

**LIST RESPONSE TO AMENDED COMMERCIAL LIST
THIRD CROSS-CLAIM STATEMENT**

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial List
Registry	Sydney
Case number	2019/00232749

TITLE OF PROCEEDINGS

First plaintiff	Terry Walter Williamson
Second plaintiff	Helen Therese Williamson
First defendant	Sydney Olympic Park Authority ABN 68 010 941 405

TITLE OF THIS CROSS-CLAIM

First cross-claimant	WSP Structures Pty Ltd ABN 78 006 769 339
First cross-defendant	Evolution Precast Systems Pty Ltd ABN 17 608 136 518
Second cross-defendant	Icon Co (NSW) Pty Ltd ACN 604 790 409

FILING DETAILS

Filed for	Icon Co (NSW) Pty Ltd , Second cross-defendant
Filed in relation to	Third Cross-Claim
Legal representative	Peter Wood of MinterEllison
Legal representative reference	1238049
Contact name and telephone	Michelle Knight (02) 9921 4064
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A. NATURE OF DISPUTE

- 1 On 18 June 2015, the NSW Department of Planning and Environment approved the development of a high-rise mixed residential and commercial development, referred to as the '**Opal Tower Development**' at Sydney Olympic Park, NSW (**Development Consent**).
- 2 On or about 29 October 2015, Australia Avenue Developments Pty Limited (**AAD**) entered into a contract with Icon Co (NSW) Pty Ltd (**Icon**), whereby Icon agreed to design and construct the Opal Tower Development (**D&C Contract**).
- 3 On 24 November 2015, Icon and WSP Structures Pty Ltd (**WSP**) entered into an agreement (**Consultancy Agreement**) by which WSP agreed to provide structural and civil engineering design services to Icon for the development of the Opal Tower Development.
- 4 Icon achieved practical completion as follows:
 - (a) Separable Portion 1 on 22 June 2018;
 - (b) Separable Portion 2 on 2 July 2018; and
 - (c) Separable Portion 3 on 8 August 2018.
- 5 In late December 2018, damage was observed on levels 4, 10 and 16 of the building. Residents of the building were evacuated following this discovery. Icon has, since this date, and without admission of liability, taken steps (to date, at its own cost) to rectify the damage, and, where necessary, pay owners and residents' costs, where temporary relocation has been necessary in order to complete these works. WSP was involved in the rectification process through the preparation of a rectification design. The main ~~This~~ rectification work ~~was will be~~ completed in early March 2020.
- 6 On 26 July 2019, the plaintiffs commenced representative proceedings under Part 10 of the *Civil Procedure Act 2005* (NSW) against Sydney Olympic Park Authority (**SOPA**), alleging that they, and the Group Members, have suffered loss and damage by reason of SOPA's alleged breach of the statutory warranties in the *Home Building Act 1989* (NSW) (**HB Act**).

7 ~~In its Amended~~ ~~On 27 September 2019,~~ SOPA, in turn, filed a Commercial List Cross-Claim Statement (**SOPA's Amended First Cross-Claim Statement**), ~~SOPA alleges,~~ ~~insofar as Icon is concerned,~~ ~~against Icon,~~ ~~alleging that:~~

- (a) if SOPA is found to be liable to the plaintiffs or the Group Members, Icon must indemnify SOPA for such liability; and
- (b) if the building was, or is, affected by certain alleged defects, Icon breached the statutory warranties under the HB Act in relation to the lots in the building owned by SOPA (the '**Retained Units**') and SOPA has suffered loss and damage as a result.

8 On ~~16 July 2021~~ ~~8 November 2019,~~ Icon filed its Amended Commercial List Response to SOPA's Amended First Cross-Claim Statement (**Icon's Amended List Response**).

9 On ~~9 July 2021~~ ~~3 December 2019,~~ Icon filed an Amended Commercial List Second Cross-Claim Statement (**Icon's Amended Second Cross-Claim Statement**) against WSP alleging, in summary (and amongst other things), that:

- a. in preparing its design of the hob, WSP failed to design for bursting stresses, contrary to what was required by AS 3600;
- b. such design defect was the cause of the Observed Damage (as defined in Icon's Amended Second Cross-Claim Statement);
- c. ~~to the extent that SOPA has suffered a loss (which Icon denies), that is a consequence of WSP's breached~~ of the Consultancy Agreement; and
- d. ~~and because~~ WSP contravened s 18 of the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**),

and that Icon has suffered loss or damage as a result (such loss or damage including Icon's potential liability to SOPA, as well as other losses) and is entitled to damages.

~~The damage referred to above was caused by shortcomings in the design that WSP either prepared or approved. Icon says that its construction works did not causally contribute to that damage, or the extent of it.~~

10 Icon also alleges that if it be found that the Partial Grouting (as defined in Icon's Amended Second Cross-Claim Statement) of the precast panel joints on levels 4, 10 and 16 caused, or materially contributed to, the Observed Damage, WSP in any event approved a change to the design of the building such that Partial Grouting would be used.

~~Icon also alleges that WSP has caused Icon to suffer further losses by reason of its breach of the Consultancy Agreement and its contravention of s 18 of the Australian Consumer Law.~~

11 On ~~19 August 2021~~ 20 December 2019, WSP filed an Amended Commercial List Third Cross-Claim Statement (WSP's Amended Third Cross-Claim Statement) against Icon alleging (relevantly, insofar as Icon is concerned) that WSP and Icon agreed that WSP's preparation of a rectification design would be governed by a new agreement, referred to by WSP as the 'Retainer for Remedial Engineering Services'.

12 Icon denies that it and WSP entered into any such agreement. Icon also denies that WSP is entitled to be paid for the preparation of the rectification design given that WSP's need to prepare a rectification design only arose because WSP's original design was defective.

13 WSP has also alleged in WSP's Amended Third Cross-Claim Statement, in summary (and amongst other things), that:

a. in the event that:

i. Evolution's shop drawings did propose the alleged design change (to Partial Grouting); and

ii. the failure to fully grout was a cause of the structural defects,

WSP alleges that:

iii. in issuing the shop drawings which did not comply with WSP's 'for construction' drawing; alternatively

- iv. in failing to expressly raise with WSP that it was proposing the design change,

Evolution breached its duty of care to Icon; and

- b. Evolution engaged in misleading or deceptive conduct in representing to WSP that the partial grouting design was prepared with reasonable care and skill, and, in failing to fully grout, breached other clauses of the Evolution Subcontract.

14 In its Amended Commercial List Fourth Cross-Claim Statement (Icon's Amended Fourth Cross-Claim Statement), Icon alleges, in summary (and amongst other things), that:

- a. Evolution breached the Evolution Subcontract; and
- b. Evolution engaged in misleading or deceptive conduct in contravention of s 18 of the Australian Consumer Law,

causing Icon loss and damage (such loss or damage including Icon's potential liability to SOPA, as well as other losses).

B. ISSUES LIKELY TO ARISE

- 1 Did WSP and Icon enter into the alleged Retainer for Remedial Engineering Services, which WSP alleges governed WSP's preparation of the rectification design?
- 2 If WSP and Icon did not enter into the alleged Retainer for Remedial Engineering Services, is WSP entitled to payment, on a *quantum meruit* basis, for the engineering services it provided after 28 December 2018?
- 3 If it be found that WSP breached the Consultancy Agreement, and that such breach caused WSP's loss, is WSP entitled to payment for the engineering services it provided after 28 December 2018 where the need for those services only arise by reason of WSP's breach of the Consultancy Agreement?

C. ICON'S RESPONSES TO THE CROSS-CLAIMANT'S CONTENTIONS

As to the contentions of WSP in WSP's Amended Third Cross-Claim Statement, Icon says as follows, adopting without admission and where relevant, the headings and definitions used in WSP's Amended Third Cross-Claim Statement.

A. PARTIES

- 1 Icon admits paragraph 1 of WSP's Amended Third Cross-Claim Statement.
- 2 Icon admits paragraph 2 of WSP's Amended Third Cross-Claim Statement.
- 3 Icon admits paragraph 3 of WSP's Amended Third Cross-Claim Statement.

B. CONSULTANCY AGREEMENT BETWEEN ICON AND WSP

- 4 Icon admits paragraph 4 of WSP's Amended Third Cross-Claim Statement.
- 5 Icon admits paragraph 5 of WSP's Amended Third Cross-Claim Statement.
- 6 Icon admits paragraph 6 of WSP's Amended Third Cross-Claim Statement.
- 7 Icon admits paragraph 7 of WSP's Amended Third Cross-Claim Statement.

C. THE EVOLUTION SUBCONTRACT

- 8-23 Icon admits that the Evolution Subcontract contains provisions to the effect described in paragraphs 8 to 23 of WSP's Amended Third Cross-Claim Statement but otherwise relies on the terms of the Evolution Subcontract as if they were fully set out herein.

D. SERVICES PROVIDED BY EVOLUTION

23A In answer to paragraph 23A of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) says that on or about 26 July 2016, Icon issued Aconex transmittal number NSWIcon-TRANSMIT-000200 to, amongst others, Evolution; and
- (b) otherwise admits the paragraph.

23B Icon denies paragraph 23B of WSP's Amended Third Cross-Claim Statement and says further that drawing S06.010[2] specified the use of a 20mm grout bed in the joint between the precast panel and the hob where the precast panels were less than 180mm thick.

23C Icon admits paragraph 23C of WSP's Amended Third Cross-Claim Statement.

23D In answer to paragraph 23D of WSP's Amended Third Cross-Claim Statement, Icon:

(a) _____ says that on or about 8 September 2016, Evolution issued Aconex transmittal number EVOPS-TRANSMIT-000002 to Icon and WSP attaching, amongst others, DE01 Rev P1 dated 30 August 2016; and

(b) _____ otherwise denies the paragraph.

23E In answer to paragraph 23E of WSP's Amended Third Cross-Claim Statement, Icon:

(a) _____ says that on or about 8 September 2016, Icon issued Aconex transmittal number NSWIcon-HCADV-002425 to, amongst others, WSP and Evolution, attaching handwritten comments on copies of Evolution's drawings;

(b) _____ says that Aconex transmittal number NSWIcon-HCADV-002425 included the following words directed to James Hallahan (WSP):

'I appreciate if you could check and feedback for those shop drawing quickly'; and

(c) _____ otherwise denies the paragraph.

23F Icon admits paragraph 23F of WSP's Amended Third Cross-Claim Statement.

23G Icon denies paragraph 23G of WSP's Amended Third Cross-Claim Statement and repeats its response to paragraph 23B above.

23H In answer to paragraph 23H of WSP's Amended Third Cross-Claim Statement, Icon:

(a) _____ says that WSP's stamp, which was placed by WSP on Evolution's Drawing DE01 Rev P1, stated as follows:

<input checked="" type="checkbox"/>	REVIEWED, NO COMMENTS
<input type="checkbox"/>	REVIEW, AMEND AS NOTED
<input type="checkbox"/>	REVISE AND RESUBMIT
<p><u>THIS DRAWING HAS BEEN CHECKED FOR STRUCTURAL ADEQUACY ONLY IN THE FINAL CONDITION, AND COMPLIANCE WITH THE DESIGN INTENT. OMISSIONS, DIMENSIONS, FIT AND TEMPORARY WORKS ARE SPECIFICALLY EXCLUDED FROM THIS REVIEW. THIS REVIEW DOES NOT RELIEVE THE BUILDER OF RESPONSIBILITY UNDER THE CONTRACT. COMPLIANCE WITH SPECIFIED REQUIREMENTS AND STATUTORY REGULATIONS REMAIN THE RESPONSIBILITY OF THE BUILDER</u></p>	

(b) _____ otherwise admits the paragraph.

23I In answer to paragraph 23I of WSP's Amended Third Cross-Claim Statement, Icon:

(a) _____ says that on or about 19 September 2016 at or about 4:55pm, Icon sent Aconex transmittal number NSWIcon-RFI-000229 to, amongst others, Evolution and said:

'Could you please update your shopdrawings following WSP comments (attached) and the latest set of pre-cast drawings (serie S06 for construction) from WSP issued this morning'; and

(b) _____ otherwise admits the paragraph.

23J Icon admits paragraph 23J of WSP's Amended Third Cross-Claim Statement.

23K Icon admits paragraph 23K of WSP's Amended Third Cross-Claim Statement and says further that:

(a) WSP's stamp, which was placed by WSP on Drawing DE01 Rev P2 and Drawing DE01 Rev P5, stated as follows:

<input checked="" type="checkbox"/>	<u>REVIEWED, NO COMMENTS</u>
<input type="checkbox"/>	<u>REVIEW, AMEND AS NOTED</u>
<input type="checkbox"/>	<u>REVISE AND RESUBMIT</u>
<p><u>THIS DRAWING HAS BEEN CHECKED FOR STRUCTURAL ADEQUACY ONLY IN THE FINAL CONDITION, AND COMPLIANCE WITH THE DESIGN INTENT. OMISSIONS, DIMENSIONS, FIT AND TEMPORARY WORKS ARE SPECIFICALLY EXCLUDED FROM THIS REVIEW. THIS REVIEW DOES NOT RELIEVE THE BUILDER OF RESPONSIBILITY UNDER THE CONTRACT. COMPLIANCE WITH SPECIFIED REQUIREMENTS AND STATUTORY REGULATIONS REMAIN THE RESPONSIBILITY OF THE BUILDER</u></p>	

(b) WSP's act of placing its stamp on Drawing DE01 Rev P2 and Drawing DE01 Rev P5:

- (i) constituted an approval of the detail prescribed on Drawing DE01 Rev P2 and Drawing DE01 Rev P5; and
- (ii) had the consequence that the detail prescribed on Drawing DE01 Rev P5 applied as the applicable detail where a hob / precast panel connection was to be constructed throughout the building,

(Grouting Design Change); and

(c) although WSP approved the detail prescribed on Drawing DE01 Rev P5 (which occurred through the placing of WSP's stamp), such detail was not thereafter administratively incorporated by WSP into any amended FC Drawings, including FC Drawing S06.010[A].

24 Not used.

In answer to paragraph 24 of WSP's Third Cross-Claim Statement, Icon:

~~admits that on about 16 September 2016, WSP issued drawing numbered 4419 S06.010 [A], which was headed 'Typical Precast Wall Details— Sheet 01' and which was described as being issued 'For Construction';~~

~~admits that Detail 1 in the drawing contained a note in the following terms:~~

~~'GROUT PANEL JOINT FOR FULL WIDTH'~~

~~says further that Detail 1 depicted a 'Typical Load Bearing External Precast Wall Joint' and did not depict a precast panel to hob beam connection;~~

~~in the premises of sub-paragraphs (b) and (c) above, denies that the note specified full grout coverage between the precast panel and the hob beam;~~

~~says further that although a precast panel to hob beam connection was depicted on the bottom left side of the drawing above the heading 'Typical Load Bearing Precast Wall Joint', such depiction was not accompanied by any note as to how the joint between the precast panel and the hob beam was to be grouted; and~~

~~otherwise denies the paragraph.~~

25 Not used.

~~In answer to paragraph 25 of WSP's Third Cross-Claim Statement, Icon:~~

~~admits that detail 1 of Evolution Shop Drawing 1 (which depicted a hob beam to panel connection) contained an express note stating 'INTERNAL GROUTING BETWEEN PANEL TO INSITU BY EVOLUTION';~~

~~says further that detail 1 of Evolution Shop Drawing 1 showed that the joint between the precast panel and the hob beam was to be partially grouted;~~

~~denies that Evolution Shop Drawing 1 was issued in respect of level 1 only; and~~

~~says further that Evolution Shop Drawing 1 was a 'Precast Detail Page' such that detail 1 and 1A in Evolution Shop Drawing 1 were to apply to~~

areas of the Building where other drawings nominated or called up the use of such detail.

26 Not used. ~~Icon admits paragraph 26 of WSP's Third Cross-Claim Statement.~~

27 Not used. ~~Icon admits paragraph 27 of WSP's Third Cross-Claim Statement.~~

28 Not used.

In answer to paragraph 28 of WSP's Third Cross-Claim Statement, Icon:

(a) ~~admits that detail 1 of Evolution Shop Drawing 2 (which depicted a hob beam to panel connection) contained an express note stating 'INTERNAL GROUTING BETWEEN PANEL TO INSITU BY EVOLUTION';~~

(b) ~~says further that detail 1 of Evolution Shop Drawing 2 showed that the joint between the precast panel and the hob beam was to be partially grouted;~~

~~says further that Evolution Shop Drawing 2 was a 'Precast Detail Page' such that detail 1 and detail 1A in Evolution Shop Drawing 2 were to apply to areas of the Building where other drawings nominated or called up the use of such detail.~~

29 Not used. ~~Icon admits paragraph 29 of WSP's Third Cross-Claim Statement.~~

30 Not used. ~~Icon admits paragraph 30 of WSP's Third Cross-Claim Statement.~~

31 Icon admits paragraph 31 of WSP's Amended Third Cross-Claim Statement.

E. DAMAGE OBSERVED ON THE BUILDING AND RESPONSE THERETO

32 In answer to paragraph 32 of WSP's Amended Third Cross-Claim Statement, Icon:

(c) admits paragraph 32; and

(d) says further that the damage was identified in the precast panel and hob outside apartment 1005 on Level 10, grid reference 10C-14.5.

33 Icon admits paragraph 33 of WSP's Amended Third Cross-Claim Statement.

34 In answer to paragraph 34 of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) admits that some residents were permitted to return to the Building on 24 December 2018; and
- (b) says further that residents in 51 apartments were not permitted to reoccupy their apartments.

35 In answer to paragraph 35 of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) denies paragraph 35; and
- (b) says further that Michael Clunie of Icon contacted Graeme Deaker of WSP and informed Mr Deaker that there had been an incident at the site and requested his attendance at the site.

36 Icon admits paragraph 36 of WSP's Amended Third Cross-Claim Statement.

37 In answer to paragraph 37 of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) admits that all residents were directed to evacuate the Building on 27 December 2018; and
- (b) says further that the direction to evacuate came from WSP.

38 Icon admits paragraph 38 of WSP's Amended Third Cross-Claim Statement.

39 In answer to paragraph 39 of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) admits that during the period 27 December 2018 to 1 January 2019, Julian Doyle of Icon and Wayne Bretherton of WSP had discussions, during the course of which WSP agreed that it would prepare a rectification design;
- (b) says further that during the period 27 December 2018 to 1 January 2019, Mr Bretherton informed Mr Doyle that WSP required commercial terms to be issued to Icon;
- (c) says further that no agreement was reached between Mr Doyle and Mr Bretherton concerning the commercial basis upon which WSP would prepare the rectification design; and
- (d) otherwise denies the paragraph.

- 40 Icon admits paragraph 40 of WSP's Amended Third Cross-Claim Statement.
- 41 Icon admits paragraph 41 of WSP's Amended Third Cross-Claim Statement.
- 42 In answer to paragraph 42 of WSP's Amended Third Cross-Claim Statement, Icon:
- (a) denies paragraph 42; and
 - (b) says further that although WSP provided engineering services to Icon following the evacuation of the Building on 28 December 2018, such services were provided pursuant to the Consultancy Agreement.
- 43 Icon admits paragraph 43 of WSP's Amended Third Cross-Claim Statement.
- 44 Icon admits paragraph 44 of WSP's Amended Third Cross-Claim Statement.
- 45 In answer to paragraph 45 of WSP's Amended Third Cross-Claim Statement, Icon:
- (a) admits that Icon was aware that WSP continued to provide remedial engineering services after 8 January 2019; and
 - (b) says further that such services were provided pursuant to the Consultancy Agreement.
- 46 Icon admits paragraph 46 of WSP's Amended Third Cross-Claim Statement.
- 47 Icon admits paragraph 47 of WSP's Amended Third Cross-Claim Statement.
- 48 Icon admits paragraph 48 of WSP's Amended Third Cross-Claim Statement.
- 49 In answer to paragraph 49 of WSP's Amended Third Cross-Claim Statement, Icon:
- (a) denies that it did not provide a response to WSP in relation to the matters set out in Mr Bretherton's email of 18 January 2019;
 - (b) says further that on 6 February 2019, Icon's solicitors, MinterEllison, wrote to WSP stating that Icon's position was (amongst other things) that:
 - (i) the damage to the Building was a result of WSP's breaches of the Consultancy Agreement;

- (ii) the implementation of WSP's Remedial Design is required as a result of WSP's breaches of the Consultancy Agreement; and
- (iii) WSP is obliged to indemnify Icon in respect of the claims, loss, damage and expenses incurred by Icon;

Particulars

The letter dated 6 February 2019 from MinterEllison was sent to
Guy Templeton, Chief Executive Officer of WSP

- (c) says further that by letter dated 4 March 2019 (which was sent in response to a payment claim served by WSP), Icon stated that WSP was not entitled to payment as the services for which WSP was claiming payment *'related to services undertaken by WSP to correct errors or omissions in the documents and materials created under the Consultancy Agreement and were required to be undertaken by WSP at its own cost and expense'*; and
 - (d) otherwise denies paragraph 49.
- 50 In answer to paragraph 50 of WSP's Amended Third Cross-Claim Statement, Icon:
- (a) admits that Icon was aware that WSP continued to provide remedial engineering services after 18 January 2019; and
 - (b) says further that Icon and Icon's solicitors communicated in writing to WSP on 6 February 2019 and 4 March 2019 Icon's position that WSP was providing engineering services pursuant to the Consultancy Agreement and that those services were to be undertaken by WSP at its own cost and expense.
- 51 Icon admits paragraph 51 of WSP's Amended Third Cross-Claim Statement.
- 52 In answer to paragraph 52 of WSP's Amended Third Cross-Claim Statement, Icon:
- (a) admits that Icon did not instruct WSP to demobilise; and
 - (b) repeats and relies on paragraphs 49(a), 49(b), 49(c) and 50(b) above.
- 53 In answer to paragraph 53 of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) admits that Icon was aware that WSP continued to provide remedial engineering services after 26 March 2019; and
- (b) repeats and relies on paragraphs 49(a), 49(b), 49(c) and 50(b) above.

54 Icon admits paragraph 54 of WSP's Amended Third Cross-Claim Statement.

F. CLAIMS IN THE PROCEEDINGS

55 Icon admits paragraph 55 of WSP's Amended Third Cross-Claim Statement.

56 Icon admits paragraph 56 of WSP's Amended Third Cross-Claim Statement.

57 Icon admits paragraph 57 of WSP's Amended Third Cross-Claim Statement.

58 Icon admits paragraph 58 of WSP's Amended Third Cross-Claim Statement.

58A Icon admits paragraph 58A of WSP's Amended Third Cross-Claim Statement.

G. WSP'S CLAIMS AGAINST EVOLUTION

59-83A Icon denies paragraphs 59 to 83A of WSP's Amended Third Cross-Claim Statement on the basis that no allegations are made against it in those paragraphs.

H. WSP'S CLAIM AGAINST ICON

83B Icon denies paragraph 83B of WSP's Amended Third Cross-Claim Statement as no allegations are made against it in the paragraph.

Contribution between tortfeasors

83C In answer to paragraph 83C of WSP's Amended Third Cross-Claim Statement, Icon repeats:

- (a) the matters pleaded in paragraphs 67A to 67K of Icon's List Response to the plaintiffs' Amended List Statement; and
- (b) the matters pleaded in paragraphs 78 to 84 of Icon's List Response to SOPA's Amended First Cross-Claim Statement.

83D In answer to paragraph 83D of WSP's Amended Third Cross-Claim Statement:

(a) Icon admits that, by reason of s 37(2) of the *Design and Building Practitioners Act 2020 (NSW) (DBP Act)*, it owed the plaintiffs (and group members) a duty to exercise reasonable care when carrying out construction work; and

(b) otherwise denies the allegations in the paragraph.

83E Icon denies paragraph 83E of WSP's Amended Third Cross-Claim Statement, including the particulars thereto.

83F Icon denies paragraph 83F of WSP's Amended Third Cross-Claim Statement and says further that:

- (a) on or around 5 August 2018, Icon received a letter from Sterling Project Solutions Pty Ltd (SPS) which identified defects including, but not limited to:
- (i) 'Southern slot – Pre-cast panel to be patched and re-finished'; and
 - (ii) 'Southern slot – mastic pointing to slot aluminium LHS is falling out due to excessive movement. Icon to check movement is within tolerance and re-point frame';
- (b) Icon engaged with its relevant subcontractors to rectify the defects described in paragraph 83F(a) above;
- (c) the defect described in paragraph 83F(a)(i) above was rectified by Evolution who prepared a rectification method which involved:
- (i) removing the piece of concrete;
 - (ii) patching using 'Unitex panel patch in accordance with technical data sheets'; and
 - (iii) once set, applying a 'skim coat using Aftek skim coat in accordance with the Technical Data Sheets';

Particulars

Email from Nick Manefield (Evolution) to James Kehoe (Icon) dated 3 January 2019 at 9:55am

- (d) the defect described in paragraph 83F(a)(ii) above was rectified and the mastic adjoined the precast panel and the window system;
- (e) Icon carried out site inspections sometime after 19 September 2018 at which point the defects described in paragraph 83F(a) above had been repaired; and
- (f) on or about 10 October 2018, Icon notified SPS that the defects described in paragraph 83F(a) above had been rectified.

83G In answer to paragraph 83G of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) admits that it did not draw any of the defects described in paragraph 83F(a) above to WSP's attention;
- (b) says further that after it became aware of the defects described in paragraph 83F(a) above, Icon rectified the defects as pleaded in paragraph 83F(b)-(f) above;
- (c) repeats paragraph 83F(c) above;
- (d) repeats paragraph 83F(f) above; and
- (e) otherwise denies the allegations in the paragraph.

83H In answer to paragraph 83H of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) denies the allegations in the paragraph, including the allegations in the chapeau and in subparagraphs (a) to (f);
- (b) says further that had WSP undertaken investigations into the grouting used in the hobs, it would have identified that the joint between the hob and the precast panel had been grouted in accordance with the Grouting Design Change which WSP had approved as pleaded in paragraph 23K above;
- (c) says further that WSP has not identified with specificity in paragraph 83H(b) (or in any other particulars provided) the 'appropriate rectification measures' it says it would have undertaken to remedy the 'grouting deficiencies', assuming they existed (which is denied); and
- (d) says further that it reserves the right to amend its response to the allegations in paragraph 83H of WSP's Amended Third Cross-Claim Statement following the

receipt of any evidence served by WSP that explains the nature of the 'appropriate rectification measures' WSP says would have been undertaken at that time.

83HA In further answer to paragraph 83H of WSP's Amended Third Cross-Claim Statement, if it be alleged by WSP (as suggested by WSP in its 13 August 2021 response to Icon's request for particulars) that the 'appropriate rectification measures' undertaken to remedy the 'grouting deficiencies' would have involved the preparation and construction of a rectification design similar to the design that was prepared and constructed after the Observed Damage was identified (**Implemented Remedial Design**), then in that circumstance Icon:

(a) denies any such allegation;

(b) says further that construction of the works specified in the Implemented Remedial Design would likely not have been capable of being completed before:

(i) the date for practical completion in the D&C Contract;

(ii) the sunset date in the D&C Contract;

(iii) the bonus date in the D&C Contract; and

(iv) the sunset date in the project delivery agreement between AAD and SOPA;

(c) says further that if construction of the building was not completed before:

(i) one or other of the dates specified in subparagraphs (b)(i), (ii) and (iv) above, Icon would have been liable to pay damages to AAD; and/or

(ii) the date specified in subparagraph (b)(iii) above, Icon would not have been eligible to receive payment of a bonus from AAD;

(d) says further that if WSP had proposed that a design similar to the Implemented Remedial Design was required to overcome the 'grouting deficiencies', Icon would have in that circumstance advised WSP that:

- (i) the works specified in the Implemented Remedial Design would likely not have been capable of being completed before the dates specified in subparagraphs (b)(i), (ii), (iii) and (iv) above; and
- (ii) if WSP insisted that a design similar to the Implemented Remedial Design be constructed in order to overcome the 'grouting deficiencies', Icon would seek to recover from WSP any damages that Icon would be required to pay AAD, and any bonus that Icon would have forgone, as a result of any delay in completion of the building;
- (e) says further that in addition to the matters pleaded in subparagraphs (b) to (d) above, WSP would not have proffered the Implemented Remedial Design given that:

 - (i) WSP would have only suggested that such design was needed if it had formed the view that its original design did not comply with AS 3600 and the Building Code of Australia; and
 - (ii) WSP would not have formed the view that its original design was non-compliant, which is to be inferred from the fact that even after the Observed Damage occurred, WSP maintained that its design of those parts of the building where the Observed Damage occurred complied with AS 3600 and the Building Code of Australia;
- (f) says further that given the matters pleaded in paragraph 83HA(b)-(e) above, if WSP had concluded that the Grouting Design Change was mistakenly approved and that it was necessary for the grouting work to be attended to, rather than proffering a design similar to the Implemented Remedial Design, WSP would have instead directed that the joint between the precast panels be grouted in accordance with what was specified in WSP Drawing S06.010[2], which work would have been able to have been completed before the dates referred to in subparagraphs (b)(i)-(iv) above; and
- (g) says further that:

 - (i) even if the hobs were grouted in accordance with what was specified in WSP Drawing S06.010[2], WSP's design of the hobs would have, in

relation to bearing stresses, remained non-compliant with AS 3600 and the Building Code of Australia as the design failed to provide for:

(A) sufficient transverse steel reinforcement across the thickness of the hob so as to resist bursting tension; and

(B) sufficient steel reinforcement so as to control inclined cracking in the hob,

(Hob Design Deficiencies); and

(ii) even if the hobs were grouted in accordance with what was specified in WSP Drawing S06.010[2], the Observed Damage would still have occurred (either at the time it did or at some later point in time) given the Hob Design Deficiencies.

83I In answer to paragraph 83I of WSP's Amended Third Cross-Claim Statement, Icon:

(a) repeats paragraph 83F above; and

(b) otherwise denies the paragraph.

83J In answer to paragraph 83J of WSP's Amended Third Cross-Claim Statement, Icon:

(a) as to subparagraph (a), admits that it did not provide WSP with a copy of correspondence from SPS dated 5 August 2018 (**Defect Notice 84**);

(b) as to subparagraph (b), denies the subparagraph;

(c) as to subparagraph (c), insofar as it is alleged that Icon was negligent in failing to refer the matters in paragraphs 83F and 83G to WSP's attention, denies that allegation and repeats the matters pleaded in paragraphs 83G to 83HA above;

(d) repeats paragraph 83F(c) above; and

(e) otherwise denies the paragraph.

83K In answer to paragraph 83K of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) denies the allegations in the paragraph, including the allegations in the chapeau and in subparagraphs (a) to (f);
- (b) says further that had WSP undertaken investigations into the grouting used in the hobs, it would have identified that the joint between the hob and the precast panel had been grouted in accordance with the Grouting Design Change which WSP had approved as pleaded in paragraph 23K above;
- (c) says further that WSP has not identified with specificity in paragraph 83K(b) (or in any other particulars provided) the 'appropriate rectification measures' it says it would have undertaken to remedy the 'grouting deficiencies', assuming they existed (which is denied); and
- (d) says further that it reserves the right to amend this List Response following the receipt of any evidence served by WSP that explains the nature of the 'appropriate rectification measures' WSP says would have been undertaken.

83KA In further answer to paragraph 83K, if it be alleged by WSP (as suggested by WSP in its 13 August 2021 response to Icon's request for particulars) that the 'appropriate rectification measures' that would have been undertaken to remedy the 'grouting deficiencies' would have involved the preparation and construction of the Implemented Remedial Design, then in that circumstance Icon:

- (a) denies such allegation;
- (b) says further that construction of the works specified in the Implemented Remedial Design would likely not have been capable of being completed before:
 - (i) the date for practical completion in the D&C Contract;
 - (ii) the sunset date in the D&C Contract;
 - (iii) the bonus date in the D&C Contract; and
 - (iv) the sunset date in the project delivery agreement between AAD and SOPA;
- (c) says further that if construction of the building was not completed before:

- (i) one or other of the dates specified in subparagraphs (b)(i), (ii) and (iv), Icon would have been liable to pay damages to AAD; and/or
- (ii) the date specified in subparagraph (b)(iii) above, Icon would not have been eligible to receive payment of a bonus from AAD;
- (d) says further that if WSP had proposed that a design similar to the Implemented Remedial Design was required to overcome the 'grouting deficiencies', Icon would have in that circumstance:

 - (i) advised WSP that the works specified in the Implemented Remedial Design would likely not have been capable of being completed before the dates specified in subparagraphs (b)(i), (ii), (iii) and (iv) above; and
 - (ii) advised WSP that if it insisted that a design similar to the Implemented Remedial Design be constructed in order to overcome the 'grouting deficiencies', Icon would seek to recover from WSP any damages that Icon would be required to pay AAD, and any bonus that Icon would have forgone, as a result of any delay in completion of the building;
- (e) says further that in addition to the matters pleaded in subparagraphs (b) to (d) above, WSP would not have proffered the Implemented Remedial Design given that:

 - (i) WSP would have only suggested that such design was needed if it had formed the view that its original design did not comply with AS 3600 and the Building Code of Australia; and
 - (ii) WSP would not have formed the view that its original design was non-compliant, which is to be inferred from the fact that even after the Observed Damage occurred, WSP maintained that its design of those parts of the building where the Observed Damaged occurred complied with AS 3600 and the Building Code of Australia;
- (f) says further that given the matters pleaded in subparagraphs (b) to (e) above, if WSP had concluded that the Grouting Design Change was mistakenly approved and that it was necessary for the grouting work to be attended to, rather than proffering a design similar to the Implemented Remedial Design,

WSP would have instead directed that the joint between the precast panels be grouted in accordance with what was specified in WSP Drawing S06.010[2], which work would have been able to have been completed before the dates referred to in subparagraphs (b)(i)-(iv) above; and

(g) _____ says further that:

(i) _____ even if the hobs were grouted in accordance with what was specified in WSP Drawing S06.010[2], WSP's design of the hobs would have, in relation to bearing stresses, remained non-compliant with AS 3600 and the Building Code of Australia as the design failed to provide for the Hob Design Deficiencies; and

(ii) _____ even if the hobs were grouted in accordance with what was specified in WSP Drawing S06.010[2], the Observed Damage would still have occurred (either at the time it did or at some later point in time) given the Hob Design Deficiencies.

83L In answer to paragraph 83L of WSP's Amended Third Cross-Claim Statement, Icon:

(a) _____ denies that it was aware at the time that the hob had spalled under load;

(b) _____ says further that on or about 6 April 2017, Icon became aware that concrete at the top edge of the hob at 10C-14.5 near to the internal glass doors had not been properly poured;

(c) _____ says further that on or about 6 April 2017, Icon notified the relevant subcontractor of the defect described in paragraph 83L(a) above and requested its rectification;

(d) _____ says further that at or around this time, Icon undertook onsite investigations and did not observe a defect similar to that described in paragraph 83L(b) above at any other location (**Site Survey**);

(e) _____ says further that on or about 27 September 2017, Icon became aware that despite repeated requests to the relevant subcontractor, the defect described in paragraph 83L(a) above had not been rectified, and in addition to the defect

described in paragraph 83L(a) above a crack running diagonally through the hob with some concrete spalled onto the slab below was observed; and

(f) otherwise denies the paragraph.

83M In answer to paragraph 83M of WSP's Amended Third Cross-Claim Statement, Icon:

(a) admits that it did not draw to WSP's attention the hob damage pleaded in paragraph 83L;

(b) says further that after it became aware of the hob damage described in paragraph 83L(a) and (d) above:

(i) Icon requested Traino attend to the rectification of the defect;

(ii) Traino engaged Pro Patching Services Pty Ltd (**Pro Patching**) to attend to the rectification of the defect on its behalf; and

(iii) on or about October 2017, an employee of Pro Patching attended to the rectification of the defect and:

(A) jackhammered out the area of the hob that had not been formed with a small handheld electric jackhammer to expose the steel in that location;

(B) cleaned the exposed concrete and steel to remove any fine materials;

(C) treated the exposed steel with epoxy to ensure it was protected from corrosion;

(D) prepared a Parchem Construction Supplies Pty Ltd HB70 product (**HB70**) to a mud like consistency;

(E) applied a priming product to the concrete; and

(F) patched and filled the hob with the HB70 by applying it layer by layer, each layer separated by the priming product;

(c) says further that the Site Survey did not identify any other similar defect to that described in paragraph 83L(b) above; and

(d) otherwise denies the paragraph.

83N In answer to paragraph 83N of WSP's Amended Third Cross-Claim Statement, Icon:

(a) denies the allegation in the paragraph, including the allegations in the chapeau and in subparagraphs (a) to (h);

(b) as to subparagraph (b) thereof, denies that the concrete used in the hobs had a compressive strength less than that specified in WSP's for construction drawings;

(c) says further that notwithstanding that the specified concrete strength for the hobs in WSP's for construction drawings was 40 MPa, the hobs were constructed with concrete which achieved a concrete strength of at least 65 MPa;

(d) says further that WSP has not identified in paragraph 83N (or in any particulars provided) what rectification measures it says it would have undertaken to remedy the 'grouting deficiencies' or the 'concrete deficiencies' (assuming those deficiencies existed, which is denied);

(e) says further that had WSP undertaken an investigation into the strength of the concrete used in the hobs, WSP would have ascertained that the hobs had been constructed with concrete which achieved a concrete strength of at least 65 MPa, which exceeded the strength required in WSP's for construction drawings;

(f) says further that in consequence of the matters pleaded in subparagraph (e) above, had WSP undertaken any investigation into the strength of the concrete used in the hobs, it would have ascertained that there was no 'concrete deficiencies' and that there was no need for work to be undertaken to deal with any concrete strength issues; and

(g) says further that had WSP undertaken investigations into the grouting used in the hobs, it would have identified that the joint between the hob and the precast

panel had been grouted in accordance with the Grouting Design Change which WSP had approved as pleaded in paragraph 23K above.

83NA In further answer to paragraph 83N, if it be alleged by WSP that the 'appropriate rectification measures' that would have been undertaken would have involved the preparation and construction of the Implemented Remedial Design, then in that circumstance Icon:

(a) denies such allegation;

(b) says further that construction of the works specified in the Implemented Remedial Design would likely not have been capable of being completed before:

(i) the date for practical completion in the D&C Contract;

(ii) the sunset date in the D&C Contract;

(iii) the bonus date in the D&C Contract; and

(iv) the sunset date in the project delivery agreement between AAD and SOPA;

(c) says further that if construction of the building was not completed before:

(i) one or other of the dates specified in subparagraphs (b)(i), (ii) and (iv), Icon would have been liable to pay damages to AAD; and/or

(ii) the date specified in subparagraph (b)(iii) above, Icon would not have been eligible to receive payment of a bonus from AAD;

(d) says further that if WSP had undertaken any investigations, it would have:

(i) ascertained that the hobs had been constructed with concrete which achieved a concrete strength of at least 65 MPa, which exceeded the strength required in WSP's for construction drawings; and

(ii) concluded that because the hobs were constructed with concrete which achieved a concrete strength of at least 65 MPa, it would not have been necessary to propose any rectification method to deal with any concrete

strength issues, and certainly would not have suggested that implementation of a design similar to the Implemented Remedial Design was necessary;

(e) says further that if WSP had proposed that a design similar to the Implemented Remedial Design, Icon would have in that circumstance:

(i) advised WSP that the works specified in the Implemented Remedial Design would likely not have been capable of being completed before the dates specified in subparagraphs (b)(i), (ii), (iii) and (iv) above; and

(ii) advised WSP that if it insisted that a design similar to the Implemented Remedial Design be constructed in order to overcome the '*grouting deficiencies*', Icon would seek to recover from WSP any damages that Icon would be required to pay AAD, and any bonus that Icon would have forgone, as a result of any delay in completion of the building;

(f) says further that in addition to the matters pleaded in subparagraphs (b) to (e) above, WSP would not have proffered the Implemented Remedial Design given that:

(i) WSP would have only suggested that such design was needed if it had formed the view that its original design did not comply with AS 3600 and the Building Code of Australia; and

(ii) WSP would not have formed the view that its original design was non-compliant, which is to be inferred from the fact that even after the Observed Damage occurred, WSP maintained that its design of those parts of the building where the Observed Damaged occurred complied with AS 3600 and the Building Code of Australia;

(g) says further that given the matters pleaded in subparagraphs (b) to (f) above, if WSP had concluded that the Grouting Design Change was mistakenly approved and that it was necessary for the grouting work to be attended to, rather than proffering a design similar to the Implemented Remedial Design, WSP would have instead directed that the joint between the precast panels be grouted in accordance with what was specified in WSP Drawing S06.010[2], which work

would have been able to have been completed before the dates referred to in subparagraphs (b)(i)-(iv) above; and

(h) says further that:

(i) even if the hobs were grouted in in accordance with what was specified in WSP Drawing S06.010[2], WSP's design of the hobs would have, in relation to bearing stresses, remained non-compliant with AS 3600 and the Building Code of Australia as the design failed to provide for the Hob Design Deficiencies; and

(ii) even if the hobs were grouted in in accordance with what was specified in WSP Drawing S06.010[2], the Observed Damage would still have occurred (either at the time it did or at some later point in time) given the Hob Design Deficiencies.

83O Icon denies paragraph 83O of WSP's Amended Third Cross-Claim Statement and repeats the matters pleaded in paragraphs 83B to 83N above.

83P Icon denies paragraph 83P of WSP's Amended Third Cross-Claim Statement and repeats the matters pleaded in paragraphs 83B to 83O above.

83Q In answer to paragraph 83Q of WSP's Amended Third Cross-Claim Statement, Icon:

(a) denies that Icon is a tortfeasor liable (either to SOPA and/or the plaintiffs) within the meaning of s 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act 1946 (NSW) (LRMP Act)*; and

(b) says further that if, which is denied, Icon is found to be a tortfeasor liable (to SOPA and/or the plaintiffs) Icon ought to be exempted from liability for contribution under s 5(2) of the LRMP Act given that the Observed Damage (and therefore any loss suffered by SOPA and the plaintiffs that is consequential thereon) only occurred because WSP:

(i) failed to design the hob in accordance with AS 3600; and

(ii) failed to ensure that its design provided for:

(A) sufficient transverse steel reinforcement across the thickness of the hob so as to resist bursting tension; and

(B) sufficient steel reinforcement so as to control inclined cracking in the hob.

83R In answer to paragraph 83R of WSP's Amended Third Cross-Claim Statement, Icon repeats the matters pleaded in paragraph 83P above and repeats paragraphs 37(b)(ii), 37(b)(iii), 39, 124 and 134 of its List Response to SOPA's Amended First Cross-Claim Statement.

Icon's breaches of the ACL

83S In answer to paragraph 83S of WSP's Amended Third Cross-Claim Statement, Icon denies the paragraph and repeats the matters pleaded:

- (a) in paragraphs 67AL to 67BD of Icon's List Response to the plaintiffs' Amended List Statement; and
- (b) in paragraphs 91 to 98 of Icon's List Response to SOPA's Amended First Cross-Claim Statement.

83T Icon denies the allegations in 83T of WSP's Amended Third Cross-Claim Statement.

83U Icon denies the allegations in 83U of WSP's Amended Third Cross-Claim Statement.

Coordinate liability

83V Icon denies the allegations in 83V of WSP's Amended Third Cross-Claim Statement.

Remedial Structural Engineering Services

84A In answer to the entirety of WSP's claim against Icon in paragraphs 84 83B to 91 of WSP's Amended Third Cross-Claim Statement, Icon pleads as follows:

- (a) as pleaded in paragraphs 88 to 101 and 110 to 120 of Icon's Second Cross-Claim Statement, Icon alleges, in summary (and amongst other things), that:
 - (i) in preparing its design of the hob, WSP failed to design for bursting stresses, contrary to what was required by AS 3600;

- (ii) such design defect was the cause of the Observed Damage; and
 - (iii) WSP therefore breached the Consultancy Agreement, causing Icon loss and damage;
- (b) Icon says further that following the evacuation of residents in the Building on 28 December 2018 (which occurred following the identification of the Observed Damage), WSP provided engineering services to Icon in the form of the preparation of a rectification design as described in paragraph 69 of Icon's Second Cross-Claim Statement;
- (c) Icon says further that contrary to what WSP has alleged, Icon did not enter into any further or new agreement with WSP that would govern the basis upon which WSP would continue to provide engineering services, and the engineering services that WSP provided from 28 December 2018 were governed by the Consultancy Agreement (which was still on foot);
- (d) Icon says further that the engineering services that WSP provided from 28 December 2018 were performed by WSP to ensure WSP's compliance with:
 - (i) its obligation in clause 2.2 of the General Conditions of the Consultancy Agreement (having regard to the definition of *Consultant's Warranties* in clause 1 of the General Conditions of the Consultancy Agreement) to ensure that:
 - (A) the design of the Building meets Icon's project requirements; and
 - (B) the design of the Building is adequate and suitable for the purposes for which it is intended; and
 - (ii) its obligation in clause 5.9 of the General Conditions of the Consultancy Agreement:
 - (A) to ensure that the design documents satisfy Icon's project requirements, all legislative requirements and any requirements of an Authority;

- (B) to ensure that the design documents contain sufficient detail to construct to and, when completed, satisfy the WSP's warranties in subclause 2.2 of the General Conditions of the Consultancy Agreement;
- (C) to ensure that the details contained in any design documents prepared are co-ordinated with the details contained in all other design documents;
- (D) to complete the Services consistently with the Consultancy Agreement; and
- (E) to ensure that the design documents are structurally and aesthetically sound,

being obligations that WSP had not previously performed notwithstanding that WSP had received payment on the basis that it had so performed;

- (e) Icon says further that WSP's breaches of the Consultancy Agreement constituted a defect or omission in the Services that was not apparent at the time of completion, or at the time of issue of the final certificate, within the meaning of clause 23.2 of the General Conditions of the Consultancy Agreement;
- (f) Icon says further that in the premises of sub-paragraphs (d) and (e) above, and by reason of clause 23.2 of the General Conditions of the Consultancy Agreement, WSP had not earned the fee in the Consultancy Agreement, notwithstanding that:
 - (i) WSP had already received payment of the full fee under the Consultancy Agreement; and
 - (ii) a final certificate had been issued pursuant to clause 23.2 of the General Conditions of the Consultancy Agreement;
- (g) Icon says further that, in the premises of sub-paragraphs (d) to (f) above, had WSP not provided the further engineering services from 28 December 2018,

Icon would have been entitled to abate the fee in the Consultancy Agreement (in a sum equivalent to the cost of rectifying WSP's non-performance) to reflect the diminution in the value of the services that WSP had provided;

- (h) Icon says further that although WSP has rendered invoices to Icon for the engineering services that it provided from 28 December 2018 totalling \$1,114,296.56 (inc GST) (which Icon has not paid), Icon is not liable to make payment of any part of the invoiced amount, or any further payment, to WSP; and
- (i) Icon says further that if, which is denied, Icon is liable to make payment of the invoiced amount totalling \$1,114,296.56 (inc GST), or payment of any other amount, such amounts are to be set off against any liability that WSP has to Icon for WSP's breach of the Consultancy Agreement and contravention of s 18 of the Australian Consumer Law, as alleged by Icon in Icon's Second Cross-Claim Statement.

84 In answer to paragraph 84 of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) repeats the matters pleaded in paragraph 84A above; and
- (b) otherwise denies the paragraph.

85 In answer to paragraph 85 of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) denies the paragraph; and
- (b) repeats the matters pleaded in paragraphs 35, 39 to 53 and 84A above.

86 In answer to paragraph 86 of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) denies the paragraph; and
- (b) repeats the matters pleaded in paragraphs 35, 39 to 53 and 84A above.

87 In answer to paragraph 87 of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) admits that WSP issued the WSP Invoices listed in the table in paragraph 87;
- (b) repeats the matters pleaded in paragraphs 35, 39 to 53 and 84A above; and

(c) otherwise denies the paragraph.

88 In answer to paragraph 88 of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) admits that Icon has not paid the invoiced amount;
- (b) repeats the matters pleaded in paragraphs 35, 39 to 53 and 84A above; and
- (c) otherwise denies the paragraph.

89 In answer to paragraph 89 of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) denies the paragraph; and
- (b) repeats the matters pleaded in paragraphs 35, 39 to 53 and 84A above.

90 In answer to paragraph 90 of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) denies the paragraph;
- (b) says further that Icon has not been enriched by reason of WSP providing engineering services following the evacuation of the Building on 28 December 2018 given that WSP only performed those services as it had hitherto not performed its obligations (as pleaded in paragraph 84A above) notwithstanding that it had received payment of the full fee under the Consultancy Agreement; and
- (c) repeats the matters pleaded in paragraphs 84A and 89 above.

91 In answer to paragraph 91 of WSP's Amended Third Cross-Claim Statement, Icon:

- (a) denies the paragraph; and
- (b) repeats the matters pleaded in paragraphs 84A and 89 to 90 above.

92 Icon denies that WSP is entitled to the relief claimed by WSP in its Amended Cross Summons or at all.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

Icon does not consider that it is appropriate at this stage for any issue or question to be the subject of a referral.

E. STATEMENT AS TO MEDIATION

Icon is willing to proceed to mediation at an appropriate time.

SIGNATURE

Signature of legal representative



Capacity

As employed solicitor of legal representative

Date of signature

~~21 February 2020~~ 27 October 2021