

The Mutual Heights Body Corporate Supplementary Chairman's Report - Damp Management 8th June 2010

This report is supplementary to my main report, based on the latest discussions with Trustees and others. It summarises the situation in regard to the management of damp penetration within the building and provides a basis for discussion of the way ahead.

The focus, as always, is on the two main issues: the **legal situation** and the **remedial works** - two areas of much recent activity that have to run in parallel.

Summary of the history

- We have a resolution from members permitting legal action against the developer (Old Mutual Properties).
- We have undertaken a survey of residents and owners, in order to tabulate the extent of the problem as perceived by them. We made strenuous efforts to contact all concerned. (See attachment)
- We engaged an expert professional adviser (Paul Koning), who undertook the first inspection and guided us as to remedial works.
- Through instructing attorneys (Maurice Phillips), we have warned the developer of our intention to proceed; they have acknowledged receipt and indicated a willingness to sit down and talk. We have not yet taken up that offer pending advice from attorneys as to the right way to proceed.
- We have engaged senior counsel (John Dickerson) and met with him at some length.
- Senior counsel has provided an "opinion", which stands as the basic reference document for legal proceedings and identifies some of the risks involved.
- We have changed our instructing attorney, to avoid potential conflict of interest (Maurice Phillips has worked for Murray & Roberts) and to reduce costs (we are now with Chris Faure).

Most recently:

- We have undertaken meetings with a specialist contractor (GVK) who has undertaken a more detailed survey.
- Subcontractors (Brassique) have completely disassembled, inspected and reassembled selected windows.
- GVK has prepared a preliminary (budgetary?) estimate of costs and we have begun detailed discussion of some of the implementation options (see below).
- The new instructing attorney has met with Senior Counsel and advised that we need to continue to gather all the evidence available.
- Trustees have formally resolved (on 3rd June 2010) to issue summons, thereby starting the processes of litigation. This is necessary because of the risk that we lose the right to make a claim because of the passage of time.
- We are also endeavouring to get some comments on due process (with regard to building codes and standards, etc) from the NHBRC.
- We are in touch again with Paul Koning, to help us with expert opinion, implementation planning and monitoring the work of the contractors.

At all stages, we have endeavoured to keep members informed as to the situation and the progress that has been made. We must acknowledge the contribution made by Paul Rippon, who has significantly assisted us on the legal front, and also the task force that assisted us in the middle stages of these proceedings and to the owners who have been able to provide us with some of the evidence that we need.

Where we are right now - costs

The first estimates of the direct costs of remedial works are (inevitably?) higher than we first expected. The indirect costs (municipality charges, health and safety, etc) are very significant. We are waiting for the contractor (GVK) to provide more detail about the costs and to develop some options concerning the pacing and staging of the work, but here is what we have right now.

As you look at the figures below, please remember that these figures are not based on quotations, only on first estimates. The claim against the developer might be substantially (and justifiably) much higher than the costs given here. We are advised that we might also be able to claim for internal remedial works (the responsibility of owners, not the body corporate) at the same time. If the legal action fails, the expenditure would have to be "paced" according to our ability and willingness to commit our funds at an agreed rate.

Budgetary costs for works

There are two main areas of direct cost:

- Replacing the sealant in the joints between the granite cladding on the **walls** - we have been advised that the whole building should be re-sealed.
- Re-furbishment of the **windows** by removing and replacing the glass and beading, and in some cases straightening the casements where the windows do not fit - this need would be done on an "as-needed" basis.

Also, there are indirect costs:

- **Project management**, including preparation, access (scaffolding), cleaning and quality control.
- Municipal and other **external** costs (fees, traffic control, health and safety, insurance etc).

In May last year we received a preliminary estimate from SkyRiders (excluding contingency etc - probably rather optimistic; more recently we have received much more detailed estimates from GVK, on a conservative "worst case" basis.

Hence, at this time there are two sets of costs to work with, from which we can derive a tentative budget for planning and cash flow management purposes:

Item	Quantity	Budget	Totals
Remedial work			
Walls: Approximate cost "per metre" of re-sealing = R280	32,000 m	R 8,960,000	
Windows: Approximate cost "per pane" = R700	10% of all windows	R 1,934,794	
	Sub total:		R 10,894,794
Overheads			
Access (scaffolding)	100%	R 2,277,000	
"Provisional sums" (Municipality etc)	100%	R 2,002,648	
	Sub total:		R 4,279,648
Management			
Preparation, project management & contingency	20% of total		R 3,034,888
Total			R 18,209,330

Note: This analysis does not necessarily reflect the value of a claim against the developer - that still depends on more detailed analysis of expert opinion for the legal claim, and the work that is to be done in the longer term - especially in terms of the number of windows that need to be refurbished.

Budgetary costs for legal services

We also need to plan for the cost of legal services.

Comments and discussion

Let's work in two stages

We agreed at an early stage that the re-pointing of the cladding is the most important thing to do first, and we are unequivocally advised by the experts that the *whole building* must be done. Given the costs involved, this alone is going to stretch us if we have to carry all the costs ourselves. We should therefore give careful consideration to working in two stages: first the cladding (complete), then the windows (on an as-needed basis). We are asking GVK to revise the estimates on this basis.

Pacing the work appropriately

Not all of the work is "urgent", but there are one or two apartments that must be attended as soon as possible because of extensive internal damage. GVK are starting work on that portion of the work now.

If the legal claim fails, we need to plan to work on a long timescale. I have suggested that in these circumstances we could use a *small* team, perhaps only three or four strong, who would become very familiar with the building and work with us over a number of years. The cash flow would then be manageable, although the sequence and prioritisation of the work becomes an issue.

We should be focusing on costs for the purposes of the claim (legal)

We must remember that our most important task right now (apart from the few units needing urgent remedial work) is to develop and finalise the costs of the claim for the legal process, and so the surprisingly high costs work to our advantage if they were to be accepted in a judgement in our favour.

Let us reflect on these options, and others - I look forward to your comments.



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