

**Icon Co (NSW) Pty Ltd v Secretary of the Department of Customer Service (2021/00228168) and the Otto 2 Project**

**Background**

1. On 28 May 2021, the Department of Customer Service issued a letter dated 13 May 2021 to Icon Co (NSW) Pty Ltd (**Icon**) that stated that the Department "*unders[ood]*" that Icon is the developer of a building known as "Otto 2" at 32 to 38 Rothschild Avenue, Rosebery NSW 2018 (**Otto 2**). The text of that letter asserted that the letter constituted a notice of intention to give a building work rectification order under s 33 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (NSW) (Act)* and attached a draft of a building work rectification order addressed to Icon.
2. On 4 June 2021, in accordance with s 46 of the Act, Icon issued to the Department a written representation which contained what the Supreme Court has held "*detailed and fully reasoned argument as to why there was no jurisdictional basis for issuing [a] building work rectification order [to Icon] because [Icon] was not in fact a "developer" within the meaning of section 4 in relation to the building, Otto 2*": see *Icon Co (NSW) Pty Ltd v Secretary of the Department of Customer Service* (unreported, Fagan J, 11 August 2021).
3. On 5 August 2021, the Department issued a letter to Icon dated 5 August 2021 that purported to constitute a building work rectification order. That document asserted that Icon is the developer of Otto 2 and stated that the reasons for giving the building works rectification order were included within the order.
4. On 11 August 2021, the Department issued a letter to Icon which revoked the building works rectification order effective immediately.
5. On 18 August 2021, David Chandler sent an email (and attachment) to the Chief Executive Officer of Icon Co Pty Ltd. A copy of this correspondence and a draft case study as an attachment is **enclosed**.
6. The draft case study included the following statement: "*We will continue to pursue apartment owner interests in this project, including to hold the Icon Directors involved accountable. This may involve reference to other regulators.*" (hereafter the embolden element referred to as the **Statement**)
7. David Chandler hereby provides a written undertaking set out in paragraphs 8 to **Error! Reference source not found.** in relation to the email to Icon of 18 August 2021 and the attachment to that email.

**Undertaking provided by David Chandler**

8. I unequivocally withdraw the Statement.
9. I accept that that I have no authority "*to hold the Icon Directors involved accountable*" or refer the Icon directors to "*other regulators*".
10. I will not take any step directed towards any Icon directors including referring any matter concerning Icon directors to "*other regulators*".
11. Prior to publishing any "*case study*" or document with the same purpose or function as the "*case study*" attached to the email to Icon of 18 August 2021 which expressly or impliedly refers to Icon, I will provide a copy of such document to Icon and provide it with a reasonable opportunity to make submissions concerning its content before proceeding to publication.

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David Chandler – Building Commissioner

Document tendered by  
 David Chandler  
 Received by  
 Rachel Buish  
 Date: 22 / 11 / 2021  
 Resolved to publish  Yes / No