

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 16 March 2022**

**2019/00232749-007, 2019/00232749-004, 2019/00232749-006, 2019/00232749-001,
2019/00232749-003, 2019/00232749-002, 2019/00232749-005 / Cross Summons 006:
EVOLUTION PRECAST SYSTEMS PTY LTD v WSP Structures Pty Ltd, Cross Summons
003: WSP Structures Pty Ltd v EVOLUTION PRECAST SYSTEMS PTY LTD, Cross
Summons 005: Australia Avenue Developments Pty Ltd v Icon Co (NSW) Pty Ltd,
Summons: Terry Walter Williamson v SYDNEY OLYMPIC PARK AUTHORITY trading as
Sydney Olympic Park Authority, Cross Summons 002: Icon Co (NSW) Pty Ltd v WSP
Structures Pty Ltd, Cross Summons 001: SYDNEY OLYMPIC PARK AUTHORITY trading
as Sydney Olympic Park Authority v Australia Avenue Developments Pty Ltd, Cross
Summons 004: Icon Co (NSW) Pty Ltd v EVOLUTION PRECAST SYSTEMS PTY LTD**

This matter is listed for Motion (Commercial List) on 1 April 2022 9:15 AM before the Supreme Court - Civil at Supreme Court Sydney.

Estimated duration: 5 Minutes

His Honour Justice Hammerschlag makes orders in the document entitled Short Minutes of Order dated today's date and placed with the papers:

The Court makes the following orders:

Pleadings

Further Amended Commercial List Statement

1. Leave be granted to the Plaintiffs in the Class Action proceeding to file a Further Amended Commercial List Statement in the form attached to the letter from Corrs to the other parties dated 28 February 2022.
2. The Plaintiffs to serve their Further Amended Commercial List Statement upon the Defendants on or before 9 March 2022.
3. The Defendants to file and serve their List Responses to the Further Amended Commercial List Statement on or before 18 March 2022.
4. The Defendants to serve any proposed Amended Cross Claim List Statement(s) on the other parties on or before 18 March 2022 and the other parties to indicate whether they consent to the filing of any such document by 25 March 2022:
 - a. If consented to, the proposed Amended Cross Claim List Statement(s) to be filed and served by 30 March 2022; or
 - b. If not consented to, any Notice of Motion seeking leave to file any Amended Cross Claim List Statement(s), together with any evidence in support, to be filed and served by 30 March 2022.

Structural Engineering

5. Direct, pursuant to UCPR 31.24(1):

- a. the Structural Experts listed in Appendix A confer on at least 14 March 2022 (between 9am and 4pm), 15 March 2022 (between 9am and 4pm) and 18 March 2022 (between 9am and 4pm) for the purposes of preparing a joint report (Structural Joint Conference);
- b. the parties are to confer and agree upon the questions to be addressed by the Structural Experts in joint conference by 10 March 2022 or, if agreement is not reached, the parties are to prepare a list of questions that is to include all of the questions proposed by any of the parties by 10 March 2022, noting for each question that is not agreed, why a particular party does not agree to the question;
- c. the Structural Experts prepare a joint report by 22 April 2022; and
- d. the Structural Joint Conference:
 - i. occur at MinterEllison's Sydney offices;
 - ii. be streamed via videoconference to permit any Structural Expert who elects not to attend in person to participate via electronic means; and
 - iii. be facilitated by George Inatey QC in person (the Facilitator).

6. Order that the costs of the Facilitator be shared equally by any party serving an expert report which addresses structural engineering issues, and otherwise be borne as required by any subsequent costs orders.

Concrete

7. Direct, pursuant to UCPR 31.24(1):

- a. the Concrete Experts listed in Appendix A confer on 17 March 2022 (between 9am and 4pm) for the purposes of preparing a joint report (Concrete Joint Conference);
- b. the parties are to confer and agree upon the questions to be addressed by the Concrete Experts in joint conference by 10 March 2022 or, if agreement is not reached, the parties are to prepare a list of questions that is to include all of the questions proposed by any of the parties by 10 March 2022, noting for each question that is not agreed, why a particular party does not agree to the question;
- c. the Concrete Experts prepare a joint report by 8 April 2022; and
- d. the Concrete Joint Conference:
 - i. occur at MinterEllison's Sydney offices;
 - ii. be streamed via videoconference to permit any Concrete Expert who elects not to attend in person to participate via electronic means; and
 - iii. be facilitated by the Facilitator.

8. Order that the costs of the Facilitator be shared equally by any party serving an expert report which addresses concrete issues, and otherwise be borne as required by any subsequent costs orders.

Structural engineering and concrete joint conferences: process

9. Direct, pursuant to UCPR 31.24(2):

- a. no person attend the Structural Joint Conference or the Concrete Joint Conference other than:
 - i. the Facilitator; and
 - ii. the experts identified, respectively, in orders 5a and 7a above.
- b. any expert who attends any of the Structural Joint Conference or the Concrete Joint Conference must only opine in response to a question which relates to an opinion contained in a report or affidavit authored by them and served in the Class Action, Developer or OC Proceedings;
- c. during the joint conference process:
 - i. the experts may contact persons who have assisted them with the preparation of their expert's report(s) and who have been identified or named in the expert's report(s) as having provided such assistance; and
 - ii. the experts may not communicate with the solicitors who retained the expert, or with any representative of the party in whose interest the expert was retained, about any issue discussed or raised in the joint conference or the joint report until such time as the experts have signed a joint report which has been served.

Expert Joint Conferences: other

Valuation

10. Direct, pursuant to UCPR 31.24(1):

- a. the Valuation Experts listed in Appendix A confer by 17 March 2022 for the purposes of preparing a joint report (Valuation Joint Conference);
- b. the parties are to confer and agree upon the questions to be addressed by the Valuation Experts in joint conference by 10 March 2022 or, if agreement is not reached, the parties are to prepare a list of questions that is to include all of the questions proposed by any of the parties by 10 March 2022, noting for each question that is not agreed, why a particular party does not agree to the question;
- c. the Valuation Experts are to prepare a joint report by 8 April 2022; and
- d. the Valuation Joint Conference:
 - i. occur at Corrs Chambers Westgarth's Sydney offices; and
 - ii. be streamed via videoconference to permit any Valuation Expert who elects not to attend in person to participate via electronic means.

QS/Costs

11. QS/Costs related expert evidence in reply is to be by joint report. The parties are to endeavour to agree upon the terms of a suitable order for the conferral and joint reporting of the parties' QS/Costs related experts and whether a facilitator should be appointed by 17 March 2022.

Developer Damages

12. Developer damages related expert evidence in reply is to be by joint report. The parties are to endeavour to agree upon the terms of a suitable order for the conferral and joint reporting of the parties' developer damages related experts and whether a facilitator should be appointed by 22 March 2022.

Insurance

13. Insurance premium related expert evidence in reply is to be by joint report. The parties are to endeavour to agree upon the terms of a suitable order for the conferral and joint reporting of the parties' insurance premium related experts and whether a facilitator should be appointed by 22 March 2022.

Other joint conferences: process

14. Direct, pursuant to UCPR 31.24(2):

a. no person attend the Valuation Joint Conference, the OS/Costs Joint Conference, the Developer Damages Joint Conference or the Insurance Joint Conference other than the experts identified in, respectively, orders 11, 12 and 13 above;

b. during the joint conference process:

i. the experts may contact persons who have assisted them with the preparation of their expert's report(s) and who have been identified or named in the expert's report(s) as having provided such assistance; and

ii. the experts may not communicate with the solicitors who retained the expert, or with any representative of the party in whose interest the expert was retained, about any issue discussed or raised in the joint conference or the joint report until such time as the experts have signed a joint report which has been served.

15. Any expert who attends any of the Valuation, OS/Costs, Developer Damages or Insurance joint conferences must only opine in response to a question which relates to an opinion contained in a report or affidavit authored by them and served in the Class Action, Developer or OC Proceedings.

Evidence on liability

16. The time for Evolution to serve its evidence on liability be extended to 4.00pm on 7 March 2022.

17. WSP to serve any evidence strictly in reply on liability to the evidence served by Icon and Evolution (in February and March 2022) by 1 April 2022.

Evidence on quantum

18. Icon to serve its evidence on quantum in reply to evidence served by the Plaintiffs, SOPA, AAD, Ecove and/or WSP on or before 4.00pm on 8 March 2022.

19. WSP to serve its evidence on quantum by 18 March 2022.

20. Icon is to serve its quantum evidence in the Developer Proceedings on or before 18 March 2022.

21. Icon is to serve its quantum evidence in the OC Proceedings on or before 4 March 2022.

Common questions

22. By 4pm on 1 April 2022, the parties are to confer in relation to the common questions.

23. If there is a dispute about the common questions, each party in dispute is to set out the questions that the party says should be determined at the initial trial (Statement of Disputed Questions) and serve the Statement of Disputed Questions on each party to the proceedings by 6 April 2022.

24. The proceedings be listed for determination of any Statement of Disputed Questions on 8 April 2022.

Hearing

25. The trial commencing 2 May 2022 be conducted as an 'in person' hearing.

26. The parties are to confer and arrange for a real time transcript of the hearing, with the costs of any such transcript to be shared equally by the parties, subject to any later costs order in the proceedings.

Trial schedule

27. By 4pm on 1 April 2022, the parties are to confer in relation to the trial schedule and appropriate sharing of hearing fees payable to the Court.

28. Unless otherwise ordered or agreed, the Court will sit on Monday - Thursday of each week and will not sit on Fridays.

Other pre-trial steps

29. Order 10 of the Orders made on 27 April 2021 (i.e. the Usual Order for Hearing) be varied as follows:

a. Orders 7, 8, 9, 10 and 11 of the Usual Order for Hearing are modified such that:

- i. references to the Electronic Court Book are to the electronic court book maintained by Epiq (Epiq Court Book);
- ii. save for those documents that AAD/ECove maintains are the subject of commercial confidence, the parties are to provide Epiq with all documents that any party wishes to include in the Epiq Court Book by 25 March 2022 and an index to and online access to a copy of the Epiq Court Book incorporating those documents is to be circulated by 4 April 2022;
- iii. any documents that AAD/ECove maintains are the subject of commercial confidence, AAD/ECove are to provide Epiq all such documents by 25 March 2022 and an index to that part of the Epiq Court Book incorporating those documents is to be circulated by 4 April 2022; and
- iv. any objections to the inclusion of particular documents in the Epiq Court Book to be notified to all other parties by 16 April 2022;

b. the parties are to confer and endeavour to agree upon an appropriate confidentiality regime in respect of the material the subject of order 29a.iii above by 16 April 2022;

- c. the parties are to comply with Orders 14, 15 and 16 of the Usual Order for Hearing by including the materials specified in those orders in the Epiq Court Book within the times stipulated by those orders except in relation to:
- i. outlines of submissions, which are to be provided as follows:
 - (a) no later than 7 working days before the hearing in respect of the Plaintiff in each proceeding; and
 - (b) no later than 3 working days before the hearing in respect of the defendants and cross-defendants;
 - ii. chronology of relevant events, which is to be provided as follows:
 - (a) by 4pm on 1 April 2022, the Plaintiffs in the Class Proceedings are to propose a chronology of relevant events; and
 - (b) by no later than 3 working days before the hearing, the parties are to endeavour to agree on a chronology of relevant events; and
 - iii. a statement of real issues and a list of authorities from all parties, which is to be provided by no later than 3 working days before the hearing;
- d. in addition to (a), no later than two working days before the hearing, the parties are to provide copies of the materials described in Order 16 of the Usual Order for Hearing to the trial Judge's Associate, or, if the identity of the judge is unknown at the time for compliance, by delivery to the List Judge's Associate; and
- e. Orders 13, 14, 15, 16 and 17 of the Usual Order for Hearing are otherwise dispensed with.

30. Order 11 of the Orders made on 27 April 2021 in relation to the Court Book be vacated.

31. Subject to any later costs order in the proceedings, the costs associated with the Epiq Court Book (other than costs attributable to optional non-shared services provided to a party on an individual basis) be shared equally by the parties to the Class Action proceedings, the OC Proceedings and the Developer Proceedings.

Discovery in Developer Proceedings

32. Within 14 days of the date of this order, MD is to serve an affidavit of discovery, made by an authorised officer, in relation to the documents it has discovered.

33. Within 14 days of the date of this order, Ecove is to serve an affidavit of discovery, made by an authorised officer, in relation to the documents it has discovered.

34. The affidavits of discovery referred to in Orders 32 and 33 above must address the matters set out in r 21.4(2) of the Uniform Civil Procedure Rules 2005 (NSW).

35. On or before 14 March 2022 Icon is to respond to the letter from the solicitors for MD dated 28 February 2022 advising:

- a. which of the categories Icon is prepared to provide discovery in relation to; and
- b. which of the categories Icon is not prepared to provide discovery in relation to.

36. In respect of those documents falling within Order 35(a) above, Icon is to provide verified discovery of such material by 28 March 2022 in accordance with the Uniform Civil Procedure Rules, including rule 21.4.

37. In the event of Icon refusing to provide discovery, AAD is to file and serve a notice of motion and supporting affidavit in respect of any application for discovery by 18 March 2022, with such Notice of Motion returnable on 25 March 2022.

Inspection of subpoenaed documents

38. Leave be granted to the parties in the:

- a. Class Action Proceedings to inspect and copy in the Registry documents previously produced under subpoena in the OC Proceedings and Developer Proceedings; and
- b. OC Proceedings, in the first instance limited to counsel and one solicitor on behalf of the Owners Corporation, to inspect in the Registry documents previously produced to the Court in the Class Action Proceedings and Developer Proceedings.

Non-structural defects

39. The Court notes that the Plaintiff, Icon, SOPA and AAD/ECove have by agreement appointed:

- a. John Hickey as the single building expert;
- b. William Marshall as the single fire safety expert;
- c. Ross Brown as the single hydraulics expert;
- d. Dean Eislers as the single electrical expert;
- e. Matthew Ottley as the single acoustics expert; and
- f. Mohamad Doureihi as the parties' single mobile telephone reception expert.

40. The Plaintiff, Icon, SQPA and AAD/ECove are to cooperate as needed to expeditiously respond to all queries from single experts.

41. Icon is to use best endeavours to complete the fire safety repair work that the Plaintiff has agreed to it carrying out by 25 March 2022. Any item referable to any such repair work not certified as repaired by a consultant for the Plaintiff by 8 April 2022 is to be referred to the relevant parties' single expert (provided any delay to certification is not caused by the Plaintiff's consultant).

42. The time for the mechanical ventilation experts to complete their (stage 2) joint report is extended to 25 March 2022.

43. The waterproofing experts are to issue their joint report by 8 April 2022.

44. Order 25 made on 15 December 2021 in relation to facade expert evidence is vacated.

45. The facade experts for the Plaintiff and Icon (facade experts) are to confer upon and to jointly inspect the alleged defect items listed in Appendix B (facade expert items) to the extent necessary to narrow the issues between them in relation to which of those items are defects and the scopes of work to rectify any such defects (facade issues) and are to issue to the parties a joint report detailing the matters agreed, the matters not agreed and the reasons for any disagreement on the facade issues by 8 April 2022.

46. Any expert evidence in response to the Plaintiff's expert evidence in relation to scratched glazing (items 87 and 913) excluding quantum served on 11 February 2022 is to be served by 29 April 2022.

47. The Plaintiff to serve its lay evidence in relation to non-structural defects (subject to matters arising from joint reports or single expert reports not yet issued) and in relation to allegedly outstanding consequential damage due to structural defects by 25 March 2022.

48. The parties to endeavour to agree upon a single repair cost estimation expert (in relation to non-structural defects not yet repaired and allegedly outstanding consequential damage due to structural defects but not including items 87 and 913) and a brief to that expert (subject to the addition of the various reports on which items are defects and the required scopes once they are completed) by 25 March 2022.

49. The Plaintiff has leave to file and serve on Icon a Notice to Produce to Court in the form of the Notice provided to Icon on 28 February 2022.

50. Non-structural defects be listed for further directions on 18 March 2022.

Other

51. Evidence in any one of the Class Action Proceedings, the OC Proceedings or the Developer Proceedings is evidence in each of the other proceedings.

52. By 4pm on 9 March 2022, MD/ECove to provide to the parties in the Class Action Proceedings and the OC Proceedings all current pleadings and all evidence served by or served on MD/ECove in the Developer Proceedings, save for the following evidence, which will only be provided to those parties following the provision of an agreed confidentiality undertaking:

- a. expert report of Brendan Halligan dated 4 November 2021; and
- b. the affidavits of Bassam Afflak sworn 4 November 2021 and Mark Abraham sworn 4 November 2021.

53. The Class Action Proceedings, OC Proceedings and Developer Proceedings be listed for a case management hearing on 1 April 2022.

54. Liberty to apply on 3 days' notice.

Justice D .Hammerschlag

Signed

Date



Appendix A

Structural Experts	
Brian Uy	Class
Doug McMillan	OC
Eric Fox	SOPA
Stephen Branch	AAD, Ecove
Ian Gilbert	Icon, Icon Co and Kajima
David Emery	Icon, Icon Co and Kajima
Anil Hira	WSP
Ronald Hamburger	WSP
Nicholas Joannides	Evolution
Concrete Experts	
Brian Uy	Class
-	OC
Eric Fox	SOPA
Stephen Branch	AAD, Ecove
Ian Gilbert	Icon, Icon Co and Kajima
David Emery	Icon, Icon Co and Kajima
David Mahaffey	Icon, Icon Co and Kajima
James Aldred	WSP
Paul Uno	Evolution

Valuation Experts	
David Lunney	Class
David Bird	SOPA
-	AAD, Ecove
Grant Jackson	Icon, Icon Co and Kajima Australia
Tony Dimasi	Icon, Icon Co and Kajima Australia
Greg Preston	WSP
-	Evolution



Appendix B

- Item 82. The facade “eyebrows” have inadequate design and/or fixings. Multiple “eyebrows” have already exhibited dislocation under wind loads and/or maintenance loads (abseil loads).
- Item 83. (Given the problems associated with water ingress through the corridor louvres, and the dislocation of the “eyebrows”, there is no or no adequate evidence of the design suitability of the facade system (in general, for both structural adequacy and weatherproofing performance), which is a requirement of the BCA (BCA “Part A2 - Acceptance of design and construction”).
- Item 84. Installation defects at numerous locations throughout the building’s facade resulting in air leakage through the cladding, as indicated by localised wind noise and wind whistling at numerous locations - locations of air infiltration (drafts/whistles) at units 1205, 1912, 2903.
- Item 86. Multi stack sliding doors difficult to open/close and do not comply with the requirements of the windows code (for maximum allowable opening force).
- Item 121. Damage to the coatings throughout the slot gardens wall and soffit due to the structural defect repair works.
- Item 122. Damage and cement splatter to awning around building above ground level damaged by construction debris due to structural defect repair works (in particular at areas under the slot gardens).
- Item 145 - Unit 3001 - loose rubber seal for a glass panel.
- Items 136 and 932. Unit 3407 bedroom sliding door leading to balcony difficult to open and close.
- Item 148. Defective weatherproofing related installation of windows and sliding doors throughout the building, water ingress through, around or in the vicinity of windows and sliding doors throughout the building and/or the sliding doors and window systems installed have inadequate weatherproofing, structural and thermal qualities and performance as a whole and in relation to each of the framing, glazing (including thickness and type of glass) and fixings and BASIX compliance. Locations pressed for the allegation are:
 - Unit 902 during periods of heavy rain, accumulated water/condensation appears on the left lower side of the fixed façade windows in living area;
 - Units 2701 and 2702 lounge room water ingress between glass and rubber seal at the bottom of windows during heavy rain;
 - 3503 water ingress through glazing systems in multiple rooms;
 - Unit 2004 water ingress from façade during heavy wind driven rain;
 - Unit 2904 water ingress via windows in lounge room, bedroom 1 and bedroom 2;
 - Unit 3205 water ingress from façade during heavy wind driven rain;

- Unit 1912 winter garden - water ingress from façade between glass and aluminium frame during heavy rain.
- Items 154 and 940. Unit 1508 - damage to aluminium window frame.
- Item 914. Ground floor awning cement splatter from the carrying out of the structural repairs.
- Item 915. Unit 1702 sliding door to balcony external glass sheet complete failure.
- Item 917. Unit 3109 sliding door to the winter garden glass panel complete failure.
- Item 918. Unit 3107 winter garden lower glass panel internal sheet complete failure.
- Item 919. Unit 2404 winter garden lower glass panel internal sheet complete failure.
- Item 920. Unit 3401 slot garden glass balustrade adjacent to 1608 cracking in glass panel.
- Item 923. Unit 3401 glass panel between winter garden and living area has a vertical streak in the glass about 1 metre long which appears to be in the interlayer of the laminated glass.
- Item 924. Unit 3401 – inappropriately coloured sealant used by Icon when repairing air leakage though some of the vertical joints in the curtain wall panels ('clear' silicone sealant product should be replaced with 'black' silicone sealant).
- Item 925. Unit 3101 bedroom 3 long fixed glass panel with stain/streak of about 8cm in length.
- Item 926. Unit 3101 efflorescence between facade and soffit joint and inadequately secured external façade trim/cover piece on the underside of the sunshade visible from unit
- Item 927. Unit 3103 lounge room glass panel contains area with blurry appearance.
- Item 928. Unit 2701 bedroom glass panel has discolouration mark (between 300-600mm in diameter and particularly visible at night time).
- Item 929. Unit 2701 – inadequately fixed ducting or other building element which results in knocking sound audible within bedroom wall when strong wind enters façade vent near main bedroom.
- Item 930. Unit 3001 winter garden window not opening and scrapes against frame.
- Item 931. Unit 703 balcony door does not close properly during strong wind.
- Item 932. Unit 3407 bedroom sliding door difficult to open/close during high wind.
- Item 933. Unit 3510 sliding doors in the living room do not close properly.
- Item 934. Unit 1901 loungeroom window does not close properly and allows excessive air into the interior during periods of strong wind.
- Item 935. Unit 3401 awning window adjacent to the kitchen does not seal properly.
- Item 936. Unit 1203 balcony sliding door not operating correctly and emitting unusual sound when sliding.
- Item 148(h): Unit 2211 water ingress from façade during heavy wind driven rain.

- Item 937. Unit 2211 balustrade glass panels has paint spots visible.
- Item 938. Unit 2211 sliding door rollers bind against track.
- Item 939. Unit 2211 Window north right-hand middle transom damaged during construction and has not been properly repaired.