



DEPARTMENT OF THE ATTORNEY GENERAL AND OF JUSTICE

237 MACQUARIE STREET
SYDNEY 23 MAR 1966
Telephone 2 6516 Ext. JLR.GP.
In reply, please quote No.

John Astin
cf

Messrs. Barkell & Peacock,
Solicitors,
11c Castlereagh Street,
S Y D N E Y.

Dear Sirs,

re: Sydney Opera House.

I am directed by the Attorney-General to advise you that he has given some preliminary consideration to your request for his allowance of an Information on the relation of your clients, Messrs. L. Peter Kollar and others.

The work, the carrying out of which was sanctioned by the Sydney Opera House Act, 1960, was that described in the Schedule of the Act as "the construction and equipment of the Sydney Opera House at Bennelong Point, Sydney, generally in accordance with the design prepared by Joern Utzon, Esquire, which was placed first in the International Competition for a National Opera House conducted by the Government of New South Wales during the year one thousand nine hundred and fifty six." The Schedule continued with a description in general terms of features to be comprised in the work, and concluded with a statement that the whole of the work thereinbefore described should be subject to such modifications as might be deemed necessary or desirable by the constructing authority, that is, the Minister for Public Works.

The design prepared and submitted by Mr. Utzon, which was placed first in the International Competition, consisted of a ground plan and a series of sketches or drawings showing various elevations, a section, and floor plans of a proposed building, together with a report as required by the conditions of the Competition.

The Attorney General is advised that up till the 28th February, 1966, work had progressed on the construction of a building generally in accordance with Mr. Utzon's design, and by that date had reached a stage where what remained to be done in order to complete the work consisted of finishing work, internal work and the equipment of the building for use as an Opera House, none of which remaining work would nor could affect or alter the general design of the project.

However, it appears from the draft Information submitted by you that it would be sought in the proposed suit to allege and prove (inter alia) first, that it is not possible for the work required to be done for the completion of the Opera House generally in accordance with Mr. Utzon's design to be done or carried out unless Mr. Utzon is Architect for or otherwise employed in connection with the carrying out of such work and, secondly, that if efforts are made (soil. by the Minister for Public Works) to carry out the remaining works without Mr. Utzon being employed in

connection therewith, the resulting building would not be generally in accordance with Mr. Utzon's design, and would therefore be unauthorised and illegal.

As the advice which has been tendered to the Attorney General appears to be at variance with the body of expert opinion mentioned in your letter of 21st March, 1966, the Attorney General, before coming to any conclusion on the matter, would be prepared to consider the opinions of such number of your experts as you may care to submit. It is desired that those experts state not only their academic qualifications and professional experience in the practice of architecture, but also the matters taken into consideration by them in forming their respective opinions and their reasons for arriving at their conclusions. In particular, the Attorney General would like them to indicate the degree of their familiarity with the documents wherein "the design" referred to in the first paragraph of the Schedule to the Act was embodied, and to discuss the question whether performance of the work now remaining to be done in order to complete and equip the State Opera House, whether performed under the supervision of Mr. Utzon or otherwise, would necessarily result in the building as so completed and equipped being constructed and equipped otherwise than generally in accordance with the design prepared and submitted by Mr. Utzon in 1956, subject to such modifications as might have been deemed necessary or desirable by the constructing authority.

It is noted that in the draft Information submitted, the defendants are named as "The Minister for Public Works" and "The Treasurer"; that is, the persons holding those offices are to be sued in their official capacities as Members of the Executive Council. It is considered that there is authority for the view that an injunction will not be granted against a Minister representing the Crown. Apart from other aspects of the matter, the Attorney General would, before giving consideration to the allowance of an Information, need to be satisfied that it would be within the competence of the Court to grant the relief sought.

Yours faithfully,

L. L. Downes
Under Secretary of Justice

