

AN AGREEMENT BETWEEN THE AUSTRALIAN
GOVERNMENT AND THE STATE OF NEW SOUTH WALES

UNDER SECTION 45 OF THE ENVIRONMENT PROTECTION
AND BIODIVERSITY CONSERVATION ACT 1999 (CTH)

RELATING TO ACTIONS APPROVED AND TAKEN IN
ACCORDANCE WITH THE BILATERALLY ACCREDITED
MANAGEMENT PLAN FOR THE SYDNEY OPERA HOUSE

Aims

- 1 This agreement aims to:
 - (a) protect the World Heritage and National Heritage values of the Sydney Opera House from unacceptable and unsustainable impacts;
 - (b) ensure an efficient, timely, and effective process for environmental assessment and approval of actions; and
 - (c) minimise duplication of environmental assessment and approval processes relating to the protection of the World Heritage and National Heritage values of the Sydney Opera House.

- 2 In particular, the declaration within this agreement provides that approval under Part 9 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) is not required for the purposes of sections 12 and 15A (World Heritage provisions) and sections 15B and 15C (National Heritage provisions) of the Environment Protection and Biodiversity Conservation Act 1999 for actions the taking of which has been approved by New South Wales or an agency of New South Wales in accordance with the bilaterally accredited management plan for the Sydney Opera House (Management Plan for the Sydney Opera House).

Note: The provisions of this bilateral agreement are to be read in conjunction with the Environment Protection and Biodiversity Conservation Act 1999 (Cth).

Parties to the agreement

- 3 The parties to this agreement are the Australian Government and the State of New South Wales.

Term of agreement

- 4 For the purposes of the declaration under this agreement relating to sections 15B and 15C of the Environment Protection and Biodiversity Conservation Act 1999 (National Heritage provisions) this agreement will commence on the date on which the agreement is entered into. For the purposes of the declaration under this agreement relating to sections 12 and 15A of the Environment Protection and Biodiversity Conservation Act 1999 (World Heritage provisions) this agreement will commence on the date on which the Sydney Opera House becomes a declared World Heritage property as defined under section 13 of the Environment Protection and Biodiversity Conservation Act 1999.

- 5 This agreement will expire five years after the date it is entered into, noting that a review of the operation of the agreement must be carried out before the date on which the agreement expires.

Nature of the agreement

- 6 This agreement is a bilateral agreement made under section 45 of the Environment Protection and Biodiversity Conservation Act 1999.
- 7 The parties do not intend this agreement to create contractual or other legal obligations between the parties, or that a breach of the agreement will give rise to any cause of action, or right to take legal proceedings, other than as provided for in the Environment Protection and Biodiversity Conservation Act 1999.

Effect of this agreement

8 Certain actions in a class of actions do not require approval under the Environment Protection and Biodiversity Conservation Act 1999

- 8.1 Pursuant to subsection 46(1) of the Environment Protection and Biodiversity Conservation Act 1999, it is declared that an action does not require approval under Part 9 of the Environment Protection and Biodiversity Conservation Act 1999 for the purposes of sections 12 and 15A (World Heritage provisions) and sections 15B and 15C (National Heritage provisions) of the Environment Protection and Biodiversity Conservation Act 1999 if:
 - (a) 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; and
 - (b) the Australian Government Environment Minister has accredited the Management Plan for the Sydney Opera House in writing for the purposes of this bilateral agreement, in accordance with subsection 46(3) of the Environment Protection and Biodiversity Conservation Act 1999.
- 8.2 For the purposes of subsection 46(2) of the Environment Protection and Biodiversity Conservation Act 1999, the law under which the Management Plan for the Sydney Opera House is in force is the Environmental Planning and Assessment Amendment (Sydney Opera House Management Plan) Regulation 2005.
- 8.3 The State of New South Wales has developed the Management Plan for the Sydney Opera House using the best available knowledge, skills and standards for the identification, protection, conservation, presentation and transmission of the relevant World Heritage and National Heritage values of the Sydney Opera House.
- 8.4 The State of New South Wales and agencies of New South Wales will act in accordance with the Management Plan for the Sydney Opera House, and will not approve the taking of actions that would be inconsistent with the Management Plan for the Sydney Opera House.

Note: The provisions of this bilateral agreement do not have any effect in relation to an action in a Commonwealth area or an action by the Commonwealth or a Commonwealth agency.

9 New South Wales to ensure that impacts on things not protected by sections 12, 15A, 15B or 15C of the Environment Protection and Biodiversity Conservation Act 1999 are assessed

- 9.1 This clause applies to an action:
- (a) that does not require approval by virtue of the declaration in clause 8.1 of this agreement; and
 - (b) is taken or proposed to be taken by a constitutional corporation;
 - (c) is taken by a person for the purposes of trade or commerce between Australia and another country, between two States, between a State and a Territory, or between two Territories; or
 - (d) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- 9.2 The State of New South Wales undertakes to ensure that the environmental impacts that the action has, will have, or is likely to have on a thing that is not protected by sections 12, 15A, 15B or 15C of the Environment Protection and Biodiversity Conservation Act 1999 are assessed to the greatest extent practicable.

Procedures to be followed

10 The Australian Government will provide advice when requested

- 10.1 The New South Wales Minister can seek advice from the Australian Government Environment Minister on:
- (a) actions that are likely to have unacceptable or unsustainable impacts on the World Heritage or National Heritage values of the Sydney Opera House;
 - (b) the mitigation of impacts on the World Heritage or National Heritage values; and
 - (c) conditions to be set on the approval of proposed actions.
- 10.2 The Australian Government Environment Minister will respond to such requests as soon as practicable, but within the statutory time periods that apply to the assessment and approval processes set out in the Management Plan for the Sydney Opera House where such time periods exist.

11 New South Wales to notify the Australian Government

- 11.1 The New South Wales Minister will notify the Australian Government Environment Minister of:
- (a) all proposed actions that will have or are likely to have a significant impact on the World Heritage or National Heritage values of the Sydney Opera House;

- (b) the level of assessment of all such proposed actions;
- (c) the grant of approval (or otherwise) of all such proposed actions; and
- (d) the conditions set as part of any approvals granted.

11.2 The New South Wales Minister will respond as soon as practicable to requests from the Australian Government Environment Minister for information concerning the assessment and approval of actions likely to significantly impact on the World Heritage or National Heritage values of the Sydney Opera House, including information on the matters outlined in clause 11.1.

Maintaining the agreement

12 Monitoring compliance with this agreement

The parties recognise that, under the Auditor-General Act 1997 (Cth), the Auditor-General may audit the operation of the Commonwealth public sector (as defined in section 18 of that Act) in relation to this agreement.

13 Reviewing the agreement

The parties agree that the review of this agreement required under section 65 of the Environment Protection and Biodiversity Conservation Act 1999 will be carried out jointly by the parties, and will:

- (a) evaluate the operation of the agreement against the aims of the agreement;
- (b) seek the views of key stakeholders;
- (c) commence at least eight months before the agreement is due to expire, and be completed at least three months before the agreement expires; and
- (d) result in a report that will be transmitted jointly to the relevant Ministers.

14 Cancelling or suspending the agreement

14.1 The parties note that sections 57 – 63 of the Environment Protection and Biodiversity Conservation Act 1999 provide that the Australian Government Environment Minister may cancel or suspend all or part of this agreement (either generally or in relation to actions in specified classes) under certain circumstances.

14.2 The Australian Government Environment Minister must cancel or suspend all or part of this agreement at the request of the New South Wales Minister, but only if the request is made in accordance with this agreement.

14.3 The parties agree that a request to cancel or suspend all or part of this agreement is made in accordance with this agreement if:

- (a) the request is made on the grounds that the New South Wales Minister is not satisfied that the Australian Government has complied or will comply with the agreement; or

- (b) the request is made on the grounds that the New South Wales Minister is not satisfied that the aims of the agreement are being achieved; and
- (c) before making the request, the New South Wales Minister has informed the Australian Government Environment Minister in writing of the reason(s) for requesting the suspension and allowed a period of at least twenty business days for the Australian Government Environment Minister to respond.

Conflict resolution

- 15 In the event that any dispute arises under this agreement, the parties will settle it by direct negotiation using their best endeavours, acting in a spirit of cooperation. The parties agree that in the event of a dispute, discussions aimed at resolution will normally take place at officials level in the first instance. This clause does not purport to limit the rights and obligations of each party under relevant sections of the Environment Protection and Biodiversity Conservation Act 1999 (including those sections dealing with cancelling and suspending bilateral agreements).
- 16 The parties will notify and consult each other on matters that come to their attention that may improve the operation of this agreement.

Interpretation

- 17 A reference in this agreement to the Environment Protection and Biodiversity Conservation Act 1999 (Cth) or the New South Wales Environmental Planning and Assessment Amendment (Sydney Opera House Management Plan) Regulation 2005 is a reference to the relevant Acts or instruments as in force at the date of this agreement. If any of the Acts or instruments are subsequently amended in a manner that affects the operation of this agreement, the parties will seek to agree as soon as practicable on whether it is necessary to make another bilateral agreement varying or replacing this agreement.
- 18 A reference in this agreement to an Act includes a reference to any regulations and instruments under that Act.
- 19 Unless the contrary intention appears, the terms used in this agreement have the same meaning as in the Environment Protection and Biodiversity Conservation Act 1999 (Cth).
- 20 Australian Government means the Commonwealth of Australia.
- 21 Australian Government Environment Minister means the Minister administering the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and includes a delegate of the Minister.

- 22 New South Wales Minister means the Minister or Ministers administering the New South Wales Environmental Planning and Assessment Act 1979, and includes a delegate of the Minister.
- 23 Management Plan for the Sydney Opera House means the bilaterally accredited “Management Plan for the Sydney Opera House August 2005”, which also encompasses the Conservation Management Plan—“Sydney Opera House: A Revised Plan for the Conservation of the Sydney Opera House and its Site” (3rd edition 2003) (CMP)—the “Utzon Design Principles” (2002) and the Statement of the National Heritage values of the Sydney Opera House, included in Schedule 1 to this agreement.

Signed for and on behalf of the
State of New South Wales by:

Signed for and on behalf of the
Australian Government by:

Signed

Signed

The Hon Frank Sartor, MP
Minister for Planning

Senator, the Hon Ian Campbell
Minister for the Environment and
Heritage

Date: 22 December 2005

Date: 12 December 2005

and

Signed

The Hon Bob Debus, MP
Minister for the Arts

Date: 22 December 2005

SCHEDULE 1
MANAGEMENT PLAN FOR THE SYDNEY OPERA HOUSE