



Appendix B

# Heritage Impact Statement and Archaeological Management Plan

Godden Mackay Logan Heritage Consultants



Godden Mackay Logan

Heritage Consultants



# Sydney Opera House Forecourt

Archaeological Management Plan and  
Heritage Impact Assessment

Report prepared for the Sydney Opera House Trust  
January 2010

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## Report Register

The following report register documents the development and issue of the report entitled Sydney Opera House Forecourt—Archaeological Management Plan and Heritage Impact Assessment, undertaken by Godden Mackay Logan Pty Ltd in accordance with its quality management system. Godden Mackay Logan operates under a quality management system which has been certified as complying with the Australian/New Zealand Standard for quality management systems AS/NZS ISO 9001:2008.

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## 1.0 Introduction

### 1.1 Project Background

Godden Mackay Logan has been engaged by the Sydney Opera House Trust to prepare an Archaeological Management Plan and Heritage Impact Assessment for proposed works within the forecourt area of Sydney Opera House.

Sydney Opera House Trust proposes to divert the major stormwater channel that runs along Bennelong Point ('Bennelong Drain') from its current to a new route under the Sydney Opera House forecourt. The proposed new discharge point would be to Farm Cove. The principal drivers for the project are discussed below and relate to future strategic building plan directions and operational flexibility.

#### 1.1.1 Alignment with the Strategic Building Plan and Operational Flexibility

The diversion of the drain is in line with the strategic building plan for Sydney Opera House and would result in greater operational flexibility for future projects that are planned for Sydney Opera House. Although these future projects are yet to be fully defined, they may include:

- The provision of a new loading area and associated access. This would separate heavy vehicle deliveries from busy pedestrian areas and would increase public safety. It would also avoid the need for heavy vehicles to use the western and northern boardwalks.
- New corridors and lifts to provide better access between different parts of Sydney Opera House.

Future projects such as these are likely to substantially improve the functionality of Sydney Opera House, but would not be able to proceed if the Bennelong Drain remains in its current position. As such, these projects would be contingent upon realignment of the Bennelong Drain.

### 1.2 Purpose of this Report

This report assesses the heritage impacts of the proposed works (including physical and visual impacts on heritage items and archaeological impacts) and identifies management strategies to mitigate any identified adverse impacts. This report particularly addresses three heritage components of the site that would potentially be directly affected by the proposed works:

- potential archaeological resources within the study area (historical archaeological 'relics' or Aboriginal 'objects');
- the Bennelong stormwater channel itself (Bennelong SWC No. 29), which is listed as a heritage item on Sydney Water's Heritage Conservation Register (which was prepared in accordance with Section 170 of the *Heritage Act 1977* (NSW)); and
- the existing seawall along the eastern boundary of the study area.

This report has been prepared as part of the Environmental Assessment (EA) for the proposed works, to accompany an application to the Department of Planning for approval under Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act). The application addresses the Director General's Requirements for Heritage and Archaeology issued on 24 July 2009.

This report has also been prepared to accompany an application to the Heritage Council of New South Wales under Section 60 of the *Heritage Act 1977* (NSW).

The impact of the proposed diversion of the drain has also been assessed in a short report prepared by Design 5 Architects, which is included as Appendix A to this report. The findings of this report are consistent with the Design 5 report.

This report considers the archaeological potential and significance of the entire study area, not just the area of proposed works.

### 1.3 Report Structure

This report includes the following:

- an assessment of the potential for archaeological relics or Aboriginal objects to survive within the study area (Section 2.0);
- an assessment of the significance of any potential archaeological resources within the study area, as well as the significance of the Bennelong stormwater channel and eastern seawall that would be affected by the proposed works (Section 3.0);
- an assessment of the potential impacts of the proposed works on potential archaeological resources, the Bennelong stormwater channel and the eastern seawall and recommended strategies to mitigate any adverse heritage impacts (Section 4.0);
- an archaeological research design and management strategy to guide proposed archaeological investigation of the site in association with the proposed excavation and construction works (Section 5.0); and
- conclusions and recommendations which summarise the findings of this report and identify recommended measures to ensure that appropriate heritage requirements, protective measures and other mitigative strategies are integrated with the proposed works program (Section 6.0).

### 1.4 The Site

The Sydney Opera House site is located at 2 Circular Quay and Macquarie Street, Bennelong Point, Sydney, and comprises all of Lot 5 DP775888 and all of Lot 4 DP787933, including the seawalls abutting these lots (see Figure 1.1).

The study area of this report is limited to the forecourt area of Sydney Opera House, which is defined as the area bounded by the base of the Sydney Opera House steps, the western side of the access road between the end of Macquarie Street and Sydney Opera House, the base of the wall of the Tarpeian Precinct of the Royal Botanic Gardens, and the eastern seawall of Bennelong Point (the study area includes this section of seawall) (see Figure 1.2).

The majority of the study area is located on land that is in the care, control and management of the Sydney Opera House Trust. A small area adjacent to the Queen Elizabeth II gate is the property of the Royal Botanic Gardens and Domain Trust (Lot 6 DP775888).

The proposed works would encroach on the easement of Lot 101 of DP 828892 in the subsurface stratum owned by the Sydney Opera House car park. The landowner (State Property Authority)

and the lessee (Trust Company of Australia) have been consulted and their consent to this project has been obtained.

## 1.5 Site History

Bennelong Point's history has been the subject of numerous reports and publications. This report relies largely on the historical research contained in the endorsed *Sydney Opera House—A Revised Plan for the Conservation of the Sydney Opera House and its Site* (3rd Edition) by James Semple Kerr (see Appendix B), as well as detailed analysis of historical plans of the area. A summary of the historical development of the site, with particular focus on the physical development of the forecourt area, is included in Section 2.0 of this report.

The history of the Bennelong stormwater channel presented in this report is based largely on the Sydney Water Section 170 listing for this heritage item (see Appendix G).

## 1.6 Heritage Listings

### 1.6.1 The Site

Sydney Opera House is listed on the World Heritage List (see Appendix C).

Sydney Opera House is listed on the National Heritage List (see Appendix D).

Sydney Opera House and Surrounds are listed on the Register of the National Estate (see Appendix E).

Sydney Opera House is listed on the New South Wales State Heritage Register (see Appendix F).

Sydney Opera House is a heritage item in the Sydney Local Environmental Plan 2005.

The Bennelong stormwater channel (Bennelong SWC No. 29) is listed on the Sydney Water Section 170 Heritage and Conservation Register as an item of Local significance (see Appendix G).

### 1.6.2 Adjacent to the Site

The Man O'War Steps, immediately adjacent to the study area, is listed on the New South Wales State Heritage Register as a separate item to Sydney Opera House (see Appendix H).

The Man O'War Steps is also listed on the NSW Maritime Section 170 Heritage and Conservation Register as an item of heritage significance.

The Royal Botanic Gardens and Domain, comprising the Upper Middle, Lower Gardens, Garden Palace Gardens and Bennelong, immediately adjacent to the study area, are listed on the New South Wales State Heritage Register as a separate item to Sydney Opera House (see Appendix I).

The Royal Botanic Gardens are also listed on the Sydney Local Environmental Plan 2005.

The Royal Botanic Gardens and Domain are also listed on the Register of the National Estate (see Appendix J).

The Opera House Gate to the Royal Botanic Gardens also has a separate listing on the Register of the National Estate (see Appendix K).

This gate is known as the Queen Elizabeth II Gate (or formally the Man o' War Gate) was erected as part of the 1879 works associated with the Sydney International Exhibition. The gate comprises

of sandstone piers and three sets of double wrought iron gates. The gate was called the Man o' War Gate prior to 1954. Following the Royal visit in 1954 the gate was renamed the Queen Elizabeth II Gate (or QEII Gate for short). The gate is also listed with the National Trust of Australia (NSW).<sup>1</sup>

## **1.7 Statutory Context**

### **1.7.1 UNESCO World Heritage List**

Sydney Opera House was inscribed on the UNESCO World Heritage List on 28 June 2007 for its Outstanding Universal Value and as a Masterpiece of Human Creative Genius under criterion (i) of the Operational Guidelines for the Implementation of the World Heritage Convention.

### **1.7.2 National Heritage List**

Sydney Opera House was included in the National Heritage List on 12 July 2005 under a range of criteria, including its significance as a masterpiece of modern architectural design, engineering and construction technology in Australia and a national icon that has become an internationally recognised symbol of modern Australia.

The National Heritage List is compiled and maintained by the Commonwealth Department of the Environment, Water, Heritage and the Arts.

### **1.7.3 Environment Protection and Biodiversity Conservation Act 1999**

The Sydney Opera House site is subject to the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act), owing to the World Heritage and National Heritage listings of the site. Part 3, Division 1 of the EPBC Act identifies requirements relating to matters of national environmental significance (Subdivision A—World Heritage and Subdivision AA—National Heritage).

Under Section 137 of the EPBC Act, approval of activities related to a World Heritage property must be consistent with:

- (a). Australia's obligations under the World Heritage Convention; or
- (b). the Australian World Heritage Principles; or
- (c). a plan that has been prepared for the management of a declared World Heritage property.

Under Section 137A of the EPBC Act, approval of activities related to a National Heritage place must be consistent with:

- (a). the National Heritage management principles; or
- (b). an agreement to which the Commonwealth is party in relation to a National Heritage place; or
- (c). a plan that has been prepared for the management of a National Heritage place.

The Sydney Opera House site is subject to a bilateral agreement between the Australian Government and the State of New South Wales made in 2005 pursuant to Section 45 of the EPBC Act. Under the terms of the agreement (Clause 8.1), an action taken at the Sydney Opera House site does not require the approval of the Commonwealth Minister for the Environment, Heritage and the Arts where:

*the taking of the action has been approved by the State of New South Wales or an agency of New South Wales in accordance with the Management Plan for the Sydney Opera House ...*

As the Sydney Opera House site is listed as a State Significant Site under Schedule 3 of the State Environmental Planning Policy (State Significant Development) 2005, any proposed development on the Sydney Opera House site would require the approval of the Minister for Planning. Such proposals would be subject to the assessment and approval processes outlined in Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act) and the Sydney Opera House Management Plan under Section 46 of the EPBC Act submitted in August 2005.

The Management Plan referred to in the bilateral agreement provides a framework for protection of the National and World Heritage values of the Sydney Opera House site and has been endorsed by the Heritage Branch, Department of Planning (formerly the NSW Heritage Office). The Management Plan states that approval of actions in relation to the Sydney Opera House site may only be made in accordance with the Management Plan.

The Management Plan identifies that any proposed development on the Sydney Opera House site would require two statutory approvals under the EP&A Act and the *Heritage Act 1977* (NSW) before works commence.

#### **1.7.4 Environmental Planning and Assessment Act 1979**

The Sydney Opera House site has been declared a State Significant Site under Schedule 3 of the State Environmental Planning Policy (Major Development) 2005.

All development on the land covered by this SEPP is therefore considered as State Significant Development. Part 3A of the EP&A Act applies to State Significant Development and the Minister for Planning is the consent authority where that development requires development consent.

#### **Director General's Requirements**

The Director General's Requirements (DGRs) for this project were issued by the Department of Planning on 24 July 2009. This report has been prepared in accordance with and fulfilment of the DGRs related to 'Heritage and Archaeology' (Issues 2.a)–h)).

The DGRs also specified that this report 'should make reference to previous archaeological studies including those completed by Wendy Thorp'. This report does not make specific reference to any studies by Wendy Thorp, as these were not able to be located at the time of writing this report. It is understood that this aspect of the DGRs was based on recommendations to the Department of Planning from the Sydney Harbour Foreshore Authority (SHFA). SHFA was contacted during the preparation of this report in an effort to locate these previous studies, and advised that consideration of these studies was not an essential part of the required archaeological assessment of the site. While this report does not make any specific reference to these previous studies, it does include a thorough assessment and analysis of the site's history and development, as part of the evaluation of the site's archaeological significance and potential.

Consultation with relevant agencies/organisations has also been undertaken during the preparation of this report, in accordance with the consultation requirements identified in the DGRs. The outcomes of consultation with the Metropolitan Local Aboriginal Land Council (MLALC) are discussed in Section 2.3.1 of this report.

### 1.7.5 Heritage Act 1977

The *Heritage Act 1977* (NSW) would usually only apply to the proposed development of a State significant site if the Minister were to determine that the proposed works were subject to the provisions of Part 4 of the EP&A Act. However, the Sydney Opera House Management Plan under the EPBC Act requires that the Heritage Act still apply to this site. The relevant provisions of the Heritage Act include:

#### State Heritage Register

Sydney Opera House is listed on the NSW State Heritage Register (SHR).

The Man O'War Steps, immediately adjacent to the study area, is also listed on the New South Wales State Heritage Register (SHR), as a separate item to Sydney Opera House.

The Royal Botanic Gardens and Domain, comprising the Upper Middle, Lower Gardens, Garden Palace Gardens and Bennelong, immediately adjacent to the study area, are listed on the New South Wales State Heritage Register as a separate item to Sydney Opera House.

The SHR, established under the Heritage Act, is a list of identified heritage items of particular importance to the people of New South Wales. It includes items and places determined to be of State heritage significance. The Heritage Act governs the development of sites registered on the SHR, specifying compliance with a variety of requirements prior to development under Sections 56–65A of the Act.

Section 57 of the Heritage Act states:

*When an Interim Heritage Order or listing on the State Heritage Register applies to a place, building, work, relic, moveable object, precinct, or land, a person must not do any of the following things except in pursuance of an approval ...*

*(c) move, damage or destroy the relic or moveable object,*

*(d) excavate any land for the purpose of exposing or removing the relic,*

*(e) carry out any development in relation to the land on which the building, work or relic is situated ...*

The relics provisions of the Heritage Act (Sections 138–146) do not specifically apply to sites that are listed on the State Heritage Register, although the site may contain 'relics' as defined by the Heritage Act.

#### Section 170 Heritage and Conservation Register

The historic subterranean stormwater channel (Bennelong SWC No. 29) is in the ownership of Sydney Water and is listed on its Section 170 Heritage and Conservation Register as an item of high historical and technical significance. The drain would be diverted as part of the proposed works.

The Man O'War Steps, immediately adjacent to the study area, is also listed on the NSW Maritime Section 170 Heritage and Conservation Register as an item of heritage significance.

Section 170 of the Heritage Act requires government instrumentalities to maintain a heritage and conservation register of heritage items in their ownership or control, and requires minimum standards of maintenance and repair to all items listed on this register. Notice must be given to the

Heritage Council of New South Wales prior to removal of any item from the agency's Section 170 Register, transfer of ownership of any listed items or demolition of any items.

### **1.7.6 National Parks and Wildlife Act 1974**

The *National Parks and Wildlife Act 1974* (NSW) (NPW Act) would only apply to the proposed project if the Minister were to determine that the proposed works were subject to the provisions of Part 4 of the EP&A Act. Relevant provisions of the NPW Act, if they were to apply, are discussed below.

The NPW Act provides statutory protection for all Aboriginal objects (consisting of any material evidence of the Aboriginal occupation of New South Wales) under Section 90 and for 'Aboriginal places' (areas of cultural significance to the Aboriginal community) under Section 84. Aboriginal objects and places in New South Wales are afforded automatic statutory protection through the NPW Act, whereby it is an offence (without the Minister's consent) to:

*Damage, deface or destroy Aboriginal sites without the prior consent of the Director-General of the National Parks and Wildlife Service,*

The NPW Act defines an 'Aboriginal object' as:

*any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.*

There is one registered Aboriginal site within the study area (Site No. 45-6-1615 in the Aboriginal Heritage Information Management System (AHIMS), recorded as a 'midden'), but the condition of this site is recorded as 'destroyed' (this site was destroyed before it was recorded in 1983).

The proposed works would not affect any known Aboriginal sites and would be unlikely to disturb any Aboriginal objects.

## **1.8 Methodology**

This report has been prepared following a thorough conservation planning process and considers the potential Aboriginal and historical archaeological resource. The methodology used is based on the guidelines contained in the *NSW Heritage Manual*, including *Archaeological Assessments* and *Statements of Heritage Impact* (Department of Urban Affairs and Planning and the Heritage Council of NSW, 1996), and applies the principles contained in *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance 1999*.

## **1.9 Limitations and Exclusions**

This assessment is based on review and analysis of available historical information, including the 2003 Conservation Plan and copies of historical plans of the site provided by Design 5 Architects.

The assessment of the Bennelong stormwater channel is based on information included in the Sydney Water Section 170 Register listing for this item, as well as documentation prepared by Warren Smith and Partners.

The description of the proposed works and assessment of potential heritage impacts are based on information provided by the proponent.

This report does not consider any geotechnical information about the site.

Consideration of potential Aboriginal cultural values associated with the site comprised a check of the Aboriginal Heritage Information Management System (AHIMS) maintained by the Department of Environment, Climate Change and Water (DECCW) and consultation with Allen Madden of the Metropolitan Local Aboriginal Land Council in relation to the proposed works.

### **1.10 Author Identification**

This report has been prepared by Godden Mackay Logan staff including Anne Mackay, Senior Associate, Anita Yousif, Consultant and Lyndon Patterson, Consultant. Consultation was undertaken with the Metropolitan Local Aboriginal Land Council by Laura Farquharson, Consultant. This report has been reviewed by Professor Richard Mackay, AM, Partner of Godden Mackay Logan.





Figure 1.1 Site location plan, with the study area of this report outlined.

