

Dear Mr. Kirkby,

**Re: Memo Heritage Impact Statement – Opera House Special Events Proposal**

The following Heritage Impact Statement (HIS) is to be included as part of the State Significant Development Application to the Department of Planning & Environment in order to obtain consent for the Special Events Proposal at SOH. This HIS may also be used within the Standard Exemption notification to the Heritage Council of NSW recommended in Section 5.1.1.3 of this report.

The following HIS outlines:

- a review of policies and other regulatory considerations as relevant to the site;
- a review of the proposal and assessment of the proposal against relevant policies;
- a heritage impact assessment; and
- any recommended management to avoid heritage impact.

I would like to thank you for the opportunity to work on this project and wish you the best of luck in securing a development approval.

Kind Regards,

**Abi Cryerhall**

**Principal, Historic Heritage**

**ARTEFACT**

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## 1.0 INTRODUCTION

### 1.1 Background

JBA Urban on behalf of the Sydney Opera House Trust (SOHT) are preparing a State Significant Development Application (SSDA) to be submitted to the Department of Planning & Environment (DPE) for proposed Special Events to take place within Sydney Opera House (SOH). Artefact Heritage has been commissioned to prepare a Heritage Impact Statement ('HIS' or 'report') to accompany the application.

### 1.2 Site Identification

The subject site of this HIS is the SOH located at Circular Quay East and Bennelong Point, Sydney, NSW, Australia. The SOH site incorporates Lot 5 DP775888 and Lot 4 DP7879333 as well as the sea walls abutting these allotments.

**Figure 1: Location of Sydney Opera House, hatched in red (Source: Department of Environment)**



### 1.3 Overview of the project

The applicant seeks consent for the temporary use of six areas within the SOH for experiential accommodation. Specifically, the accommodation would be provided by way of temporary conversion of rooms within the SOH that are currently occupied by offices, foyer space and a performance space.

The proposed use would involve the installation of temporary furnishings that would be removed immediately following an event. Any works associated with the proposal would be internal to the SOH building.

### 1.4 Purpose

This HIS has been prepared to assist the relevant authorities in making a decision as to the development application by assessing the impact that the proposal may have on the recognised heritage values of the SOH.

For the purpose of this report, the following background research and assessments have been carried out:

- a review of CMP policies and other regulatory considerations as relevant to the site;
- a review of the proposal and assessment of the proposal against relevant CMP policies;
- a heritage impact assessment; and
- any recommended management to avoid heritage impact.

### 1.5 Methodology

The heritage values considered within this HIS are as outlined in the Conservation Management Plan (CMP) endorsed for the site (James Semple Kerr, 2003).

The Heritage Impact Assessment in Section 4.0 of this report considers the Legislative Context for the site (Section 2.0) and is based on an assessment of the Proposal (Section 3.0) against the relevant conservation policies as outlined in the SOH CMP (J.S. Kerr, 2003), the ICOMOS *Burra Charter* and other relevant recommended management documents.

### 1.6 Scope

This report is limited to an assessment of impact on the heritage values of the SOH only. The proposed Special Events being located within the building premises, it is considered that there would be no external or visual impact onto heritage items located in the vicinity of the site and further research on surrounding heritage has not been carried out.

### 1.7 Authorship

This report has been prepared by Emmanuelle Fayolle (Senior Heritage Consultant, Built Heritage Specialist) and reviewed by Abi Cryerhall (Principal).

## 2.0 LEGISLATIVE HERITAGE CONTEXT

### 2.1 The World Heritage Convention

The *Convention Concerning the Protection of World Cultural and National Heritage* (the World Heritage Convention) was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on 16 November 1972, and came into force on 17 December 1975. The World Heritage Convention aims to promote international cooperation to protect heritage that is of such outstanding universal value that its conservation is important for current and future generations. It sets out the criteria that a site must meet to be inscribed on the World Heritage List (WHL) and the role of State Parties in the protection and preservation of world and their own national heritage.

The concept of a buffer zone was first included in the *Operational Guidelines for the Implementation of the World Heritage Convention* in 1977 and recognises the value of the environment that surrounds a site. The buffer zone acts as an additional layer of protection for World Heritage sites. It is a space that is itself not of outstanding universal value, but that influences the value of a World Heritage site.

#### 2.1.1 World Heritage List

The World Heritage List contains sites that have been listed by UNESCO as being of special cultural or physical significance.

*Sydney Opera House is listed on the World Heritage List for meeting the threshold for criteria (i): “to represent a masterpiece of human creative genius”.*

*The listing is applicable to the property Sydney Opera House, 2 Circular Quay east, Sydney, NSW, Australia.*

### 2.2 Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides a legislative framework for the protection and management of matters of national environmental significance, that is, flora, fauna, ecological communities and heritage places of national and international importance. Heritage items are protected through their inclusion on the World Heritage List, Commonwealth Heritage List or the National Heritage List.

The EPBC Act stipulates that a person who has proposed an action that will, or is likely to, have a significant impact on a World, National or Commonwealth Heritage site must refer the action to the Department of the Environment and Minister for the Environment (hereafter Minister). The Minister will then determine if the action requires approval under the EPBC Act. If approval is required, an environmental assessment would need to be prepared. The Minister would approve or decline the action based on this assessment.

A significant impact is defined as “an impact which is important, notable, or of consequence, having regard to its context or intensity.” The significance of the action is based on the sensitivity, value and quality of the environment that is to be impacted, and the duration, magnitude and geographic extent of the impact. If the action is to be undertaken in accordance with an accredited management plan, approval is not needed and the matter does not need to be referred to the Minister.

### 2.2.1 Commonwealth Heritage List

The Commonwealth Heritage List has been established to list heritage places that are either entirely within a Commonwealth area, or outside the Australian jurisdiction and owned or leased by the Commonwealth or a Commonwealth Authority. The Commonwealth Heritage List includes natural, Indigenous and historic heritage places which the Minister is satisfied have one or more Commonwealth Heritage values.

*The Sydney Opera House **is not** listed on the Commonwealth Heritage List.*

### 2.2.2 National Heritage List

The National Heritage List has been established to list places of outstanding heritage significance to Australia. It includes natural, historic and Indigenous places that are of outstanding national heritage value to the Australian nation.

*Sydney Opera House **is** listed on the National Heritage List.*

*The listing is applicable to the property at 2 Circular Quay and Macquarie Street, Bennelong Point, Sydney, comprising all of Lot 5 DP775888 and all of Lot 4 DP7879333, and including the sea walls abutting these lots.*

## 2.3 New South Wales Heritage Act 1977

The NSW *Heritage Act 1977* (Heritage Act) provides protection for items of 'environmental heritage' in NSW. 'Environmental heritage' includes places, buildings, works, relics, movable objects or precincts considered significant based on historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic values. Items considered to be significant to the state can be listed on the State Heritage Register and cannot be demolished, altered, moved or damaged, or their significance altered without approval from the Heritage Council of NSW.

### 2.3.1 State Heritage Register

The State Heritage Register (SHR) was established under Section 22 of the Heritage Act and is a list of places and objects of particular importance to the people of NSW, including archaeological sites. The SHR is administered by the Heritage Division of the Office of Environment and Heritage (OEH) and includes a diverse range of over 1500 items, in both private and public ownership. To be listed, an item must be deemed to be of heritage significance for the whole of NSW.

*Sydney Opera House **is** listed on the State Heritage Register (Listing number 01685).*

*The listing is applicable to the property Sydney Opera House, Circular Quay East and Bennelong Point, Sydney, NSW, Australia (Lot 5 DP 775888 & Lot 4 DP 787933).*

### 2.3.2 Section 170 registers

Under the Heritage Act all government agencies are required to identify, conserve and manage heritage items in their ownership or control. Section 170 of the Heritage Act requires all government agencies to maintain a Heritage and Conservation Register that lists all heritage assets and an assessment of the significance of each asset. They must also ensure that all items inscribed on its list are maintained with due diligence in accordance with State Owned Heritage Management Principles approved by the Government on advice of the NSW Heritage Council. These principles

serve to protect and conserve the heritage significance of items and are based on NSW heritage legislation and guidelines.

*Sydney Opera House **is not** listed on any Section 170 Heritage & Conservation Registers.*

## 2.4 Environmental Planning and Assessment Act 1979

The EP&A Act establishes the framework for cultural heritage values to be formally assessed in the land use planning, development consent and environmental impact assessment processes. The EP&A Act requires that environmental impacts are considered prior to land development; this includes impacts on cultural heritage items and places as well as archaeological sites and deposits. The EP&A Act also requires that local governments prepare planning instruments (such as Local Environmental Plans [LEPs] and Development Control Plans [DCPs]) in accordance with the EP&A Act to provide guidance on the level of environmental assessment required.

The study area falls within the boundaries of the City of Sydney Local Government Area (LGA). The study area is therefore subject to the Sydney LEP 2012.

### 2.4.1 Sydney Local Environmental Plan 2012

The aim of the LEP in relation to heritage, as stated in Section 1.2 (g) is to conserve, protect and enhance the environmental and cultural heritage of Sydney. The LEP lists items of heritage significance within the LGA and specifies conditions of development consent within heritage listed area.

*Sydney Opera House **is** listed on the heritage register of the Sydney LEP (item # I1712; level of significance: world).*

*The listing is applicable to the property Sydney Opera House including forecourt, seawall, platforms and interiors, Circular Quay East, Sydney, NSW, Australia (Lot 5 DP 775888 & Lot 4 DP 787933).*

### 2.4.2 Sydney Development Control Plan 2012

The Sydney Development Control Plan (DCP) aims to conserve the heritage significance of heritage items and heritage conservation areas of Sydney including associated fabric, setting, curtilage and views, and to conserve archaeological sites. The DCP states that development applications relating to heritage items or places in the vicinity of a heritage item require a Statement of Heritage Impact.

*Sydney Opera House **is not** situated within any of the Localities or Specific Sites respectively defined under Sections 2 and 6 of the Sydney DCP 2012.*

*Section 3 Part 9 Heritage and Section 5 Part 1 Central Sydney of the Sydney DCP 2012 generally apply to the site.*

## 3.0 PROPOSAL

### 3.1 Project Concept

The applicant seeks consent for the temporary use of six areas within the Sydney Opera House for experiential accommodation. Specifically, the accommodation would be provided by way of temporary conversion of rooms within the SOH that are currently occupied by offices or foyers.

The proposal will facilitate use of the Opera House for two types of experiential events subject to the following limitations:

#### **Event A**

Event A proposes up to two nights' accommodation for a maximum of five guests, offered three times per year. Smaller areas such as the boardroom will accommodate groups of this size.

#### **Event B**

Event B proposes up to two nights' accommodation for a maximum of 100 guests, offered on a single occasion per year. Areas such as the concert hall foyers have the capacity to accommodate groups of this size.

It is not known at this stage exactly which rooms would be used in the context of the events described above as it is understood that this is subject to change. However, the rooms concerned would be primarily non-performance related areas such as offices and foyers. Performance spaces may also be used to accommodate bigger groups such as for Event B described above.

### 3.2 Proposal Description

The proposed use would involve the installation of temporary furnishings and fittings that will be removed immediately after the event. Any works associated with the proposal will be internal to the SOH building, and there would be no external works or change to the building envelope. The furnishings and fittings to be temporarily removed would be existing moveable items of little or no significance. No alterations to internal elements such as fixed joinery or fittings of significance is proposed.



## 4.0 HERITAGE IMPACT ASSESSMENT

### 4.1 Heritage Significance

Various studies and assessments of significance have been made of the SOH overtime. Official assessments and statements of significance are available from UNESCO, the Australian Department of Environment and the NSW State Heritage Inventory.

The excerpt below is the Statement of Significance provided in the CMP endorsed for the site prepared by James Semple Kerr (2003:32):

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*The Sydney Opera House is a dramatic expression of the genius of a then relatively unknown architect, Jørn Utzon (whose subsequent international fame was in part a result of the design of the building), of the high quality completion of the work by Hall, Todd and Littlemore, and of the technical support given throughout by the internationally renowned engineering firm of Ove Arup and Partners and finally by M.R. Hornibrook, the inventive contractor of stages two and three.*

*The Sydney Opera House is of exceptional significance because of:*

- *its spectacular quality as sculpture in the round both by day and night;*
- *its inspired design solution in response to its setting;*
- *the picturesque quality of the peninsula setting;*
- *the way in which its fabric reflects the contemporary philosophy of creating refined forms from machine-made components;*
- *the way in which the plastic arts, geometry and technology were drawn on to create a structure at the leading edge of endeavour;*
- *the majestic quality of its public spaces contained by powerful structural forms;*
- *the evidence of its fabric in expressing its place in twentieth century architecture (not excluding the troubled history of its construction);*
- *the seminal influence of some of its design and construction techniques;*
- *its function as a performing arts centre of world renown;*
- *its almost mythological status as a cultural icon (then and now) arising from all the above, from the high public interest in its protracted and controversial development; and from its power to attract artists, patrons and tourists on a national and international level. This significance is intensified by the extensive associations of the site and its structures, including: Aboriginal and European contact (Bennelong and his house); scientific investigation (Flinders and Baudin); defence (Phillip's 1788 redoubt to Greenway's Fort Macquarie, 1817–1901); Picturesque planning (Macquarie to Utzon); marine and urban transport (overseas shipping and local ferry wharves, tram terminal and dépôt); popular recreation;*



*and, finally, the nation's most famous cultural icon (The Opera House) and its legions of national and international performers.*

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## 4.2 Conservation Policies

The following policies have been reviewed and considered in relation to the proposal during the preparation of the Heritage Impact Assessment provided in this Section:

- The endorsed CMP, and in particular the Conservation Policies outlined and detailed in pages 43 to 100 (*Sydney Opera House: A plan for the conservation of the Sydney Opera House and its site*, J.S. Kerr, 2003);
- The *Australia ICOMOS Charter for Places of Cultural Significance*, *The Burra Charter*, 2013;
- The Recommended Management for the site (NSW State Heritage Inventory sheets related to the site, where relevant); and
- The *Statement of Heritage Impact Guidelines* (NSW Office of Environment & Heritage, 2001).

## 4.3 Impact Assessment

### 4.3.1 Potential impact: Fabric

The proposal would involve the temporary removal of existing furnishings and items of furniture within selected areas of the SOH for a limited period of time in the context of Special Events to occur one to five times a year. The selected rooms would primarily be non-performance areas but for some of the bigger events when a performance space, such as the Utzon room, or one of the foyers may be required. These selected areas would be emptied of their usual furnishings and temporarily furnished with items such as beds, cots, bedside tables and sofas etc. to accommodate guests.

It is understood that the physical elements to be removed are moveable items of furniture which do not form part of the significance of the SOH. It is also understood that any removal is to be temporary and the selected room/area to be reconfigured as usual after the Special Event terminates. The fabric involved in the proposed removal is of no particular significance to the SOH. Notwithstanding, it would not be impacted and would be put back in its place after the event.

There are no proposed impacts on fabric of significance within the premises of the building, and the exterior of the buildings would not be affected. Potential impacts exist related to the removal of furniture and equipment in and out of the rooms/areas. However, it is recognised that this is inherent to any operational activity taking place at the site which functions as an everyday performance centre. Therefore, the proposal is unlikely to result in damage to the fabric of the item considering that an Event Management Plan would be prepared and implemented, as is usual practice at the SOH. Further heritage-related recommendations are made in regard to the Event Management Plan in Section 6.0 of this report.

**Proposed direct impact: Nil.**

**Potential direct impact: Negligible.**

#### 4.3.2 Potential impact: Use

A major aspect of significance of the SOH is its intended and continued use as a performance art centre, theatre and concert hall. This use is represented in the tangible fabric of the building as well as in its intangible significance. As such, this use should at all costs be conserved. The proposal would use designated areas within the SOH to accommodate guests overnight, functioning as 'experiential accommodation'. This use would be acceptable on a heritage level on the grounds that:

- The use would be temporary with overnight or two nights' stays only and limit to one to three events per year, conserving the primary use of the SOH as a theatre and concert hall; and
- The proposed accommodation would be essentially located within boardrooms, offices and foyers where the use is not performance-related and less significant for the place. It is understood that performance spaces, such as the Northern Foyers may be used for the bigger events which would occur once yearly.

Therefore, the proposed occasional temporary change of use of designated areas within the SOH would not bear a strong impact onto its significance and the site would continue to function and be appreciated for its intended purpose as a concert hall and theatre.

**Proposed indirect impact: Negligible.**

#### 4.4 Statement of Heritage Impact

After reviewing the relevant policies as outlined in Section 4.2 above and considered any direct or indirect impacts that the proposal may have onto the SOH, it is assessed that the proposal would have a nil to negligible impact onto the significance of the site.

## 5.0 STATUTORY OBLIGATIONS

### 5.1.1 Legal Implications

#### 5.1.1.1 EPBC Act 1999

SOH is listed on the World and National Heritage Lists.

The EPBC Act stipulates that a person who has proposed an action that will, or is likely to, have a significant impact on a World, National or Commonwealth Heritage site must refer the action to the Department of the Environment and Minister for the Environment (hereafter Minister), who then determines if the action requires approval under the EPBC Act.

A significant impact is defined as “an impact which is important, notable, or of consequence, having regard to its context or intensity.” The proposal as presented below in Section 3.1 would not have an impact on the heritage values of the place and would be undertaken in accordance with the endorsed Conservation Management Plan (J.S. Kerr, 2003) for the site.

Therefore, referral to the Minister and approval under the EPBC Act is not required.

#### 5.1.1.2 State Environmental Planning Policy (State and Regional Development) 2011

Under Clause 1 of Schedule 2 within the State Environmental Planning Policy (State and Regional Development) 2011 (SEPP SRD), all development on land identified as being within the Sydney Opera House site is State Significant Development and should be submitted for approval by the Department of Planning & Environment (DP&E).

Therefore, a State Significant Development (SSD) application must be submitted to the DP&E for approval of the proposal. Though the application will be determined as SSD under section 89E of the EP&A Act is not exempt from obtaining approval from the Heritage Council under Part 4 of the *Heritage Act 1977*.

#### 5.1.1.3 NSW Heritage Act 1977

SOH is listed on the NSW State Heritage Register.

Under the *NSW Heritage Act 1977*, **approval** is required in order to undertake most forms of work on items listed on the State Heritage Register under Part 4. However, basic maintenance, repairs and minor alterations can be subject to exemption from approval if they will have minimal impact on the heritage significance of the item. In such cases, these exempt activities still require notification. **Standard exemptions** for state listed heritage items have specific notes and definitions to guide their implementation. There is also potential for **site-specific exemptions** to be made for a particular heritage item on the recommendation of the Heritage Council of NSW.

The Site Specific Exemptions listed in the State Heritage Inventory sheet for the site (database number 5054880) do not include exemptions relevant to the Proposal described in Section 3.0 of this report. However, the Proposal would fall under some of the Standard Exemptions and a Section 57(2) Exemption notification should be made to the NSW Heritage Council (using Standard Exemptions 7 & 9: respectively Minor Activities with little or no adverse impact on heritage significance & Change of use).

#### 5.1.1.4 EP&A Act 1979

SOH is listed as a heritage item on the register of the Sydney Local Environmental Plan 2012 (Schedule 5).

The aim of the LEP in relation to heritage as stated in Section 5.10(1) is to conserve the environmental heritage of Sydney and the heritage significance of heritage items. Development consent would normally be required under Clause 5.10(2) of the LEP to alter a heritage item that is a building by making changes to anything inside the item that is specified in Schedule 5 in relation to the item, the listing for the heritage item in Schedule 5 applying to “SOH including forecourt, seawall, platforms and interiors”. However, the proposal being identified as State Significant Development to be submitted for approval by the DP&E, a Development Application to the City of Sydney Council is not required.

#### 5.1.2 Statutory Heritage Requirements

In accordance with the legal implications outlined in Section 5.1.1, the Department of Planning & Environment and the NSW Heritage Council are the primary consent authorities for the Proposal, respectively under the *State Environmental Planning Policy (State and Regional Development) 2011*, and the *Heritage Act, 1977*.

A State Significant Development Application should be submitted to the Department of Planning & Environment for approval under the *State Environmental Planning Policy (State and Regional Development) 2011*. This should be accompanied by a Heritage Impact Statement assessing the impact of the proposal onto the significance of the subject site.

A Standard Exemption application should also be separately submitted to the Heritage Council of NSW for approval under the *Heritage Act, 1977*. This should be accompanied by a complete Section 57(2) Exemption notification form and a Heritage Impact Assessment demonstrating how the proposal complies with the relevant exemption requirements.

## 6.0 RECOMMENDATIONS

1. As assessed above in Section 4.3. the proposal in itself would bear no direct impact onto the fabric of the SOH as it is understood that only furnishings of little significance would be temporarily removed during the preparation and operational stages, before being put back into their usual place. It is recommended that a Special Events Management Plan be prepared prior to any of the proposed Special Events taking place at the site. This Plan should:
  - describe and assess all existing fittings and furnishings within the rooms that may be used in the carrying out of the Events;
  - list the items acceptable for temporary removal. These should limit to moveable furnishings of little significance and exclude any fixed fittings that constitute part of the fabric of the place, and therefore part of its significance;
  - outline the risks inherent to the proposal and provide risk management measures to be enforced during the preparation and operational stages of the Special Events so as to limit any damage or impact on significant fabric within the rooms concerned; and
  - provide recommended timeframes for each events so as to limit 'clutter' within areas of the SOH open to or visible by the public, in line with the conservation policies of the CMP and the design principles of the building's architect Jørn Utzon regarding public and hybrid 'outside' spaces (J.S. Kerr, 2013).
2. A Section 57(2) Exemption notification should be prepared and submitted to the NSW Heritage Division (delegate of the Heritage Council of NSW) for approval (standard exemption 7 and 9). No proposal event should take place prior to receipt of an approved S57(2) Exemption.

The change of use of certain rooms within the SOH is considered to bear a negligible indirect impact onto the significance of the site due to the temporary nature of the proposed events and the conservation of the existing and original use of the premises as a theatre and concert hall. The proposed Special Events are in line with general marketing carried out by the SOH Trust to encourage people to visit the site. This will in turn enhance appreciation of the site's heritage values by the local and broader public.