Unit 7
Michelle Mazey (*Clubs NZ)*	Unit 8
Russell & Sarina Joseph *(Corporate Risk)*	Unit 9

Proxies
Russell Joseph receives proxy for Unit 1
Geline Owczarek receives proxy for Unit 2 and Unit 3
Michelle Mazey receives proxy for Unit 8

Other

Ashleigh Marr	CBCS – Body Corporate Manager
Dakota Scott	CBCS – Body Corporate Coordinator

3. Apologies.

Apology received from Mark Darrow (Unit 11)

Motion 1: That the apologies are accepted.

MOTION PASSED UNANIMOUSLY

4. Confirmation of dispute & building reports.

No comments were made.

Motion 2: That both the dispute and the building reports be accepted into the Body Corporate records with no amendments made.

Moved: Michelle Mazey (Unit 8) **Seconded:** Danny Nelson (Unit 7)
MOTION CARRIED

5. **Building Insurance.**

Anzac House is currently insured for Indemnity & Demolition only as full replacement means that the insurers will only agree to pay if the Body Corporate fully rebuild and replace the building. Andrew Hooker wrote a paper on indemnity vs full replacement for anyone interested.

6. **Use of unit 11 (level 8 apartment).**

Russell Joseph gave some background to the history of Unit 11 with the key points as follows:

- Mr Saben purchased Unit 11 as a commercial unit and converted it to a residential unit without the Body Corporates consent.
- Although Mr Saben changed the use of Unit 11 from commercial to residential, it ultimately was not challenged, and Mr Saben was elected to the management committee and contributed to the building maintenance projects.
- The current owner, Mr Darrow, brought the unit from Mr Saben in the belief that the Body Corporate had agreed that the unit 11 windows were to be replaced by the BC.

Russell travelled to Auckland to meet with Mark Darrow, where they came to an agreement, whereas the BC would pay an amount of $17,500 to Mr Darrow as the full and final settlement in respect to Mr Darrow's claims for the window replacement and damage resulting from the level 8 floods. Mr Darrow in turn agreed to waive his claims for legal fees and loss of rent, and to bring his levies up to date.

Geline Owezarek made a request that Mr. Darrow provide the guarantee from the window supplier, along with any warranties related to the installation work completed by Best Build. This is to ensure that all documentation is in place, allowing any potential issues in the future to be addressed by the Body Corporate promptly and appropriately.

Motion 3: That the Body Corporate agree to pay $17,500 for the window repair/replacement on Level 8 including damage resulting from water damage, on the basis that Level 8 will withdraw the current invoice of $31,000, that the owner will pay all outstanding levies, and will also remove the claim for legal fees & loss of rents.

This is intended to be a full & final settlement and that no other claims will be made in relation to the window replacement and/or leaks.

Moved: Michelle Mazey (Unit 8) **Seconded:** Danny Nelson (Unit 7)
MOTION CARRIED UNANIMOUSLY

7. **Update of ANZAC House Body Corporate operating rules.**

It was discussed that if the Body Corporate accepts Unit 11 as a residential unit, the committee recommends undertaking a comprehensive restructure of the Body Corporate rules. This would ensure the rules are updated to appropriately address the requirements of both residential and commercial units within the property. The committee also agreed that the revised rules should be drafted by a suitable law firm to ensure compliance with relevant legislation and best practices.

A discussion was held around the possibility of offering all units in the building the option to convert. Additionally, the option of converting levies to utility interest-based levies was considered. It was noted that this change would result in higher levies for Unit 8, reflecting its unit value. However, it was also acknowledged that Unit 8 would receive a higher insurance payout if anything were to happen to the building. No decision was made, as the Committee intends to conduct further research before proposing a motion.

Motion 4: The Body Corporate accepts Unit 11 as a residential Unit.

MOTION CARRIED UNANIMOUSLY

Motion 5: The Body Corporate agrees to start the process of reviewing the operational rules.

MOTION CARRIED UNANIMOUSLY

8. Use and access to level 7 roof.

A discussion was held regarding the use of the Level 7 roof, which poses a significant health and safety (H&S) risk due to the height of the balustrades. The following options were proposed:

1. Install a bar on the outside of the double doors to restrict access.
2. Send a letter to the owner advising that access to the roof is prohibited.
3. Change the locks to prevent unauthorized entry to the level 7 roof from the unit 11 apartment.

An alternative option discussed was selling the Level 7 roof to the Level 8 owner. This approach would transfer the responsibility for bringing the roof up to H&S standards to the buyer and could contribute funds to the Long-Term Maintenance Plan (LTMP). However, a new rule would need to be established to ensure maintenance access is available for the Body Corporate.

Motion 6: That the BC agrees to explore selling the Level 7 roof to the Level 8 Owner on the basis that the new owner would take full responsibility for maintenance to bring the balustrades & flooring up to the correct Structural and Health & Safety standards.

MOTION CARRIED UNANIMOUSLY

9. Level 7 & 8 roof leaks (Building report).

Russell mentioned that the majority of the roof leaks are due to the drains being blocked and suggested Hirise install flashings that are already made and that other matters raised in the building science report also be implemented.

Motion 7: That the BC agree to Hirise installing the already fabricated flashing and action other remedial fixes highlighted in the Building Science report.

MOTION CARRIED UNANIMOUSLY

10. Unit 11 window replacement and offer to settle.

No further comments were made.

11. Body Corporate levies.

No further comments were made.

12. Engagement of a Building Manager

A discussion was had in respect to engaging a permanent building manager. Mr Mike Winton of Building Science was approached and has provided a fixed fee per month ($225 +GST) to undertake fortnightly building checks, to facilitate repairs, to monitor the CCTV, and to manage the card access system.

Motion 8: That the BC agree to engage Building Science to manage the building which includes fortnightly inspections of the common areas, sourcing appropriate contractors for repairs and maintenance, monitoring CCTV, and managing the card access system. The fee for this service will be $225 + GST per month.

Moved: Russell Joseph (Unit 9) **Seconded:** Michelle Mazey (Unit 8)
MOTION CARRIED UNANIMOUSLY

13. Closing.

Meeting was closed at 2.08pm

MINUTES APPROVED BY CHAIR

Name: ____

Signed: ________________________

Date: ________________________

MOTIONS

Ordinary Resolution: For an Ordinary Resolution to pass, 50.1% of eligible voters who vote on the resolution must vote in favour of the resolution (50% or more for a poll vote).

Special Resolution: For a Special Resolution to pass, 75% of eligible voters who vote on the resolution must vote in favour of the resolution (75% or more for a poll vote).

	Motions	**Type of Resolution Ordinary / Special**	**Vote For (Yes) Against (No)**
1	That the apologies are accepted	Ordinary	Yes
2	That both the dispute and the building reports be accepted into the Body Corporate records with no amendments made.	Ordinary	Yes
3	That the Body Corporate agree to pay $17,500 for the window repair/replacement on Level 8 including damage resulting from water damage, on the basis that Level 8 will withdraw the current invoice of $31,000, that the owner will pay all outstanding levies, and will also remove the claim for legal fees & loss of rents. This is intended to be a full & final settlement and that no other claims will be made in relation to the window replacement and/or leaks.	Ordinary	Yes
4	The Body Corporate accepts Unit 11 as a residential Unit.	Ordinary	Yes
5	The Body Corporate agrees to start the process of reviewing the operational rules.	Ordinary	Yes
6	That the BC agrees to explore selling the Level 7 roof to the Level 8 Owner on the basis that the new owner would take full responsibility for maintenance to bring the balustrades & flooring up to the correct Structural and Health & Safety standards.	Ordinary	Yes
7	That the BC agree to Hirise installing the already fabricated flashing and action other remedial fixes highlighted in the Building Science report.	Ordinary	Yes
8	That the BC agree to engage Building Science to manage the building which includes fortnightly inspections of the common areas, sourcing appropriate contractors for repairs and maintenance, monitoring CCTV, and managing the card access system. The fee for this service will be $225 + GST per month.	Ordinary	Yes

ANZAC HOUSE BODY CORPORATE No 66017

UNIT 11 DISPUTE

29 October 2024

To:	Richard Young (Young Family Trust)	Unit 1
	Geline Owezarek (proxy)	Unit 2
	Geline Owezarek (proxy	Unit 3
	Paul Doney (Tall Poppy Real Estate)	Unit 4
	John & Geline Owezarek (Astra Healthcare)	Unit 5
	Paul Cheng	Unit 6
	RNZ RSA	Unit 7
	Michelle Mazey (Clubs NZ)	Unit 8
	Russell & Sarina Joseph (Corporate Risks Limited)	Unit 9
	John Hickey (Schlat Properties)	Unit 10
	Mark Darrow (MCD Capital Limited)	Unit 11
	Ashleigh Marr, Body Corporate Manager, Complete Body Corp Solutions Ltd	

1. INTRODUCTION

1.1. At the 2024 ANZAC HOUSE Annual General Meeting, I accepted the role as incoming Chairperson.

1.2. The meeting was facilitated by Ashleigh Marr (Body Corporate Manager, Complete Body Corp Solutions Ltd) and attended by 5 of the 11-unit owners with 2 proxy votes held by Unit 5. No apologies were received.

1.3. The following are key discussions (arising at the AGM).

1.3.1. **Item 4** - confirmation of the 2023 AGM Minutes. The motion that the minutes of the meeting held Thursday 2 November 2023 be confirmed as a true and correct record of that meeting. (**MOTION CARRIED**)

1.3.2. **Item 5** – A discussion surrounding the unit 11 external windows took place as the 2023 minutes (items 10 & 19) referred to **window repairs, not window replacements.** It was reinforced that window replacements were not approved or agreed to by the Body Corporate and accordingly, it was considered that if a unit owner was wanting a full window replacement, then approval from the Body Corporate (BC) would be required in the first instance and that the replacement would be done at the owner's expense. [BC rule 32 (r) below]

1.3.2.1. *Request the Body Corporate in writing, where an owner wishes to carry out any work or activity prohibited* ***or not authorised*** *in these rules to approve the work or activity.* ***If the Body Corporate agrees*** *to the work or activity to be carried out it shall be necessary for the Body Corporate to* ***approve the contractor*** *for that work or activity.* ***<u>All costs involved with the work or activity shall be the responsibility of the owner concerned</u>****. Any damage may be claimed by the Body Corporate against the owner, contractor, or other person in respect of such loss or damage.*

1.3.2.2. The implications of this rule are obvious as the change of window type affects the structure and overall appearance of the building.

For, example if all unit owners decided to change their window type, without the need to seek the approval from the BC, the ramifications of this could lead to a conglomeration of window styles and colours that would, in essence, devalue the appearance of the building.

1.3.2.3. In this case the Body Corporate **<u>did not</u> approve the replacement of the windows**, **<u>did not</u> approve the contractor and <u>did not</u> agree to pay for the replacement**, neither in writing, nor verbally.

1.3.2.4. Improvements beyond maintenance and repairs that contribute to the betterment of the unit are at the unit owner's expense.

1.3.3. **Item 15** – A discussion took place regarding the change of use to unit 11 and if the Body Corporate should investigate how to return the building to its intended fully commercial status **or** to alternatively accept that the BC did not challenge the previous owner when the change was made and now needs to update the BC rules to reflect the change.

1.3.4. The issue of insurance was also discussed following concerns that the residential status of Unit 11 was likely impacting on the insurance levies for the building.

1.4. As the incoming chairperson I have been asked to investigate the matters raised at the AGM and to specifically address the following.

1.4.1. Change of Use (UNIT 11)

1.4.2. Level 7 roof leaks

1.4.3. Level 8 roof leaks

1.4.4. Unit 11 window leaks and subsequent replacement

1.4.5. Unit 11 sale (advertising)

1.5. On Friday 11 October I, along with Mr. Mike Winton of **Building Science Limited**, inspected the Levels 7 & 8 roofs. Mr. Winton has completed a comprehensive report, and this has been provided to the maintenance committee.

1.6. Mr. Winton advises that the roof is in good repair and is **not** in need of replacement.

1.7. Mr. Winton was also asked to provide his expert opinion regarding the Unit 11 window repair/replacement. His observations will also be covered in his report.

2. BACKGROUND

2.1. 181 Willis Street was built in 1965 and approved by the WCC as an **office building**. This is reflected in the rules of the ANZAC HOUSE Body Corporate No 66017

2.2. 11 Units are shown on the title which include Unit 11 (level 8). Unit 11 is shown to encompass a floor plate of 167$^{m2.}$ and pays Body Corporate Levies on a per ^{m2} basis.

2.3. On 15 May 2007 the then owner of Unit 11 sold it to Mr. Ken Saban.

2.4. On 27 August 2022, Mr Saban sold Unit 11 to the current owner.

2.5. Unit 11 is presently on the market and is being marketed by Harry Eggers Licensed Real Estate Salesperson of Professionals Redcoats. The advertisement is repeated in various media such as Trademe property, OneRoof, Homes.co.nz and others.

2.6. When built, unit 11 did not include any external doors to the level 7 roof.

2.7. The following now addresses the specific items referenced above.

3. CHANGE OF USE (UNIT 11)

3.1. When built, all units associated with 181 Willis Street were used solely for the purpose of light commercial office space. All units operated under the then Rules of the Westbrook House Body Corporate 66017. This included the smaller 8th floor office space which looked out over the north, south and west facing level 7 roof. The building's name later changed to ANZAC HOUSE when the RNZ RSA took ownership of Unit 7.

3.2. When built, the unit 11 office space did not include external doors to the level 7 roof.

3.3. On 15 May 2007 the then owner of Unit 11 sold it to Mr. Ken Saban.

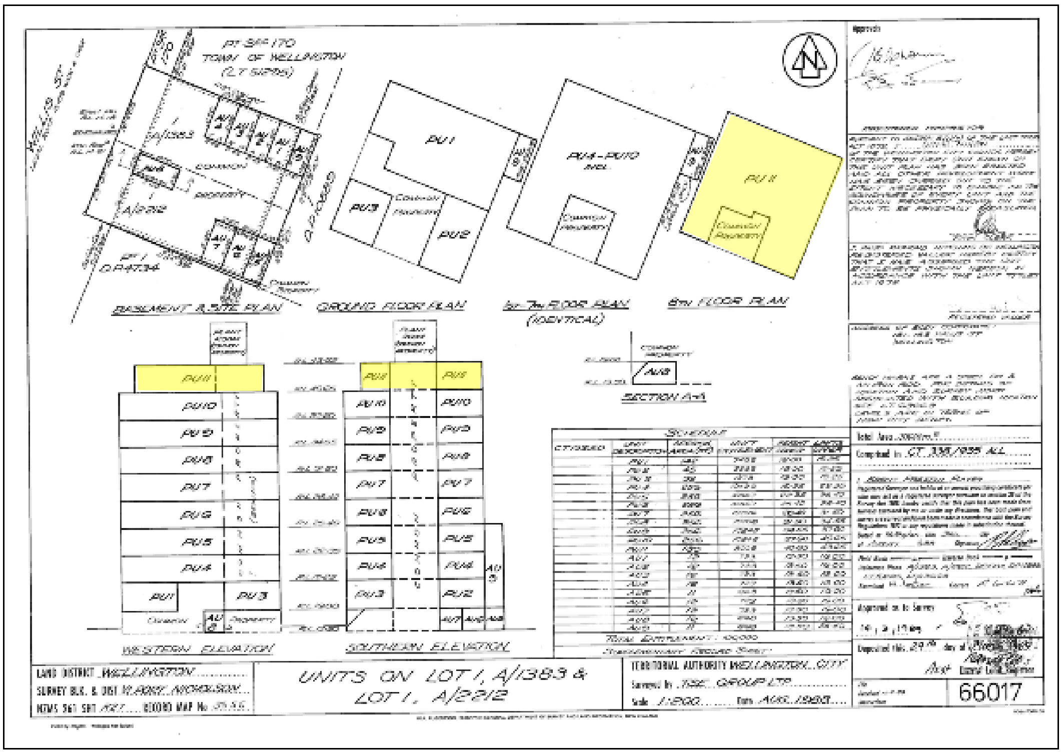
3.4. Mr. Saban applied to the Body Corporate to change the use of Unit 11 to that of residential. **This was denied** as the Body Corporate rules did not allow for this change. (clause 30 Rules for ANZAC HOUSE Body Corporate No 66017).

3.5. Mr. Saban, however, decided to proceed with his plans and made changes to the building to bring it to code. On 24 October 2010 the WCC consented the change of use (***Change of Use - to level 8 from working light/commercial to residential - 1 unit only - Unit 11 ANZAC House****)*.

3.6. Sometime following the change of use, Mr. Saban changed the western façade to include a door which opened onto the L 7 roof. It was understood that this door was put in place solely to assist with access to the roof for maintenance matters.

3.7. There is no record of Mr. Sabin using this area for recreational purposes. Certainly, no approval was sought, nor given, by the Body Corporate - nor could this be granted as the 860mm high level 7 roof parapet did not (and still does not) meet the legal requirements for the roof to be accessed for recreational purposes.

3.8. Unit 11 is shown to encompass a floor plate of approximately 180$^{m2.}$ and pays Body Corporate Levies on a per ^{m2} basis. The site plan does not identify the presence of a balcony.



SCHEDULE					
C.T. ISSUED	UNIT DESCRIPTION	APPROX. AREA (m^2)	UNIT ENTITLEMENT	HEIGHT LIMITS LOWER	UPPER
	PU1	142	7462	16·00	19·25
	PU2	45	2252	16·00	19·25
	PU3	32	1273	16·00	19·25
	PU4	256	10420	19·25	22·35
	PU5	256	10567	22·35	25·40
	PU6	256	10567	25·40	28·40
	PU7	256	10706	28·40	31·50
	PU8	256	10706	31·50	34·55
	PU9	256	10845	34·55	37·60
	PU10	256	10845	37·60	40·65
	PU11	180	8006	40·65	43·65
	AU1	12	723	13·50	16·00
	AU2	12	723	13·50	16·00
	AU3	12	723	13·50	16·00
	AU4	12	723	13·50	16·00
	AU5	11	668	13·50	16·00
	AU6	12	723	13·50	16·00
	AU7	12	723	13·50	16·00
	AU8	12	668	13·50	16·00
	AU9	11	668	13·50	25·40
TOTAL ENTITLEMENT: 100,000					
SUPPLEMENTARY RECORD SHEET:					

3.9. Accordingly, the insurance levies and potential payment for damage, etc. are allocated on the same basis. However, the occupants of all other units, by-in-large, occupy the building between the hours of 8:00 AM and 6:00 PM, Monday to Friday. Whereas the current occupants of Unit 11, occupy the unit on a 24/7 basis.

3.10. Historically, the building has been fully secured between the hours of 6:00 PM and 8:00 AM, Monday to Friday and all-day Saturday and Sunday. This is no longer the case.

3.11. With the change of use to Unit 11 (now converted to residential) the occupants of that unit access and use the common areas such as lifts, foyer and stairs on a disproportionate basis and this has placed the security of the remaining floors at a greater risk during the out of business hours.

3.12. What is clear, is that despite there being BC rules expressly forbidding the change of use, Mr. Saban proceeded to convert Unit 11 to residential. Following this, the Wellington City Council (WCC) sanctioned the change by providing a code of compliance, allowing the change of use. See below paragraph 30 ANZAC House BC rules and extract from the WCC Lim report.

3.12.1. No owner of any Unit shall use or permit to be used the Unit or any part thereof for any purpose other than for offices, meeting rooms, function rooms, retail, except food (for ground floor), and such other purposes as the Body Corporate shall approve and ***shall not permit or allow the use of the same or any part thereof for any purpose including any residential purposes, whether temporary or permanent,*** *nor for any other use conflicting with zoning ordinance or by-laws for the time being in force.*

LIM: SR 550213
Property: 181 Willis Street, Te Aro
Legal description: Lot 1 A 1383, Lot 1 A 2212

This is a list of building permits and/or building and other consent types held at Archives for the above address. Digital copies of these records, which usually include plans, can be accessed through the Building Consent Search Service. Charges and turnaround times apply. Please ring (04) 801 2096 or email consentsearch@wcc.govt.nz for more information.

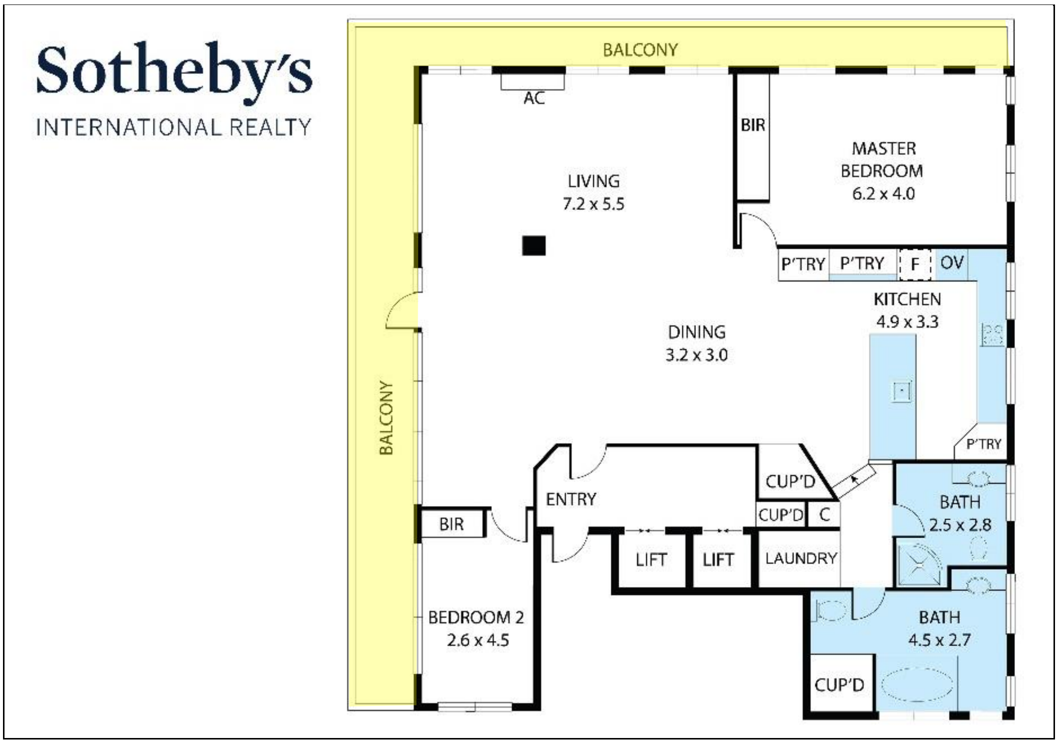
170883	aBLDG CONSENT Regular Under	24/10/2007	181 WILLIS STREET	3.2 Change of Use - to level 8 from working light/commercial to residential - 1 unit only - Unit 11 ANZAC House	LOT 1 A 1383	Completed

3.13. It is important to note that despite the change, the BC did not take any action in respect to the change of use and, as such, the existing BC rules are in part redundant and were not enforced by the Body Corporate. This has subsequently enabled Mr. Saban to sell Unit 11 as a residential dwelling (penthouse apartment).

3.14. Mr. Saban sold Unit 11 as a residential apartment on 27 August 2022 to Mr. Mark Darrow.

3.15. The apartment was marketed by Sotheby's International Realty and at my request, I have been provided with a limited number of images that were used to market the apartment.

3.16. The below image shows that when sold, the diagram **misrepresents** that Unit 11 has a balcony (highlighted by me in yellow) and if it was sold to Mr. Darrow on this basis, it was clearly misleading as the Level 7 roof does not, and has never, been part of the unit 11 floorplate.



4. CURRENT UNIT 11 SALE (ADVERTISING)

4.1. Unit 11 is presently on the market and is being marketed by Harry Eggers Licensed Real Estate Salesperson of Professionals Redcoats. The advertisement is repeated in various media such as Trademe property, OneRoof, Homes.co.nz and others

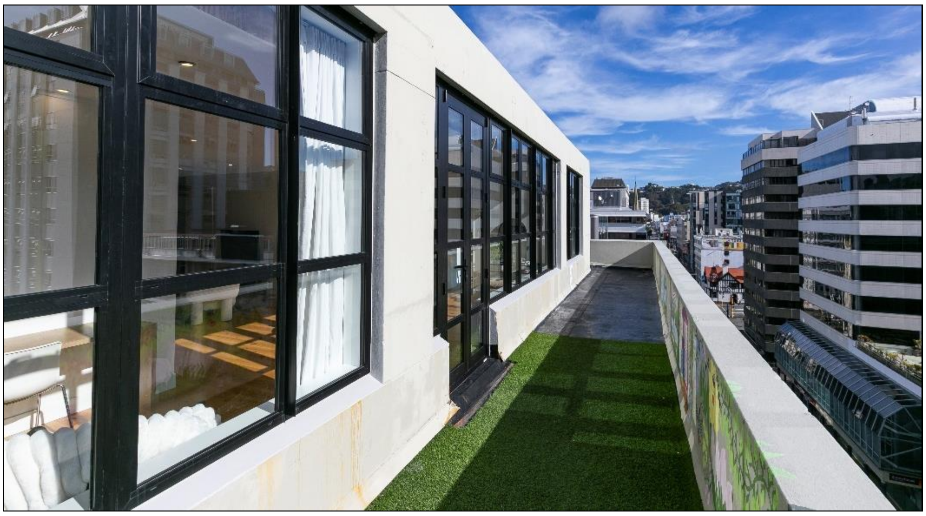
4.2. A review of the Professionals marketing text, photographs, floorplan diagram, 3D walkthrough and material (sent to me by Mr. Eggers) was clearly representing that Unit 11 has a balcony.

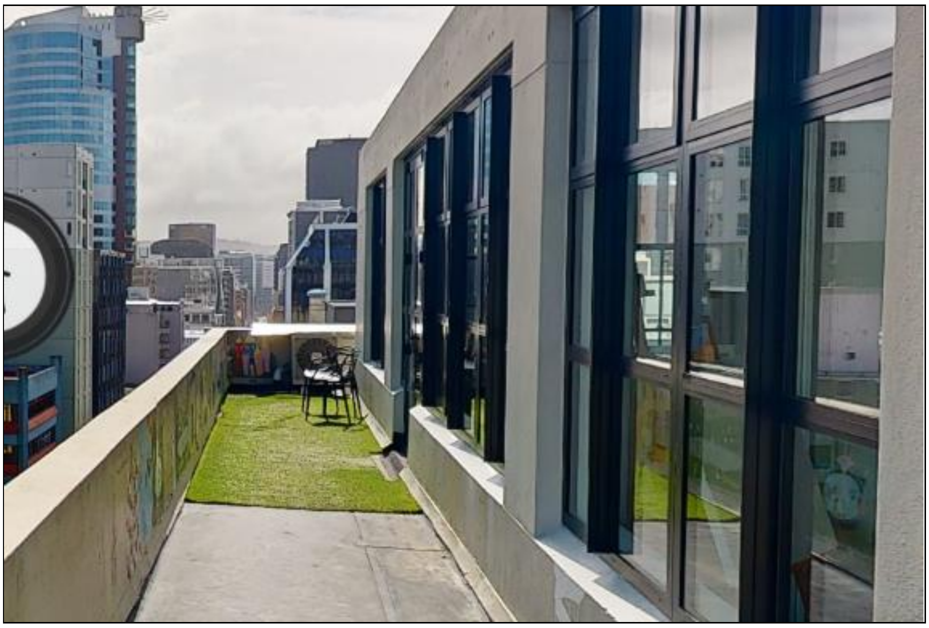
4.3. The following are extracts from the professionals online marketing along with images showing the balcony.

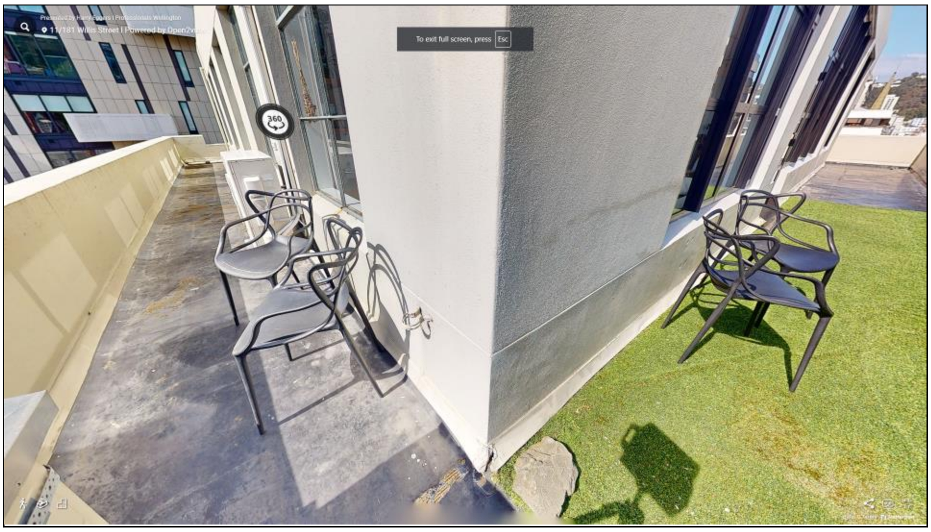
4.3.1. “Enjoy the **west-facing sun on the external deck**”,

4.3.2. “The Property comprises 167m2 floor area **plus deck space**”

The red border, shown in this image, clearly implies that the level 7 roof space forms part of Unit 11



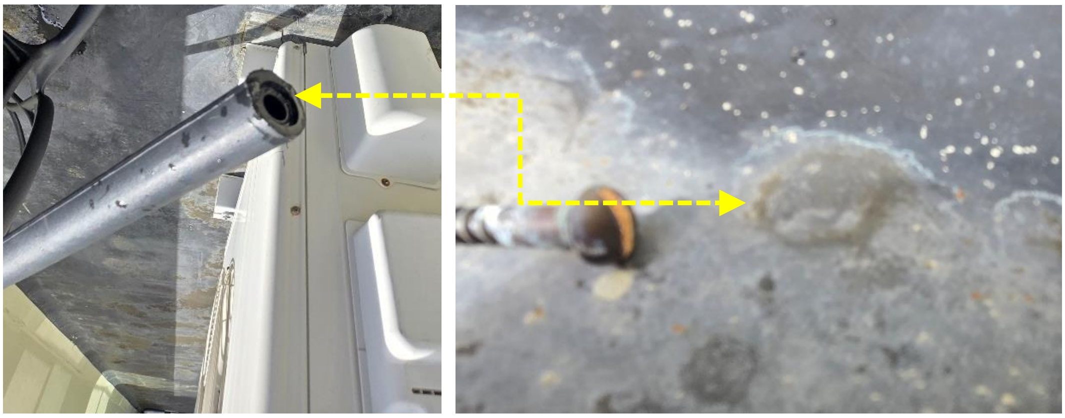




4.4. It is clear that, **not only** is Unit 11 on the market, representing that it has a balcony, but the images also shown in the online advertising illustrate clearly that it is currently being used for recreational purposes.

4.5. My own site visit on 11 October 2024 confirmed the presence of 4 chairs, artificial grass, curtain rails and a large rock used to hold down the artificial grass, remain present on the level 7 roof.

4.6. The chairs have pointed feet which are beginning to penetrate the butanol roof.



4.7. I wrote to both Mr. Darrow and Mr Eggers separately and explained the BC position. I reinforced that the L7 roof, was just that, **IT IS NOT A BALCONY** and that it is not to be accessed (used) for any other purpose than that of maintenance.

4.8. Mr Eggers replied stating that they have now removed any reference that there is a balcony that forms part of the unit 11 sale.

4.9. Mr. Darrow, to his credit, readily accepted the BC position and similarly advised that he, too, would instruct the advertising be amended immediately.

4.10. During the recent upgrade to the apartment, a new double door (floor to ceiling height) was installed. These continue to provide access to the western side of the Level 7 roof.

4.11. BC rule 32 (i) states:

*4.11.1. Observe all legal and practical requirements relating to **health and safety issues** and to comply with all statutes, ordinance, proclamations, orders or **regulations**, present or future affecting or relating to the use of the unit and with all requirements which may be made or notices, orders which may be given by the governmental, semi-governmental, city, municipal, health, licencing, civic or any other authority having jurisdiction or authority over or in respect of unit or the user thereof and shall keep the Body Corporate indemnified in respect to all such matters referred to in the paragraph.*

4.12. Naturally, unless **the existing double doors** are fully secured so that the occupants cannot freely open them and access the roof, Mr. Darrow places the occupants (along with any visitors to the apartment) at a significant risk (falling from height) by allowing direct access to the level 7 roof via these doors. He also places himself and the BC at risk as providing access to this non-compliant area could also lead to a prosecution by WorkSafe.

4.13. I again emphasise that the existing 860mm high parapet is **not compliant** in respect to this area being accessed as a balcony.

5. LEVEL 7 & 8 ROOF LEAKS

5.1. It has been suggested that the L 7 & 8 roofs have failed to cope with the excess volumes of water that have arisen over the past few years.

5.2. Level 7 & 6 have experienced some water egress, resulting from the overflow of the northwest rain-head/drain and similarly, unit 11 (level 8 apartment) has experienced similar issues along the north face.

5.3. Although the BC has previously been advised that the roof **may** need replacing in the near future, and that this should be planned for in the long-term maintenance fund, Mr. Winton of Building Science Limited, inspected the roof and has concluded that it is currently in good condition.

5.4. It is believed that the leaks were the result of blocked drainage pipes and not the inability of the rain-heads and downpipes to adequately cope with higher-than-expected volumes of rainwater.

5.5. High Rise were engaged by the BC to investigate and, in doing so, identified a blocked downpipe. When this was cleared the water drained away.

5.6. A quote for remediation and general maintenance was prepared and when Mr. Darrow was advised that the work was to proceed, he unhelpfully refused access to the contractors. Accordingly, the process came to an abrupt halt. The refusal of access was endorsed by Mr. Arie Moore (Mr. Darrow's solicitor) in his letter dated 15 May 2024 Paragraphs 14 &15.

5.6.1. Our client is refusing the Body Corporate and or contractors access to the 8th floor on the basis that the proposed High-Rise repairs are largely cosmetic and do not solve the underlying problem.

5.7. Remedial work required

5.7.1. Mr. Winton of Building Science has now completed a detailed, independent assessment of the Level 7 & 8 roofs.

5.7.2. Mr. Winton has identified that the butanol roof material on both level 7 and 8 are in good condition and that no failures were noted.

5.7.3. There is a broken downpipe on the north side of the unit 11 apartment. It is understood that this was broken by contractors engaged by Mr. Darrow.

5.7.4. There are silicone sealant failures around the unit 10 heat pump penetrations.

5.7.5. There are moisture bubbles in the level 8 west facing parapet which indicate a failure in the parapet surface coating.

5.7.6. Water is currently leaking through the level 7 ceiling (below the northwest rain-head) indicating a blockage of the rain-head or an issue with the associated sealant.

5.7.7. The Building Science report provides recommendations for remedial work, and this should be implemented without further delay.

6. UNIT 11 WEST FACING WINDOW REPLACEMENT

6.1. There is an escalating situation developing, regarding the replacement of the **west facing** unit 11 windows (level 8). These replaced windows include a new set of double doors.

6.2. As late as 9 October 2024 the contractors (Best Build Construction Limited) who supplied and installed the windows were threatening to remove the windows and doors on the basis that there was an amount outstanding and that they had an expectation that the BC were liable for that payment.

6.3. Notwithstanding which windows were actually the subject of dispute - I, in the first instance, asked Best Build to provide me with a copy of their quote and also any correspondence relating to the acceptance of their quote.

6.4. After a number of emails where Mr. Brendan Clark of Best Build insisted I speak with Mr. Darrow he finally, in an email dated 9 October 2024, stated:

6.4.1. We entered into a contract with Mark so Best you speak to him. Regardless of the fact. The window is coming out at cob today should we not be paid.

6.4.2. You and Mark need to sort this out as it has nothing to do with me.

6.5. I responded as follows:

6.5.1. Based on your email below, it is now clear that your contract is with Mr Darrow and not the Anzac House Body Corporate BC66017.

6.6. I have not been provided with any correspondence that would, in any way, suggest that Best Build have engaged with the Body Corporate for the purpose of accepting a quote to replace the windows and double doors on the west facing side of unit 11. Similarly, I have not been provided with any documentation from the BC where it accepts that the BC has an obligation to pay for the replacement of the west facing windows and doors- subject of this dispute.

6.7. As of todays date, the windows and doors remain in place.

6.8. I have instructed that Complete Body Corp Solutions Ltd immediately remove any invoices from their system as there is no agreement in place to pay Best Build for anything other than what had been agreed to, in respect of the unit 11 flood damage.

6.9. Following my correspondence to Mr. Darrow and Best Build, Mr. Darrow sent the following:

From: Mark Darrow <mark@darrow.co.nz>
Date: 17 October 2024 at 5:49:10 PM NZDT

No response has been received within a reasonable timeframe for what is a very straight forward matter. It is unreasonable to expect the BC and/or Committee to take months to deliberate on a matter already agreed to in writing.

6.9.1. ***On behalf of the BC*** *I have today paid the amount of $31,173.21 owing to the construction company to prevent the bank from appointing a receiver against* *that company as at 8am tomorrow morning. While mainly for the windows I also understand there is some painters hours relating to flood damage also. The complete disregard for the builder's situation who did the work in good faith on your written confirmation and overall the abdication of the Committee's responsibility is frankly outrageous and professionally negligent.*

6.9.2. ***The amount is now owing by the BC to MCD Capital Limited*** *and attached is an invoice which is due for payment immediately.* ***If the amount is not paid in full by 5pm tomorrow (Friday 18th October 2024) then my solicitor will start the legal process with any other costs thereof attributable to the BC****.*

6.9.3. *In the meantime* ***I am withholding any Body Corporate Levy payments as an offset,*** *(as previously noted by my solicitor) for as long the issue remains unresolved.*

6.9.4. *The bank accounts details for payment are included at the bottom of my invoice and trust this will be paid tomorrow.*

6.10. In respect to this latest invoice, I have also asked that the invoice not to be loaded into any system for payment, pending further advice.

6.11. The issue of the unit 11 windows was discussed at the 2023 ANZAC House Body Corporate AGM. This meeting was held on 2 November 2023 and attended by 5 out of the 11-unit representatives with the addition of two proxy votes.

6.12. Item 10 (2023 Annual General Meeting Minutes) Discussion of Long-term Maintenance Plan and funding thereof, brought about a discussion regarding the BC's proposed contribution to the cost of the steel window frame repairs. "*It was agreed that the cost of* ***window repair*** *should be shared 50/50 between the unit owner and the BC. It was noted that the internal items are owner responsibility and external items are Body Corporate responsibility. It was also noted that any improvements beyond basic maintenance and repairs that contribute to the betterment of the unit are at the Unit Owners expense."*

6.13. I am aware that various emails sent to the BC by Mr. Darrow and his solicitor continue to reference that the BC agreed to **replace** the windows. This is simply **incorrect** and neither

Mr. Darrow nor his solicitor have identified any correspondence to the effect where the BC have agreed to **replace** the windows.

6.14. Correspondence from MCD Capital dated 6 January 2023 and signed by Mr. Darrow, among other items, references the 2023 AGM and states:

*6.14.1. The "agreement" made at the meeting (on whatever legal basis that was, as it was not a resolution and has no precedent), that owners **would pay for 50% of window replacement**, holds no water and has no precedent.*

6.15. This statement by Mr. Darrow is factually incorrect. He is quoting the 2023 AGM minutes (item 10) where it is clear that it was **repairs and not replacement**, that was documented and agreed to.

6.16. In the same correspondence Mr. Darrow, for the first time, describes the windows which are in dispute. He states.

*6.16.1. "The deterioration of the **north facing** windows in unit 11 are the frames, not the flashings as represented by the Committee Chair in the minutes. The bottom part of the iron/steel frames have simply rusted through.*

6.17. Later in the correspondence under a heading titled My urgent requests are repeated as follows:

*6.17.1. That the BC immediately replaces the **3 North facing windows** in unit 11 as urgent external maintenance.*

6.18. It is clear from this correspondence that Mr Darrow is referencing specific windows that face **North.**

6.19. The **north facing windows** are again referenced in a letter sent to the BC by Arie Moore of Reflective Construction Law Limited dated 15 May 2024. At paragraph 20 he states:

6.19.1. "The outcome at the AGM appears to be that affected owners would pay 50% of window replacement".

6.20. The statement by Mr. Moore is again factually incorrect. It was 50% of **repair** not replacement that was agreed to.

6.21. Also, in his letter Mr. Moore at paragraph 21 appears to agree that **it was repair**.

6.21.1. *"Windows are a critical part of the building structure and the external waterproofing of the building. The obligation to **repair** these is clearly within the scope of the Body Corporate's responsibility, not for an individual unit owner.*

6.22. Further at paragraph 22 Mr. Moore reinforces Mr. Darrow's position - that it is the **north facing** windows that are in issue.

6.22.1. *"It is important to clarify that it is the frames that have deteriorated on the **north facing windows in Unit 11**, not the flashing as represented by the Committee Chair in the minutes".*

6.23. As recent as 3 October 2024 Mr Darrow confirms that the windows, in issue, are the **north facing windows**. He attaches two images which **show 3 north facing windows**.

6.24. Below the images is the following body of text.

6.24.1. Hi Ashley, Mark. The position with the windows is set out in our letters dated 15 May 2024 and 6 June 2024, including why the 50% allocation recorded as an outcome of the 2 November 2023 AGM is not valid. Moreover, this would need to be dealt with as part of the levy process for the body corporate.

6.24.2. The maintenance committee has agreed to address the windows, and this is reflected in your 1 August 2024 email indicating that the committee has agreed to ***<u>repair</u> 3 windows****. See snip below.*

AM **Arie Moore <arie@reflectivelaw.co.nz>** 1 October 2024 at 5:23 PM

RE: Payment

To: Mark Darrow <mark@darrow.co.nz>, admin@cbcs.nz <admin@cbcs.nz>, Hide

Cc: Lucy McIntosh (Complete Body Corp Solutions) <finance@cbcs.nz>, Shaynee Falloon <admin@crlimited.com>, Ben Duflou <ben@cbcs.nz>, Sam McCutcheon <sam@reflectivelaw.co.nz>

Hi Ashleigh, Mark,

The position with the windows is set out in our letters dated 15 May 2024 and 6 June 2024, including why the 50% allocation recorded as an outcome of the 2 November 2023 AGM is not valid. Moreover, this would need to be dealt with as part of the levy process for the body corporate.

The maintenance committee has agreed to address the windows and this is reflected in your 1 August 2024 email indicating that the committee has agreed to repair three windows (see snip below).

Good Morning Sam,

Please see our answers below in red.

1. **Window repair (outstanding payment)** – The latest invoices remain unpaid, can these be paid urgently please. **This has now been paid.**
2. **Future work (window and roof)** – The final window replacement (stage 3 of 3) is underway and we understand that Brendan Clarke (Best Build) is meeting the Body Corporate representative on 7 August 2024 to detail the work that needs to be completed on the roof (the overflow pipes are currently insufficient). The overflow issue will need to be addressed as part of the roof repair and we understand that a process to identify and address this is in place (which is appreciated). **The committee has agreed to 3 windows.**

The invoices are addressed to the Body Corporate, and the builder has carried out the work for the Body Corporate. To turn around now and refuse to pay is simply not justified.

If payment isn't made, the builder would be entitled to bring proceedings and recover the costs of doing so from the Body Corporate.

We are happy to discuss, but consider the need for payment is straightforward.

Regards,

Arie Moore
Director

Reflective Construction Law

Mob 027 457 9203
Connect with me
www.reflectivelaw.co.nz

Good Morning Sam,

Please see our answers below in red.

1. **Window repair (outstanding payment)** – The latest invoices remain unpaid, can these be paid urgently please. **This has now been paid.**
2. **Future work (window and roof)** – The final window replacement (stage 3 of 3) is underway and we understand that Brendan Clarke (Best Build) is meeting the Body Corporate representative on 7 August 2024 to detail the work that needs to be completed on the roof (the overflow pipes are currently insufficient). The overflow issue will need to be addressed as part of the roof repair and we understand that a process to identify and address this is in place (which is appreciated). **The committee has agreed to 3 windows.**

6.25. If it is Mr. Darrow's assertion that this standalone response as highlighted in red above represents that the BC has agreed to pay for the replacement of the west facing windows, then he is mistaken. He cannot simply take this as an agreement to pay. Both Mr. Darrow and his Lawyer cannot be in any doubt that from the very beginning, the BC position is, and has remained, that the BC agreed to contribute 50% of the cost **to repair the north facing windows.**

6.26. The response in red does not include the words repair or replace and should be taken in context with all previous correspondence which stipulates 50% of **repairs**.

6.27. As can be seen above, the correspondence (from Mr Darrow and his lawyer) suggests that the contractor would be entitled to recover costs from the Body Corporate. As already identified, the contractor concerned has stated clearly that he entered into a contract with Mr. Darrow – not the Body Corporate.

6.28. In an email dated 1 April 2024 to the then BC Chairman (Marty Donoghue) Mr. Darrow Stated:

6.28.1. *Please be advised **I have ordered the windows and will be asking the BC to pay for them.***

6.29. Mr. Donoghue on 11 April 2024 in a response to Mr. Darrow questions in his email dated 10 April 2024, requested CBCS to advise Mr. Darrow that **no provision has been made for the windows as no acceptance of liability by the BC has been made**.

6.30. Earlier correspondence obtained when Mr. Darrow was in the process of purchasing unit 11, identifies that, prior to the purchase of this unit, **it was his intention to replace the north and west facing windows. Email below.**

On Thu, 25 Aug 2022 at 11:51, Harry Eggers <harry@redcoats.co.nz> wrote:

Hi Gillian

I spoke to your colleague just now regarding 181 Willis Street ANZAC HOUSE.

***We have a Purchaser (Mark Darrow)** whom would like to make an Unconditional Offer today for Apartment 11/181 Willis Street (Level 8 – owner is Ken Saban) once his Due Diligence is completed.*

Mark Darrow
P: 021888858
E:mark@darrow.co.nz

*The Vendor (via the Agent – Jason Knott) has conveyed clearly to us that the Body Corporate are in process and **due to replace the North and West side windows of Apartment 11.** The **Body Corporate Minutes (issued yesterday 24/08/2022) clearly does not show this at all. Hence Mark needs definitive clarity on as soon as possible:***

Is the BC replacing (at the BC's cost) the north and west side windows with new Double Glazing? Yes - so when? OR No?

If the BC is not replacing these windows now or in the near future can the new Owner replace the Windows now with BC approval and then invoice the Body Corporate?

Mark has indicated that he would like to get the windows replaced as soon as practically possible if he purchases the Apartmen*t. Access is straight forward and wont need scaffold.*

SO, we need this clarification please as it will affect the Offered Price to the Vendors (Ken Saban).

Gillian can you please call Mark on 021888858 or confirm in writing back to Mark and I as soon as possible?

Always on 021777806

Kind regards

***Harry Eggers** Real Estate Specialist & Licensed Real Estate Salesperson*

6.31. The BC response was as follows.

On 25/08/2022, at 1:22 PM, CBCS Body Corporate Manager <admin@cbcs.nz> wrote:

Hi Harry

Thank you for your email.

***CBCS does not have any knowledge around the replacement of the windows**. The best option would be for the owner to contact the maintenance committee at ANZAC House.*

Kind regards,
Gillian Brown
Body Corporate Manager

6.32. Mr. Eggars subsequently contacted Michelle Mazey (the then BC Chairperson) and spoke with her on the telephone. Michelle subsequently detailed the conversation in an email to members of the then BC maintenance committee.

I have talked on the phone with Harry and explained that I have not been able to find any discussion in any minutes about the replacement of all windows to double glazing as outlined below. I have discussed with him the fixing of the damaged windows that were bought to our attending last Friday. (Making watertight ASAP and having them repaired).

6.33. It is clear from this correspondence that Mr. Darrow intended to replace the north and west facing windows following his purchase of the unit 11 apartment. The correspondence, available at this time, clearly showed that the BC was not discussing replacing the north or west facing windows on level 8 (unit 11).

6.34. In his email dated 25 August 2022 Mr. Eggars included the following:

From: Harry Eggers <harry@redcoats.co.nz>
Sent: Thursday, 25 August 2022 5:35 pm
To: Michelle Mazey <michelle@clubsnz.com>
Cc: Mark Darrow (mark@darrow.co.nz) <mark@darrow.co.nz>; jason.knott@nzsir.com
Subject: FW: 11/181 Willis Street ANZAC HOUSE (Level 8) - BODY CORP QUERIES - Complete Body Corp Solutions

Hi Michelle

SO, we need this clarification please as it will affect the Offered Price to the Vendors (Ken Saban).

Harry Eggers   Real Estate Specialist & Licensed Real Estate Salesperson

6.35. It can be taken from this early correspondence that Mr. Darrow always intended to replace the west facing windows. The Professionals correspondence advises that the BC position was needed as it would affect the offered price to the vendors.

6.36. Following the purchase of the unit 11 apartment, a quotation was obtained by Mr. Darrow from Cozy NZ (dated 31 July 2023), for the replacement of:

6.36.1. 1x 1870 x 1570 window (W1)

6.36.2. 1x 2140 x 2720 window (W2)

6.36.3. 1x 2600 x 5480 window with a ***1200 x 2700 double door*** *(W3)*

6.37. The windows and door replacement (referred to in the quote) relate to the **west facing windows** and the replacement of the pre-existing double door.

6.38. It is clear from this quote that Mr. Darrow’s intention was to replace the west facing windows and doors and not the north facing windows that he and his solicitor had been referencing as the leaking windows.

6.39. When providing marketing material to prospective purchasers, Mr Eggers states:

6.39.1. Please see the relevant information below:

6.39.1.1. The Property comprises 167m2 floor area ***plus deck space***

6.39.1.2. The Vendors have given the Apartment a ***major upgrade including new double glazing (west side****) during their ownership tenure.*

6.39.1.3. Builders Report – None. Purchasers are encouraged to engage their own building inspection.

6.39.1.4. The Home is not on the Earthquake-Prone Buildings Register (EPB Register). There has no EQC claims past or present. See Vendors EQC Disclosures

6.39.1.5. The is a WCC Encroachment License that covers some of the land at the front of the Property. Full details in the Dropbox.

6.40. As a unit owner, it concerns me that the BC has been under the impression that it is the **north** facing windows that were in issue - when it has always been the intention of Mr. Darrow to upgrade the **west** facing windows and doors using BC funds. This is reinforced by the August 2022 correspondence, generated prior to purchase.

6.41. Other members of the maintenance committee are similarly of the impression that it was always the north facing windows that were at issue.

6.42. None of the correspondence makes any reference to the double door being an issue and yet it has been replaced with a taller double door (double glazed) along with the expectation that the BC will pay for this upgrade.

6.43. Clearly the Professionals marketing material recognises the replacement of the windows and doors as an **upgrade**.

6.44. It is concerning that already an amount exceeding $25,000.00 has been paid by the BC, in good faith, to Best Build for work that the unit owners believed to be the agreed 50% contribution to the repair of the north facing windows.

6.45. It is also concerning that future new owners of unit 11 may also make a claim for the north facing windows – given that the BC funds appear not to have been used for this purpose.

6.46. To confuse matters Mr. Darrow sent the following email to Mr. Donaghue on 23 February 2024.

On 23/02/2024, at 2:53 PM, Mark Darrow <mark@darrow.co.nz> wrote:

Thanks Marty appreciated the call.

I currently have a builder on site doing some renovations, and had included the windows on his list to look at / replace.

*Contact details are Brendon on 021 242 6616 if you would like to view the 3/4 windows with him that need replacing. Given it is the steel frames that have rusted through **(not the aluminium inserts)**, I don't believe repair is possible.*

I respect some other owners may be against replacing them (because costs are shared), but my approach is more fundamental i.e. what is and isn't the BC's (collective) responsibility.

6.47. The implications of this email are that it **identifies the aluminium inserts which are only present on the west facing windows.**

7. SUMMARY

Change of Use

7.1. The previous owner of level 8 (Unit 11) applied for and was denied approval by the BC to convert the Level 8 office to residential.

7.2. Without the BC consent the owner proceeded with his plan, made the necessary improvements to the fire alarm system and obtained the necessary consent from the WCC.

7.3. The BC did not challenge this change and by default appears to have accepted the change of use.

7.4. Similarly, although the BC has not approved the change, neither has it taken steps to amend the BC rules to reflect its status, that being 10 commercial units and 1 residential unit.

7.5. The change of use has bought about additional security risks to the commercial users in that the building is no longer secured during the evening and weekends.

7.6. The BC should, as a matter of urgency, meet to resolve this anomaly and if it decides to accept that Unit 11 is a residential apartment, then the BC operating rules need to be updated to reflect this position.

Level 7 roof

7.7. The parapet on the level 7 roof does not meet the minimum barrier height requirement of 1.1m. and accordingly, it should **not** be used (or advertised) as a recreational space.

7.8. The new double doors that have been added to the Unit 11 apartment will need to be secured so that the occupants of that area cannot open the doors and walk out onto the roof.

7.9. The current "non restricted" access to the roof puts the occupants and any visitors at grave risk of personal harm.

7.10. Steps must be taken to ensure that the unrestricted recreational access to the Level 7 roof is eliminated.

Window replacement

7.11. The question of three windows "being agreed to" has never been in dispute.

7.12. What is disputed is the detail surrounding what has been specifically agreed to, in respect of the three windows.

7.13. An in-depth discussion is remembered by those who attended the 2023 AGM.

7.14. The discussion traversed the following:

7.14.1. Given that external aspects of the building's maintenance are covered by BC and that internal aspects of maintenance are covered by individual owners – those present were in agreement that the accepted approach, when dealing with repairs to window frames (considered to be both external & internal aspects of the building) would be for these costs to be split 50/50 between BC and the owner.

7.14.2. The BC is not disputing that three north facing windows needed repair.

7.14.3. The BC is not disputing that it agreed to pay 50% of the costs associated with the **repair** of three **north facing windows**.

7.14.4. The BC is refuting that the level 8 windows required full replacement.

7.14.5. The BC is refuting that it agreed to pay 100% of the cost of repair or replacement of the three north facing windows.

7.15. Mr. Darrow holds the view that a 50% contribution is not acceptable.

7.16. The BC rule 14(a) states that the Body Corporate shall –

7.16.1. ***Repair and maintain** all structures, doors, **windows,** rooves, exterior and interior surfaces, chattels, fixtures, and fittings including stairs, lifts, elevators, and fire escapes used or intended, adapted, or designed for use, in connection with the common property or the enjoyment thereof.*

7.17. The outside of the building is common property, and the window frames are the responsibility of the Body Corporate. Accordingly, was the BC decision (to pay 50% of repair versus 100% of repair) an appropriately informed decision?

7.18. Importantly however, is that the BC rule references **repair and maintain**, not **replace and upgrade.**

7.19. Furthermore, given that the **north facing windows have not been repaired**, then is it reasonable to suggest that the BC should not have paid any costs associated with the replacement and total upgrade to the west facing windows?

7.20. For the unit 11 owner to proceed and instruct that, three west facing windows and doors be fully replaced and upgraded, without prior agreement from the BC for this scale of work, is completely inappropriate – particularly when the unit owner had no intention of covering any of these costs himself. Mr Darrow was always aware that the BC had only ever agreed to **REPAIR** the three **north facing windows** as represented by him and by his lawyer as being the windows requiring urgent attention.

7.21. Emails & dialogue, perpetuated by Mr. Darrow and his legal team, have consistently referenced the north facing windows. Images of the north facing windows have been provided (when discussing the issues faced) and have been referenced on more than one occasion. The inference always being that it was the north facing windows requiring repair. I do note, however, that in his email to Mr Donaghue in February 2024, Mr. Darrow references the aluminium joinery stating, "*Given it is the steel frames that have rusted through (**not the aluminium inserts**), I don't believe repair is possible".* This naturally would require an understanding by the BC that by referencing the aluminium joinery in this way Mr. Darrow was, in fact, discussing the west facing windows.

7.22. The BC has always been of the view that the discussions and agreements undertaken at the 2023 AGM related to the repair of the 3 north facing windows. Accordingly, the 50% (of repair cost) which was agreed to by the BC at the 2023 AGM, was also in respect of these same north facing windows.

7.23. Having read through emails and documentation provided and having had discussions with both previous two Chairpersons, it is concerning to note that the specific mention of leaking **west facing windows** does not appear to feature in any of the correspondence that I have been provided with.

7.24. I am now mindful that it is now the west facing windows which form the basis of this dispute. It is also the west facing windows which we now know to be the subject of all previously paid invoices to Best Build.

7.25. This raises some serious questions.

7.25.1. Has any agreement ever been reached between Mr Darrow and the BC in respect of the West facing windows?

7.25.2. Given that the BC's undertaking was to approve the repair of the three north facing windows, have the significant invoices (which have already been paid by the BC) been paid in error?

7.26. Following the building inspection report, it is now clear that whilst representing that the north facing windows were leaking, **no repairs** have been carried out in respect to any of the north facing windows.

7.27. What is also clear, is that not only was the aluminium joinery along the west face replaced, but the two recently installed aluminium doors have also been unnecessarily replaced. The new doors have an increased height to provide a floor to ceiling betterment.

Unit 11 Sale

7.28. Unit 11 is presently on the market and is being marketed by Harry Eggers Licensed Real Estate Salesperson of Professionals Redcoats.

7.29. Due to misleading advertising, I contacted Mr. Darrow and Mr. Eggers requesting that the advertising across all media required changing to reflect the true status of the Unit 11 entitlement.

7.30. Mr Darrow acknowledged the need for the necessary changes to be made and said that he would contact Mr. Eggers. Mr. Eggers also acknowledged the communication and removed some (but not all) images and incorrect wording from the online advertising.

7.31. Following a second email from me to Mr. Eggers further misleading material was removed.

7.32. I am now concerned that despite the acknowledgement that the online advertising was incorrect, Mr Eggers continues to mislead potential buyers with false statements (see below email)

*From**: Harry Eggers** <harry@redcoats.co.nz.*
Subject: 11/181 Willis Street - PROFESSIONALS RED26132
*Date: **18 October 2024 at 6:59:40 AM NZDT***
To: Mike Winton <mike.winton@icloud.com

Hi Mike

Thanks for your interest in Penthouse at 11/181 Willis Street!

To answer your queries:

*Body Corporate Fees = $2343 per month. This includes Building Insurance and contributions to the Long Term Maintenance Plan. For instance **the Body Corporate has just paid for high end brand new Double Glazing windows on the west facing side for Apartment 11.***

***There are no restrictions with the Body Corporate in terms of any Tenancy, AIR BNB or the like. You can rent / lease out to suit your needs**.*

The Apartment and ANZAC House is not on the Earthquake-Prone Buildings Register (EPB Register). There has no EQC claims past or present. The Building has an NBS rating of 41%. The Body Corporate had the Building checked after the quake last Saturday and there is no damage or any issues. This Building was built properly and has stood the test of time. See Vendors EQC Disclosures

This Apartment is (in my opinion) is so awesome as it is the only one in the Building, has been fitted out by the Owners to a very high specification. I have sold other Apartments around the city for $2M – 3M in new buildings that aren’t as appealing. You need to see it to appreciate it!

Quick Reference:

Configured as consented 3 Double Bedrooms + 2 Bathrooms + 1 Car secure car park

Body Corporate Fees = $2343 per month – includes Building Insurance

RV $880,000. (not reflective of market value) WCC Rates $3847pa.

Not on WCC EQC register

WCC LIM report is in Dropbox.

Please see the relevant information below:

The Property comprises 167m2 floor area ***plus deck space***

The Vendors have given the Apartment a major ***upgrade including new double glazing (west side)*** *during their ownership tenure.*

Builders Report – None. Purchasers are encouraged to engage their own building inspection.
The Home is not on the Earthquake-Prone Buildings Register (EPB Register). There has no EQC claims past or present. See Vendors EQC Disclosures

The is a WCC Encroachment License that covers some of the land at the front of the Property. Full details in the Dropbox

7.33. The continued disregard for the ANZAC HOUSE Body Corporate No 66017 operating rules places not only a potential purchaser at risk but similarly, also places a continued strain on the relationships that exist between the unit owners who comprise the BC.

7.34. As it stands, the Professionals marketing material, continues to reference the use of a balcony (deck space) and that there are no restrictions with the BC in respect to tenancy. Mr Eggers takes this even further by suggesting that it can be used as an **AIR BNB.**

7.35. The BC will now need to consider lodging a formal complaint with the Real Estate Authority (REA).

8. EXTRAORDINARY GENERAL MEETING REQUIRED

8.1. An extraordinary general meeting of all unit owners is now required to consider the content of this report and to reach some consensus on the following:

8.1.1. That the BC recognises that there has been considerable investment in converting Unit 11 to a residential apartment and the current owner, Mr. Darrow, purchased the unit in good faith believing that it was indeed accepted by the BC as a residential apartment. If the BC accepts that the Unit 11 apartment is to remain as a residential dwelling, then it should engage a suitable party to update the rules to reflect this position. In doing so, the BC must understand the implications in respect to the ongoing security and insurance ramifications of the building and ensure that any amended rules reflect the wishes and concerns of all those who are affected.

8.1.2. To enforce **<u>no entry</u>** to the level 7 roof, unless for the purpose of maintenance.

8.1.3. The Building Science report has identified several anomalies in respect to the Best Build invoices that have been paid thus far. The Building Science report makes several suggestions about the investigation/audit of various matters arising out of the invoicing. BC members will need to consider if it wishes to pursue these further avenues of enquiry.

8.1.4. Review and discuss Mr. Darrow's latest invoice for $31,173.21 submitted to the BC for payment, bearing in mind that this invoice, along with those already paid, relates to the **total replacement and upgrade of the west facing windows**.

8.1.5. Can the BC and Mr. Darrow reach a compromise in respect to the replacement of windows that were not approved by the BC to be replaced?

8.1.6. In view of the BC funds being used for the total upgrade and replacement of the west facing windows and doors (not for the north facing windows consistently referred to by Mr. Darrow and his solicitor as being the failing windows requiring attention) and recognising that Mr. Darrow always intended (pre purchase) to replace and upgrade the west facing windows and doors - can Mr. Darrow appreciate why the BC has held the view that it should not be expected to contribute to what is seen as the upgrade of his apartment?

8.1.7. BC to discuss and consider Lodging a complaint with the REA regarding the misleading material that continues to be provided to prospective unit 11 purchasers, by Mr. Eggars of the Professionals.

8.1.8. Engage a suitable roofer to make good any roof repairs as identified by Mr. Winton.

9. CLOSING

9.1. The performance of the Body Corporate, as a united entity, has been less than desirable.

9.2. Throughout the process, the responsibility for decision making has come down to individuals as opposed to the Body Corporate as a whole. This has been stressful and frustrating for the few individuals who have been prepared to step up and play an active role. This understandable frustration is evident in the email below, from Michelle Mazey Dated June 19, 2024.

Subject: RE: FW: Leak issues: ANZAC House

I have had a look over these invoices and feel that we just get them paid (Total $12946.76). We also need to arrange for an AGM and/or Special GM on how to move forward with all of this as they have stopped us from doing the work needed and ***neither myself or Marty are happy to keep dealing with all of this as NOONE from the Body Corporate even comments on any of the emails that we send for feedback.***

9.3. The collective BC must acknowledge its lack of engagement with the process.

9.4. Individual members cannot assume sole responsibility for authorisation of large invoices. These situations and decisions require participation from other members.

9.5. When emails are ignored and responses are not forthcoming, decisions are deferred, and obligations cannot be met. To this end, unit owners like Mr. Darrow are entitled to feel frustrated.

9.6. The key area of disagreement here is the question of repair versus replace. What cannot be debated is the issue of 50% versus 100% - whether the BC is repairing or replacing, it is the BC's responsibility to cover 100% of the cost.

9.7. The issue of north facing windows versus west facing windows is another murky area. The constant references to the north facing windows has made it difficult to understand why such a major upgrade to the west facing windows has taken place. There are, however, images provided by Mr. Darrow which show corrosion to the bottom steel rail of the west facing windows. Unfortunately, the BC members have been under the impression that the invoices approved thus far have related to the north facing windows.

9.8. Clearly some remedial work was also required on the west facing windows but the issue creating dispute relates to this question: - Could these windows have been repaired as opposed to being fully replaced and upgraded?

9.9. If Mr. Darrow had commissioned an independent building report (engaging an inspector who would NOT stand to gain from any work resulting from the recommendations made) and the findings of that independent report had recommended full replacement of the west facing windows and doors, then Mr. Darrow's claim (that this undertaking was reasonable and should be paid for by the BC) would have been considerably more straight forward to address.

9.10. Unfortunately, no such independent report appears to exist, which brings us back to the contentious argument regarding the need for replacement versus a maintenance issue which may have been adequately addressed by repair.

9.11. This matter has been festering for far too long and now needs to be resolved.

9.12. It can be fairly argued that both parties (BC and Unit 11 owner) have contributed to the confusion and frustration in respect of some of their actions.

9.13. It must be agreed that further incessant debate and lack of action benefits no-one and it is now incumbent upon all unit owners, along with Mr. Darrow, to find a way forward that enables all parties to bring this matter to a close.

9.14. I am happy to meet with individual owners, at any time, to discuss thoughts, suggestions and recommendations as to how closure can be achieved.

9.15. I would ask that all parties, in considering the information provided, be measured, realistic and fair in their thinking when submitting their views.

9.16. As Mr. Darrow is in the process of selling Unit 11, it is desirable that resolution of the above be expediated as the ongoing conflict is detrimental to the pending sale of unit 11.

9.17. I have asked Complete Body Corp Solutions Ltd to arrange a meeting for 1pm Tuesday November 12th, 2024. The meeting can be held in the Corporate Risks Board Room (Anzac House, level 6).

9.18. As the successful functioning of the BC is dependant on the full participation of all unit owners, I would respectfully request that all unit owners attend this meeting, in person, and do not rely on proxy votes.

9.19. The implications of the issues above have long term ramifications for all parties, and it is essential that all unit owners participate fully and can hear, first hand, the viewpoints of all parties.

Regards,

RUSSELL JOSEPH
Chairman **ANZAC HOUSE** Body Corporate No 66017

Building Report
ANZAC HOUSE

Inspection of Roof above Floors 7 and 8

Review of Correspondence regarding flood events

Body Corporate 66017

C/o- Russell Joseph

6/181 Willis Street

Wellington 6011

BUILDING SCIENCE

Purpose of Report

The purpose of the report is to explain what was observed during the survey of the roof above Unit 11, and the survey of the walkable roof space around Unit 11. In particular to explain the condition of the butynol roofing materials, to discuss the condition of the roof penetrations, parapets, and window joinery. Then review communications to the Body Corporate.

Brief summary of the inspection

- The parapet on the top floor is non-compliant for tenant access and is a fall danger when accessing the roof space.
- The parapet on the lower roof is non-compliant for recreational use and this roof is not to be accessed for any reason other than maintenance. This area should be locked off with access provided only by the body corporate officer in charge.
- The drainage capacity of the roof above 11 and the walkable roof around unit 11 are calculated to handle all water flows from all recent storm events, this means no further overflows, new pipes or an upgrade to the size of drainage pipes are required.
- The butynol roof, roof laps and rain-heads are working as designed, there is no reason to upgrade or replace what is currently in place.
- The west facing windows have been replaced and upgraded, the north facing windows are original and have not been replaced. This is contrary to what has been communicated in emails between the Unit 11 owner and the body corporate.
- Consequently further investigation into the invoices submitted and which exactly were the windows of concern, needs to looked into.

ROOF CONDITION - ABOVE UNIT 11

Objective	‣ To assess the condition of the roof
Top of Unit 11	https://gopro.com/v/468GLr3ymR04n
Butynol Condition	https://gopro.com/v/DkMEBl8PnwX5E
Access	From the roof accessed via door RHS of elevator on 8th floor
Health & Safety	A harness should be used under current regulations
Butynol Roofing	- Working as designed - good condition
Butynol Laps	- Working as designed - good condition
Rain-heads	- Working as designed - good condition - unblocked
Down-pipes	- Working as designed - one broken so needs to be repaired
Work Required	- Spray with slow release anti fungal to remove lichen.
	- NW Down-pipe on north facing wall needs to be replaced.
How much water can the roof handle per hour?	This roof with its four two inch pipes can clear 14,593 litres per hour, Cyclone Gabrielle was 10,920 litres per hour at its peak in Wgtn. So no risk of flooding. It would have needed all 4 drains to be blocked to flood.
Repair work observed	No recent repair work observed on roof - but mastic has been applied around the broken drain pipe coming out of north facing wall.

ROOF CONDITION - AROUND UNIT 11

Objective	▶ To assess the condition of the roof / penetrations / parapet
Roof around Unit 11	https://gopro.com/v/nq0XkOm8RVmJp
Butynol Condition	https://gopro.com/v/oKGdvBmye1wv6
Access	From the roof accessed via door RHS of elevator on 8th floor
Health & Safety	A harness should be used under current regulations
Parapet Height	- Non Compliant - below height requirements
Butynol Roofing	- Working as designed - good condition
Butynol Laps	- Working as designed - good condition
Rain-heads	- Working as designed - good condition - unblocked
Down-pipes	- Working as designed
Penetrations	- Poor condition
Work Required	- Spray with slow release anti fungal to remove lichen.
	- Clean and reseal penetrations see page 19
	- Check and seal north west rain-head
	- Service steel north facing joinery - corrosion present
	- Stop tenant access to roof - lock off door - non compliant
How much water can the roof handle per hour from the two roof parts.	This lower roof with its four two inch pipes can clear 53.45 mm of water per hour Cyclone Gabrielle was 40mm's per hour at its peak. No risk of flooding. It would need all 4 drains to be blocked to flood.
Repair work observed	No repair work observed on roof - but west facing windows have been upgraded.

ROOF CONDITION - IMPACT ON UNIT 10

Objective	▸ To assess the condition of the ceiling of Unit 10
Access	Via reception of Unit 10
Observation	- Moisture has entered and damaged ceiling tiles in NW corner
Work Required	- Seal penetrations above in north west corner.
	- Check the performance rain-head above

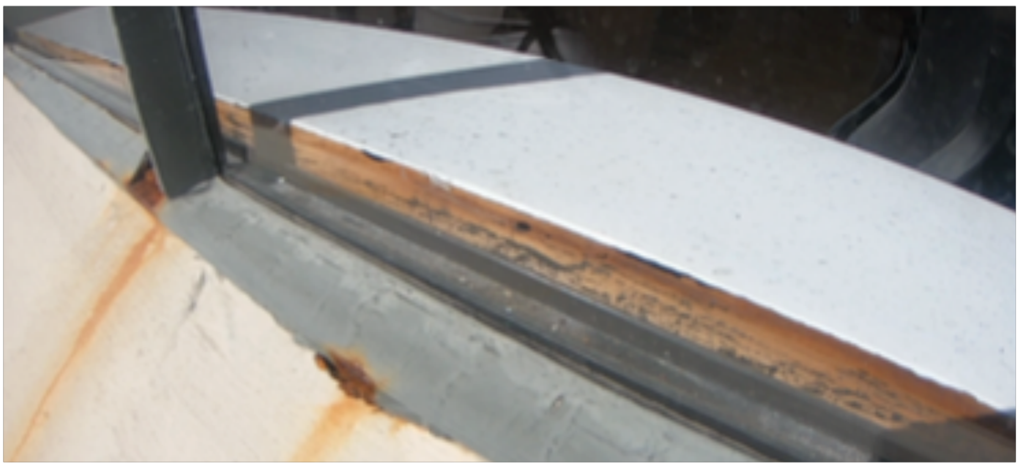
ROOF CONDITION - PARAPETS AROUND UNIT 11

ROOF CONDITION - PARAPETS AROUND UNIT 11

Objective	▸ To assess the compliance of the parapet for safe access to roof around Unit 11 for maintenance issues.
Access	From the roof accessed via door RHS of elevator on 8th floor
Observation	- The parapet height is 86 cm's high.
	- This is a compliance issue.
	- The parapet height is not compliant with building code F4 safety from falling, which requires a minimum barrier height of 1.1 meters in accessible areas.
	- This roof space belongs to the body-corporate and not to the owner of Unit 11. The legal responsibility for any accidents or falls belongs to the body corporate solely.
	- The owner of unit 11 when replacing the west facing joinery has installed a new door providing access for tenants to the roof space. There are tenant's chairs and fake grass carpet on the roof outside Unit 11 indicating use of the roof space.
Work Required	- Stop non approved access immediately to the roof around Unit 11 - this is a potentially legal risk to the BC.
	- Access is only for body corporate approved contractors working on the roof or heat pumps with appropriate safety equipment.
	- Install additional safety barriers if raising the parapet is not feasible. Install a barrier now to restrict the door opening.
	- The body corporate may wish to offer this roof space for purchase to the Unit 11 owner if felt appropriate by BC.

NORTH FACING WINDOWS

Objective	▸ To assess the condition of the North Facing Windows on Unit 11
Access	From the roof accessed via door RHS of elevator on 8th floor
Observation	- All north facing windows are showing signs of corrosion.
	- All north facing windows are original but have been painted.
	- No maintenance has been performed for a long time.
Work Required	- Seal head flashings with a mastic.
	- Have a steel window technician visit to see if the windows can be serviced. This is a specialised job.



WEST FACING WINDOW JOINERY UPGRADE

Objective	▸ To assess the new west facing window joinery.
Access	From the roof accessed via door RHS of elevator on 8th floor
Observation	- All the original steel / aluminium west facing joinery has been replaced by new double glazed aluminium joinery.
	- A new double door has been installed for roof access by tenants, but this area belongs to the body corporate.
	- This upgrade is "betterment" to what was originally installed.
	- This door access is extremely unsafe for tenants of Unit 11.
	- This door access creates a legal liability for body corporate.
	- This roof space is being marketed by the real estate agent as part of the dwelling that is being sold as at Oct 2024.
Work Required	- Block access as a health & safety issue for tenants.
Legal Risk	- The body corporate is legally exposed to issues arising from a fall event occurring at the current time.

COMMENTS IN RELATION TO COMMUNICATIONS

The Body Corporate has received communications from the owner and invoices from Bestbuild. In these communications there are mentions of recurrent flooding and inadequate repairs, tenants stopping paying rent, insurance companies not accepting claims and demands for reimbursements for joinery installed. These are all very serious matters.

31st July 2023

Quote from Cozy NZ to owner Unit 11. The quote is for replacing the west facing joinery . Price is for $34,509.73 and includes install. There is no discussion of 3 north facing windows.

30th April 2024 - Best Build - BBC

Bestbuild charges $1,049.095 incl 15% margin to engage Chemdry. BBC helped Chemdry lift carpet and mop for 10 hours over 3 days and charges $2,391.94 but then refills for same hours the next month on the 31st May, but charge 2 hours more then. Is this double billing? Is this two claims?

15th May 2024

From Lawyer to BC. Says 5 floods in past 12 months. Involving 3 separate insurance claims. Says roof belongs to building. Says repairs failed. Says outlets inadequate and need bigger outlets and downpipes and a secondary overflow. Refusing BC contractors access. Says window leaks known. Says a 50% replacement deal agreed to. Says 3 north facing windows are the issue.

31st May 2024 - Best Build - BBC

Bestbuild invoices for an insurance claim. (no date of flood event) Bills for 12 hours onsite helping Chemdry over 3 days, helping Chemdry to pull up carpet and mop. A job Chemdry is well equipped to do. BBC charges for 3 lots of paint, approximately 24 litres. And $180 for service fee and disbursements. A total of $2155.01 (who covered Chemdry bill this time? - did BBC fix the leak? What was the 24 litres of paint for?)

31st May 2024 - Best Build - BBC

This invoice is for a window install. There is a charge for 49.5 hours and some misc charges coming to $6,007.87 Does this mean that the windows were out at the time of the flood event? Could explain why there was no Chemdry bill?

▸ 6th June 2024

From Lawyer to BC. Says repairs underway and invoices will be sent to BC. Says roof is failing and Bestbuild will bill BC directly

30th June 2024 - Best Build - BBC

This invoice is for a window install. For an additional 100 hours of labour (following on from the initial 49.5 hours a month earlier) it is stated there were 5 full days of parking required and 2 half days. The bill is $20,735.34 and there is a charge of $9,040 which is unexplained?

30th June 2024 - Best Build - BBC

There is a flood claim invoice on this date again, making it 3 claims in three months for floods at the same time the windows were out of the wall, the windows taking 150 hours to be installed. There is a 4 litre of paint being charged here as well as 13 hours of labour at $85 per hour. So again the builders were already onsite and this time Chemdry is not involved. Why are things still leaking if BBC and Chemdry were onsite previously solving the flood issue and stopping the flooding?

▸ 19th September 2024

From Lawyer to BC manager Indicates a payment made less legal costs $3,441.95 (Re roof repairs, insurance cover etc.)Less loss of rent $2,250.00 (Re water egress and lack of roof maintenance - was notified and should have been part of the insurance claim) The deductions have been included in previous correspondence from myself and my solicitor. They clearly relate to shortcomings of the BC which I have effectively covered. Loss of rent would have been included in an insurance claim, had the BC made one - I understand they chose not to. (money is being deducted for roof repairs the owner of unit 11 has paid for to BBC? But has not stopped the leaks? - why no claim made by BC?)

▸ 3 October 2024.

- From Unit Owner to BC. 3 failed windows, leaks caused by inadequate roof drainage. Insurance company won't accept claim, Photos of one event. Has deducted costs. Says unit is for sale.

▸ 9th October 2024

From Unit 11 owner to the BC. Bestbuild were contracted for a refurbishment. During refurbishment the apartment has had 5 floods. BBC undertook remedial work and invoiced the BC. 3 windows were found to have failed. Did BBC allow unit 11 to be flooded, statistically very interesting to have 3 floods in 3 months, very unfortunate and quite uncommon, considering the two companies being onsite cleaning up and apparently trying to stop the leaks? - BBC are acknowledged leak experts and thats all Chemdry does 365 days a year?)

Observations

1. BBC has double billed the BC it appears on first two invoices.
2. BBC has also charged for helping Chemdry do their Chemdry job at $85 per hour.
3. Did the insurance company contact the BC to handle any claims?
4. Did the insurance company contact the BC to say it was declining claims?
5. The Unit 11 owner has said he has paid BBC to stop the flood leaks and has deducted money to cover that fee, but the floods kept happening?
6. 3 floods happened when BBC was onsite doing work for Unit owner. Did BBC cause the floods or did having the building open contribute to them?
7. We have received two quotes from other 2 window installers saying the installation of the windows would take 2 days. Or around 24 - 30 hours.
8. The cosy quote was for 4 windows and included installation and was for $34,000.
9. Quotes we have requested are between $24,000 to $34,000 installed.
10. The new west side joinery has been upgraded beyond what was originally there.
11. The three failing north facing windows have not been addressed, and the property is on the market. Are these windows no longer an issue, and have these concerns and repairs been included in the disclosure documents?
12. Unit 11 is being marketed as including a roof deck? Is that correct?
13. Why are there still leaks if BBC was onsite fixing the leaks to protect the remediation work they were doing at the same time?

14. Three photos were provided of one one flood event, yet all water appears to be sitting on top of the underlay, in three pictures. Discussion is made of the roof overflowing but there are no pictures presented of water coming in from the roof.

15. The three pictures indicate the wall paper is bubbling. Can we have it confirmed that the flood waters rose up above the skirtings to reach the wall paper in three separate rooms on the north facing walls, yet at the same time allowing the underlay to remain largely intact with only the carpet being removed in all of the pictures.

To assist all parties reach a fair and equitable solution would it be possible to:

1. Have access to the BBC photos of the claims they assisted Chemdry with?

2. Have photos of the roof repairs BBC charged the Unit 11 owner for?

3. Have the dates of the 5 floods that happened in the previous 12 months?

4. Have permission to discuss these claims with the Insurance company, to understand why they declined to settle the claims, and why they were bypassing the BC who as **the insured**, would usually be the party the insurer would communicate with, and to find out why the insurer chose instead, to deal with a member of the BC directly?

5. Have permission to discuss with Chemdry how they dried out Unit 11 and why they did not address the method of water entry when they were onsite?

6. Have BBC be able to cover off their uses of Resene paint in their flood damage bills of the 31st of May 2024, and 30th of May 2024.

7. Have BBC explain what their $9000 charge on their 30th June invoice is for, as part of the window install.

8. Have BBC explain where and when they solved the roof flooding issues, and what they did to do so. This needs to be disclosed to the BC for their records and should be disclosed to any future buyer of Unit 11.

9. Have it explained how if it wasn't the drainage system that was blocked, how exactly did the roof keep managing to flood, damage the wall paper and not require the underlay to be removed?

10. Have additional photos supplied of water coming down from the roof via the ceiling? Was the ceiling gib board replaced, and in how many of the floods was it replaced?

11. Have it explained why BBC engaged Chemdry themselves in April, and why the BC, or Unit 11 owner, or insurance company themselves did not engage Chemdry directly? Had the Insurance company as per communications from Unit 11 owner started refusing claims as early as April 2024, and if so why?

12. Have the BC confirm all the claims the BC handled as the insured party, and on which date were they were notified that the BC insurer was no longer prepared to cover water entry issues under their insurance cover until remediation issues were addressed?

13. I would imagine there will be an official email communication held by the BC administrators from the insurance providers to the body corporate, in their files, that should cover the date they were notified of loss of cover?

14. I am hoping that somebody, I.e tenants, body corporate, insurer, chemdry, Bestbuild or unit 11 owner will provide more than just the three photos I have seen to date that will show the previous flood damage from 4 other floods.

This would assist me greatly at this stage reviewing matters so far after the flood events have occurred.

15. Be provided with both the Unit 11 and Body Corporate quotes for fixing the roof, and the reasons for the need to add additional drainage to the roof.

16. I understand that both parties used different contractors and there was disagreement over the methodologies of the repairs and the level of repairs required.

17. Nothing has been done to-date other than the Bestbuild work performed and paid for by the Unit 11 owner, and this roof fix has apparently been deducted from BC fees owed, as noted on the 3rd of October email from Unit owner to BC administrator.

18. Could BBC provide at the precise location of the where this work was performed, as the only new sealant I have found is around a broken drain pipe coming out of the north facing wall?

19. If I have missed it, I need to note it down officially so the BC notes can be updated, and the real estate agent can update their own disclosures for the selling process of Unit 11.

DOES EXTRA DRAINAGE OR OVERFLOWS NEED TO BE ADDED TO THE ROOF?

At present, I am aware that there is a statement made that the roof is flooding. I have not yet seen the pictures of wet ceilings or water running down the walls, so in lieu of that I have taken the time to perform some calculations that should assist the parties.

	Above Unit 11	Around Unit 11	***Total Catchment***
Roof Size	184 Sqm over stated	89 sqm over stated	273 sqm
Drainage Pipes	4 * 2 inch pipes	Emptying onto this area	4 * 2 inch pipes
Drainage Capacity of pipes	**243.2 litres a minute**		14, 593 litres an hour
Can disperse	rainfall	of up to	**53.45 mm's an hour**

Now lets's measure the capacity of the roof against the largest flood events in Wellington in the last 2 years, to see if we can work out how the water entered the building.

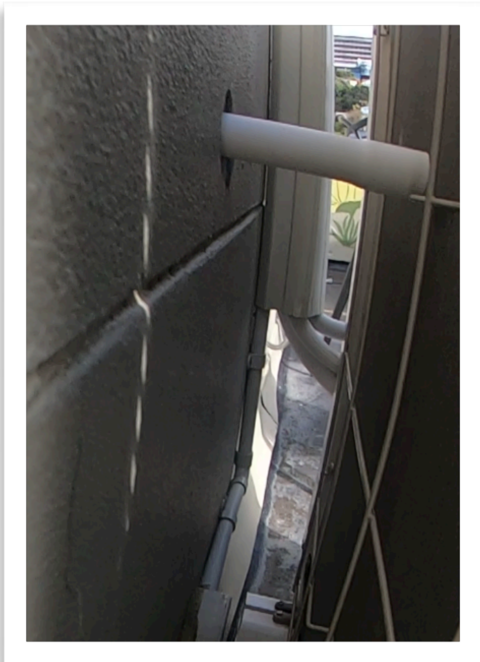
Date	**Wellington**	**Rainfall Intensity**	**Flood Potential**
February 2023	Cyclone Gabrielle	**40 mm's an hour**	No
June 2023	Winter Storm	8.33 mm's an hour	No
November 2023	Heavy Rainfall	5.28 mm's an hour	No
April 2024	Downpour	9 mm's an hour	No
August 2024	Late Winter Storm	5.67 mm's an hour	No

So for water to enter from above, either an internal rain head leaked, or there was a cut in the butynol roofing along the north face of the roof, or water blew in through the flashings above the north facing windows. The insurance assessor's reports will help us find the real cause. At this stage it appears the existing drainage can handle the most extreme water events easily with 13.4 mm's an hour of drainage capacity in reserve. Or you



" In Wellington, the peak intensity of heavy downpours typically ranges between **30 to 42 mm per hour** during significant weather events. For example, during one extreme rain event in Avalon, 42 mm of rain was recorded in a single hour, marking a rare occurrence expected roughly once in **50 years.** Other instances, such as in Wainuiomata and Shandon, saw peak hourly totals of **28 to 33 mm**, typically occurring every 10 to 30 years."

would need a storm 1.3 times the magnitude of Cyclone Gabrielle to overwhelm the drainage capacity of your drainage system on your roof. For that reason, I will say you do not need to consider extra drainage capacity at present.



Building Science Ltd are: certified water damage remediation technicians, specialist insurance assessors and investigators since 2009. And are accepted as providers of expert witness testimony on weather tightness in the High Court of New Zealand. waterdamage@me.com

DISCLOSURE STATEMENT

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