*BACKGROUND MATERIAL*

*Initial questions*

Seeking a quotation for expected legal expenses for the remainder of the UCOL project.

“We expect this will involve the following, but would really value your input in letting us know any gaps or things we have missed.”

1. Unit titling of the 24 units which involves a survey of the units, titling and registering with LINZ
2. Settlement of the sale and purchase agreements at the end of the build
3. Possible sale and purchase of available units which may occur during the build, or (our preference), to occur at settlement
4. Retentions settlement at the completion of the build (i.e retentions returned to S&W)

*Responses*

From Helen:

Dear Susan, Thank you for your email.

First of all, I need to say I no longer work for McMillan & Co.

Where I work now consists of two senior women lawyers who have many years of conveyancing experience between them.

We have just employed a legal executive finishing his training who is keen on property law and is a conscientious and energetic worker.

Neither of we two  lawyers are “profit driven” and have a significantly different way of approaching our work to that which I have left behind.

We are keen to meet with you if that would assist.

As for the way forward, I agree with your assessment and the four points you outline. I do bear in mind, however, the following possibilities:-

1. Issues with the underlying titles, which, I understand, are considered “limited as to titles” and which is Mark Geddes’ issue but which mayrequire legal assistance.

2. Issues with the DCC in its regulatory capacity, which may also require lawyers.

3. Possible easements, which need drafting and registering, along with the Covenant and Unit title/Body Corporate documentation.

4. Any documentation Kiwibank may require if there are any extensions or variations to the loan particulars or conditions.

5. Possible issues with shareholders loans.

6. Assistance with any issues which mayarise from Stevenson & Williams or any other contractors involved with the build.

The LINZ registration fees (disbursements) alone will be around $9,000.

Having said that, it would be our intention to keep our fees somewhere between $30,000 and $40,000 plus GST and disbursements, preferably nearer $30,000

If there was something unexpected which arose we would consult the Group first before committing.

I stress I will be responsible for the quantum of our fees.

Helen

From Simon: (2/5/19)

Hi Susan, Thank you for your email below.

I have now had a chance to discuss the surveying aspects with Mark Geddes which has been very helpful.

Mark has advised that the first step is amalgamating the two existing titles and that he has almost completed this. Consent of neighbouring land owners is required and he will be working with you on that aspect. Once that is complete we would then liaise with Mark and register an order for the new certificate of title.

I have also discussed with Mark regarding the final stage of completing the Unit Title Plan. There will be a considerable amount of survey work required to get to that stage and we would liaise with Mark , when required , through this process. Once the survey work is complete we then prepare orders for the new certificates of title for the 24 units and also prepare the documents for any easements and covenants required. In discussing with Mark the unknown at this stage is just exactly what easements will be required to be registered as part of the unit title subdivision and whether they will be complicated or straightforward. Without getting too complicated , as part of this process, Mark will be looking to see just what services can be placed over the common property rather than over individual units as this will reduce the scale of what easements will be required. Note that any easements required from, for example, Aurora, Contact, DCC will require us to deal with their solicitors and their solicitors costs would also need to be paid by you (which would be relatively minimal).

Referring now to costs and taking into account the above, items 1-4 in your email below, and our estimate of costs which has been provided previously (copy attached). Under our attached estimate of costs I note that costs of $64,867 have been incurred to date leaving a balance under our estimate of $37,000 plus GST and disbursements to completion. We confirm that we would be agreeable to keep to that estimate with the only qualification being that if there were any major issues that might arise throughout the process to completion which could not have been anticipated now then we would discuss that with you as costs would then increase.

We are more than happy to meet with you to discuss further or clarify any aspect but I trust that the above information assists at this stage. Don’t hesitate to contact us at any time.

We look forward to hearing from you.

Thanks, Regards,

Simon

Pros and cons as presented verbally by the ‘small group’ 9/5/19

We recommend to the group that we remain with McMillan & Co.

Pros

- they know us and our situation

- I have been impressed with Simon's efforts to find out correct information to inform their quote, and to follow up by phone calls.

- the firm already hold the trust accounts for the builders retentions; and the 10% 'deposit' from DCC

- they seem to have the capacity and ability to meet our requirements

- they seem to work very professionally and have given a reasonable quote which they made some effort to explain how they arrived at

Cons

- some in the group have had negative experiences with Simon

*Regarding Helen*

Pros

- she knows us well, the ethos of the group and has done a lot of work with us and for us, some of which has been pro bono

- she has good personal relationships with some in the group

Cons

- the reason she finished with McMillan & Co and unclear implications of that for us as a group

- she has moved to a very small firm which she notes is building up staffing but currently looks to be thin on the ground which does not fill me with confidence

- we would have to move the trust accounts which may cost us (I am unclear of the exact cost implications, if any)

- she seems to have had some difficulties relating to Kiwibank lawyers and DCC lawyers

From Antony Hamel: 23/5/19 [*responding to a proposition from the directors that he consider taking on UCOL as client for the remainder of the build, because of his knowledge of what we have done*]

Thank you for your email

I have a conflict of interest if I became the lawyer for UCOL. The clients I currently act for would need to find another lawyer to complete the purchases. This could involve them in additional costs and puts me in an impossible position in dealing with those other lawyers if there was a dispute between UCOL and my former clients.

Also I do not have the resources or experience with Unit Titles Act to be able to do this work in a timely or efficient manner. I would have no idea how much work is involved so am unable to even provide an estimate for the creation of the titles.

I would strongly recommend you continue to instruct Helen Davidson in this matter. She is the lawyer most familiar with the project and can complete the project in the most cost effective and efficient manner. I have worked very closely with Helen on this project and have total confidence in her.

Please do not hesitate to contact me if you have any other questions.

Anthony

*Supplementary questions (emailed 19 June to Simon Milne and Helen Davidson)*

1. Would you have PA support for this UCOL work?

2. What would your 'back-up' plan be for if the UCOL work load became too great at critical moments?

3. Can we have some assurance that deadlines would be able to be met acknowledging that the timeline at the moment means that the units will be completed on 24th November so we will likely be running into the Christmas period for the settlements which all have to occur at the same time?

4. What would be your mechanisms to keep costs down for unpredicted issues?

5. Could you give us an estimate for legal costs for changing Sale & Purchase agreements and other legal documentation (signing of the UCOL Agreement etc) for units sold to new members before settlement?

From Simon :

1. *Would you have PA support for this UCOL work?*

Yes we are very well resourced and have very competent and experienced support staff who would assist me with this work. In fact we have just employed a 20 plus year experienced PA from another highly regarded firm to assist me and the property team here.

2. *What would your 'back-up' plan be for if the UCOL work load became too great at critical moments?*

As advised above we are well resourced and would pull in other members of our property team here as and when required. That would include other solicitors and /or legal executives as and when required. We are experienced and part of that experience is being able to work under pressure and delegate when required.

3. *Can we have some assurance that deadlines would be able to be met acknowledging that the timeline at the moment means that the units will be completed on 24th November so we will likely be running into the Christmas period for the settlements which all have to occur at the same time?*

As per our comments in 1 and 2 above we are well placed to meet any required deadlines. As an example we would work closely with your surveyor to ensure that we are all working in tandem with what documentation and steps are required to ensure timeframes are met.

4. *What would be your mechanisms to keep costs down for unpredicted issues?* If there were any unpredicted issues we would discuss that with you at the outset in order to ensure you were aware at the earliest possible time and to discuss possible solutions and costs. As far as keeping costs down this will depend on what type of unpredicted issue might arise. It is therefore difficult to be any more specific at this stage.

5. *Could you give us an estimate for legal costs for changing Sale & Purchase agreements and other legal documentation (signing of the UCOL Agreement etc) for units sold to new members before settlement?*

My understanding is that we currently hold signed agreements for each Unit. Therefore I am not sure exactly what you are asking here. If it is the cost of assigning the current signed agreements to different purchasers or entities then that would be straightforward and would involve a simple deed of assignment at say $2-300. If you are referring to actual on sales from any current purchasers to a new purchaser then that would require an Agreement to be prepared from the current purchaser to a new purchaser and that should be at the cost of the current purchaser to prepare that Agreement and not the cost of UCOL. Note also that any assignment or on sale requires the consent of UCOL as per clause 31 of the standard Agreement. If I have not covered what you are asking then please advise and I can comment further regarding this question.

*As of 7.00pm on Wednesday 26 June, Helen has not sent a written response to these questions. Anne spoke with her this morning, asking for a written response which could be shared. Helen expressed confidence that the process at settlement next year would be much more straightforward than getting everything signed last year, when there was a degree of negotiating to be done between lawyers. She said that much of the paperwork would be done ahead of time, leaving only the signing, which we would each organize with our own lawyers. The directors would meet to sign all 24 agreements on behalf of UCOL.*

*On 1 July Helen and Anja Klinkert will be forming a new company, Fernhill Lawyers Ltd, in which they will be equal directors and shareholders. They will then have a presence on the internet. They have a legal executive working with them.*