



Sydney SuperDome  
(Homebush Bay Multi-Use Arena)

# Summary of contracts

October 1999





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The assistance of Clayton Utz and officers of the OCA is gratefully acknowledged.  
 All responsibility for the contents of this *Summary of Contracts* is accepted by the OCA.

# 1 Introduction

This report summarises the main contracts, from a public sector perspective, for the Multi-Use Arena (“Sydney SuperDome”) project at Olympic Park, Homebush Bay.

It has been prepared by the Olympic Co-ordination Authority (OCA) in accordance with the public disclosure provisions of the 1995 *Guidelines for Private Sector Participation in the Provision of Public Infrastructure*. In September 1998 it was submitted to the Auditor-General for review and certification prior to tabling in Parliament.

In line with the *Guidelines*, this report focuses on those Multi-Use Arena project contracts under which public sector organisations have entered into contractual obligations with private sector entities. Other project contracts and the parties to them are referred to only to the extent necessary to explain the public sector’s exposure.

## 1.1 The project

Following the announcement on 24 September 1993 that Sydney had won the right to host the Games of the XXVII Olympiad, work began on planning and developing the Sydney 2000 Olympic Games facilities. The Olympic Co-ordination Authority (OCA), established in June 1995, has been overseeing this process.

The Multi-Use Arena is an integral part of these facilities. It is located within the Sports Precinct of the Homebush Bay area, north of the main Olympic stadium (Stadium Australia) and west of the new Sydney Showground (Figure 1).

In its Olympics gymnastics configuration the Multi-Use Arena will seat about 15,000 people. Construction of the arena was completed at the end of August 1999, and the arena has been operational since September 1999.

During the Olympics the Multi-Use Arena will be used for gymnastics competitions and the basketball finals. During the Paralympics it will be used for wheelchair basketball events.

After the Paralympics the arena will be able to seat up to 20,000 people, depending on its use, and will be able to be reconfigured very quickly, using retractable seating. It is expected to be used for major national and international standard indoor sports, including gymnastics, tennis, basketball and ice hockey, for concerts, in both “end stage” and “centre stage” modes, for family shows such as Disney on Ice and the Moscow Circus, and for community events.

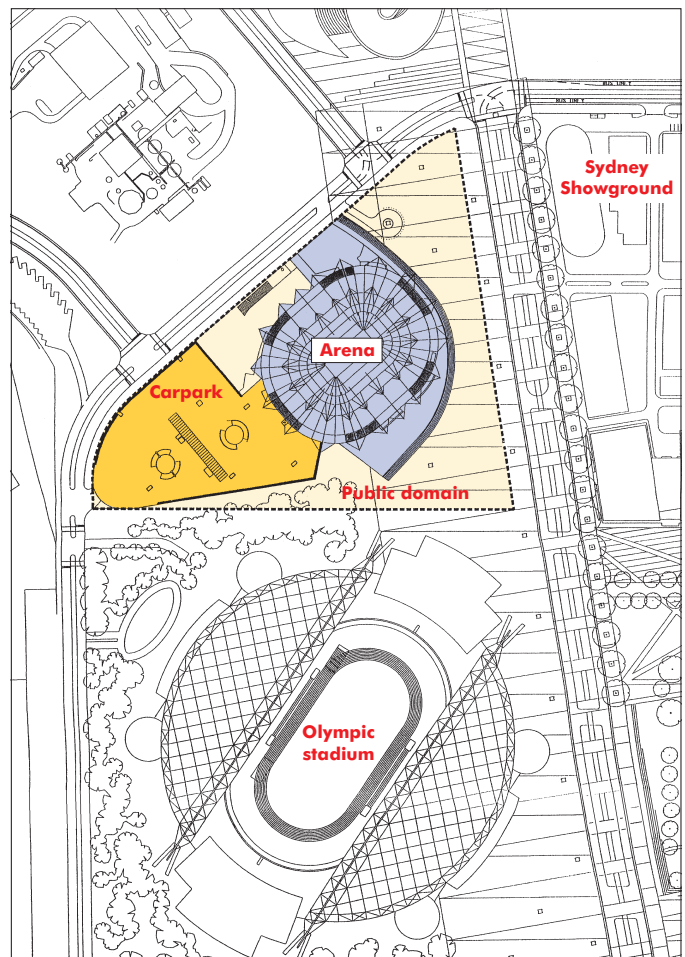


Figure 1. Location of the Multi-Use Arena, the adjacent Avenue 2B carpark and the associated public domain works

With 5–10,000 more seats than existing indoor venues in Australia, and the most modern facilities in the country, the arena is expected to attract events that have not previously been attracted to New South Wales.

The arena has been designed to provide excellent sight-lines, comfortable seating, easy access for all, high-quality sound and lighting and high-quality event catering.

It is one of the most environmentally advanced arenas of its type in the world, having adopted a series of measures to:

- Significantly reduce energy and water consumption
- Minimise the use of PVC and maximise the use of environmentally friendly building materials, including non-toxic paints, cellulose fibre insulation and sound-proofing made from recycled paper

- Use electricity generated from renewable sources, including solar collectors on the arena's roof that will generate up to 70 kW of power
- Encourage patrons to use public transport
- Use finishes and systems selected on the basis of life cycle analyses
- Ensure the arena is built and operated in accordance with an environmental management system



The Multi-Use Arena (Sydney SuperDome) viewed from above Olympic Boulevard, looking northwest, with the Olympic stadium at bottom left



The Multi-Use Arena in its Olympics gymnastics configuration



*View from the east, from Olympic Boulevard*



*View from the southeast, from outside the Olympic stadium*

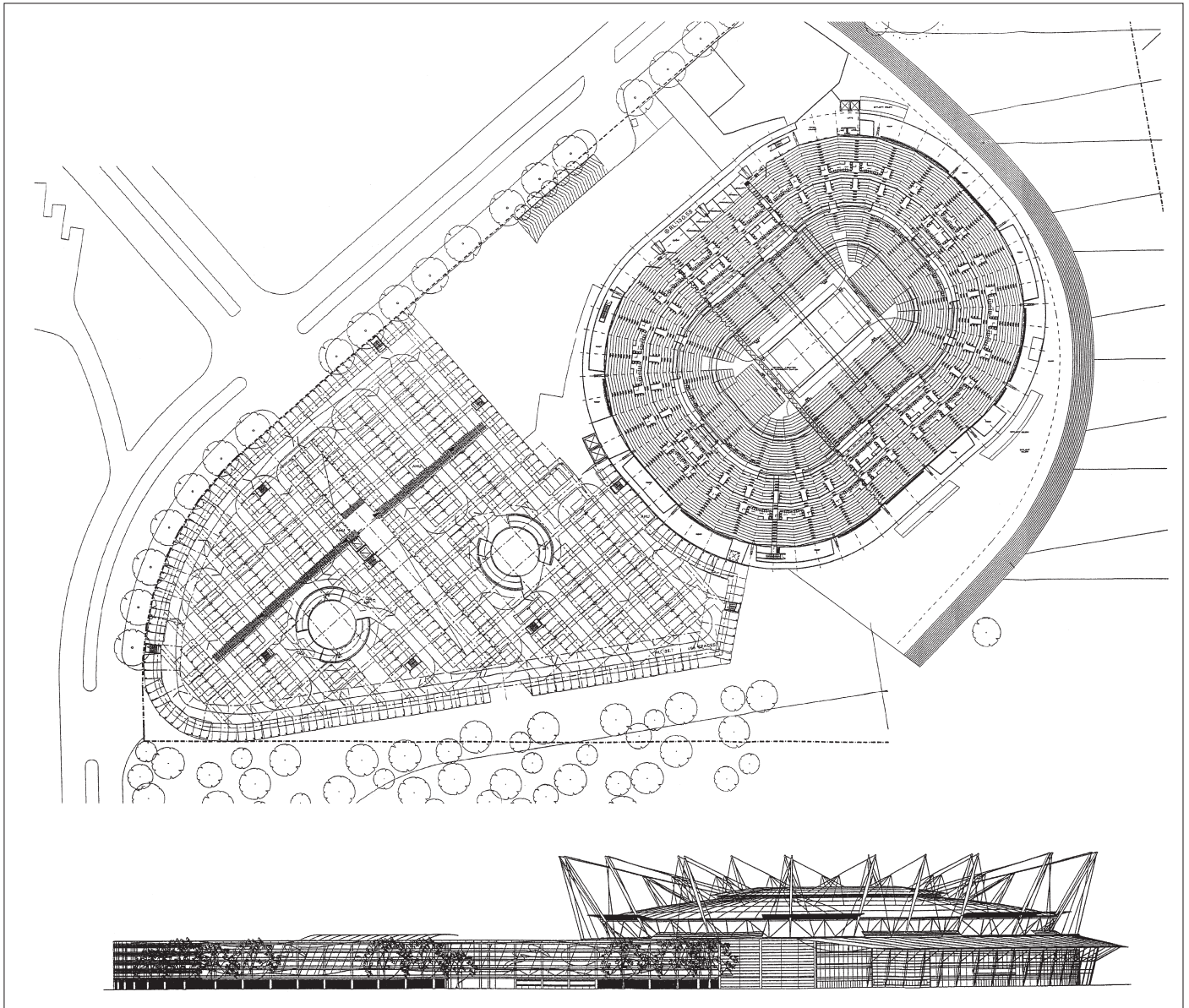


Figure 2. Plan and south elevation of the OCA-funded Avenue 2B Carpark (left) and the jointly funded Multi-Use Arena (right)

- Minimise indoor air pollution
- Minimise and manage all wastes and maximise waste recycling
- Use only recycled and plantation timbers.

Sport and recreational facilities in the Homebush Bay area, including the Multi-Use Arena, Stadium Australia, the Aquatic Centre, their adjacent sporting facilities and the Sydney Showground, are supported by integrated public transport infrastructure and services. The NSW Government's public transport commitments include the new rail loop, permitting up to 30 trains per hour to travel to and from the new Olympic Park railway station at Homebush Bay, carrying up to 50,000 people per hour during the Olympics, and provisions for bus services carrying up to 28,000 people per hour.

Provision has also been made for 10,000 car parking spaces in the Homebush Bay area, except during the Olympics period, when private car access to Homebush Bay will

be prohibited. 3,400 of these spaces are provided in a multi-storey "Avenue 2B Carpark" built for and operated by the OCA immediately west of the Multi-Use Arena, with direct links between this car park and the arena (*Figures 1 and 2*).

The car park is also linked to a coach park, to the west, via a pedestrian underpass.

The private sector consortium involved in the project is known as the Millennium consortium. Its sponsor, Abigroup, which built the arena, car park and public domain works, has contributed \$14.85 million in equity to the project. The consortium's debt finance, which under the contracts summarised in this report was originally to be provided by AIDC Ltd, is now being provided by the Bank of Western Australia ("BankWest"). Others involved in the Millennium consortium include Cox Richardson/Devine de Flon Yaegar (architects) and Obayashi Corporation (as head contractor for works subcontracted to Abigroup). Until



April 1998 the consortium also included LMI Sydney, a joint venture between Leisure Management International and International Sports Facilities Management, which was to have been responsible for the management, operation and marketing of the arena. These functions have now been taken over by Millennium Agent Pty Limited, as agent for a Multi Use Arena Partnership formed by the consortium in June 1997. Millennium Agent and all the partners in this partnership are wholly owned by Abigroup.

The total estimated design, construction, fitout, commissioning and financing cost of the Multi-Use Arena itself is \$197.2 million, of which the Government will contribute \$141,488,000 under the OCA's contracts with the private sector.\* The Millennium consortium will contribute approximately \$55.7 million, of which:

- \$14.85 million is equity as described above, which under the contracts was to be contributed on the earlier of 1 April 1999 and the date of practical completion of the pre-Olympics arena and carpark (i.e. other than works to be undertaken after the Olympics and Paralympics)
- Up to \$35.5 million is being raised under an amortising debt finance facility provided by BankWest (during the construction phase a BankWest construction debt facility of up to \$40.5 million is being utilised)
- Some or all of the balance will be derived from the arena's operating cash flows, with the arena's operating fund account as at 31 December 2000 being underwritten by Abigroup to the extent of \$5.3 million.

In addition, the Government will pay the Millennium consortium an estimated \$62.0 million for the planning, design, construction and commissioning of the adjacent Avenue B Carpark and \$19.3 million for adjacent "public domain" landscaping and related works. These estimates

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\* In the September 1996 *Call for Detailed Proposals* referred to in section 1.2 below, the shortlisted proponents for the design, construction, financing and operation of the arena were advised that the maximum contribution by the NSW Government to the successful proponent would be \$130 million (\$AUD 1996), and that that a key evaluation criterion would be the extent to which they minimised the contribution required from the Government. The proposal submitted by the Millennium consortium involved the least cost to the Government of any of the proposals submitted in response to this *Call for Detailed Proposals*. The Millennium design for the arena also included features that had not been included in the Government's original "benchmark" design. The OCA's Assessment and Negotiating Team considered that these features would significantly increase the arena's potential uses, and judged them justified in terms of "value for money". Accordingly, as part of its acceptance of the finally negotiated Millennium consortium proposal, the Government accepted and approved a higher Government contribution to the design and construction cost of the arena. As discussed in section 3.2 of this report, the Government's contribution, initially set at \$141,800,000, was subject to adjustments in the light of interest rate movements until 23 October 1997, when it became fixed at \$141,488,000.

include "provisional sums" totalling \$2.9 million and \$14.75 million, respectively.

The Multi-Use Arena site is owned by the NSW Government through the OCA. When construction of the arena is completed, the OCA will grant a company established by the Millennium consortium a lease for approximately 31½ years, until 31 January 2031, and the consortium will operate, maintain and repair the arena throughout this period, after which ownership and control of the facility will revert to the Government. The OCA will receive a share of the profits from the arena in the form of rent, provided the returns to the private sector parties exceed a specified threshold.

The completed Avenue 2B Carpark and the public domain works are being operated, maintained and repaired by the Government.

## 1.2 Project history

Sydney's successful bid for the 2000 Olympic and Paralympic Games necessitates the construction of the Multi-Use Arena as part of the facilities to be provided at Homebush Bay.

In May 1996 the Government issued a *Call for Proposals* from the private sector for the design, construction, financing and operation of the Multi-Use Arena for a 30-year period, with the arena then to revert to the Government.

Following a review of the five proposals received, three proponents were shortlisted by the Government for the next phase:

- The Millennium consortium, sponsored by Abigroup
- The SA2000 consortium, sponsored by Hambros Australia and Multiplex Constructions, and
- The Coliseum consortium, sponsored by Leighton Holdings.

The OCA issued these shortlisted proponents with a *Call for Detailed Proposals* on 26 September 1996, with a closing date of 28 January 1997. On 25 November 1996 the proponents were also invited to submit fixed price proposals for the design and construction of the adjacent Avenue 2B Carpark.

All three consortia submitted proposals for both the Multi-Use Arena and the Avenue 2B Carpark.

On 2 April 1997, following a detailed OCA review of these three proposals, the Olympic Committee of Cabinet authorised the OCA to enter into detailed negotiations with the Millennium and SA2000 consortia and to assess proposals from these two consortia. Both consortia were explicitly advised of the strengths and weaknesses of their proposals to that date, were informed that they had an equal chance of winning the bid, and were invited to submit

revised proposals and documentation with a view to being able to enter into contracts by 13 June 1997. A final stage of clarification and negotiation, to resolve and improve the proposals on a number of outstanding issues, was then conducted, with a closing date of 3 July 1997.

All negotiations and assessments were carried out in accordance with previously defined methodologies and were overseen by the OCA's probity auditor, Mr Rory O'Connor of Deloitte Touche Tohmatsu. An OCA Assessment and Negotiating Team, assisted by a team of expert advisers, carried out detailed analyses of and negotiations on the evolving proposals, and reported progressively to an Executive Advisory Committee which was responsible, among other things, for making recommendations to the Minister for the Olympics.

Expert advisers contracted to the OCA in the negotiations phase included Westpac Banking Corporation (advice on funding certainty and commercial risks), Hellmuth, Obata & Kassabaum (architectural concepts and advice), Clayton Utz (negotiations strategy, legal advice and the preparation of agreements), Deloitte Touche Tohmatsu (probity auditing) and KPMG Corporate Finance (advice on Government contributions and the project's financial viability).

A detailed final assessment report was completed by the OCA on 14 July 1997.

The OCA's probity auditor reported on 11 July 1997 that on the basis of the work it had performed and its discussions with relevant OCA staff, the independent advisers and assessors to the process and each proponent, it was not aware of any issues arising that would lead it to conclude that the evaluation process followed by the OCA had not been conducted in a fair and equitable manner.

On 23 July 1997 the Olympic Committee of Cabinet approved the OCA's recommendation that the OCA

should contract with the Millennium consortium for it to design, construct, commission, finance and operate the Multi-Use Arena and design, construct and commission the adjacent Avenue 2B Carpark and associated public areas.

The negotiated Project Agreement and most of the other project contracts summarised in this report were executed on 31 July 1997. They became effective on 23 October 1997, once a number of conditions precedent had been satisfied.

Development consents for the arena and carpark under the Environmental Planning and Assessment Act were granted by the Minister for Urban Affairs and Planning on 21 October 1997.

Practical completion of the arena was granted by the OCA on 30 August 1999.

### 1.3 The structure of this report

The tenses used in the rest of this report reflect the fact that the contracts were summarised well before the completion of construction.

**Section 2** summarises the structuring and management of the Multi-Use Arena project and explains the inter-relationships of the various agreements between the public and private sector parties.

**Sections 3 to 7** summarise the main features of the key agreements.

**Section 8** summarises changes in the contract parties arising from the sale of AIDC Ltd, which was originally to have provided debt finance for the private sector participants in the project, a role now taken over by BankWest.

**Section 9** summarises the project's public sector financial benefits and costs.

## 2 Overview of the project contracts

### 2.1 The participants in the project

The principal public sector party to the Multi-Use Arena project contracts is the **Olympic Co-ordination Authority (OCA)**, a statutory body representing the crown in the right of New South Wales. The OCA is constituted under the Olympic Co-ordination Authority Act 1995. It is responsible for delivering the major Olympic facilities, including the arena, and also has functions with respect to the orderly and economic development of the Homebush Bay area of Sydney.

The **Minister for the Olympics**, under delegation from the Treasurer, has signed a Deed of Guarantee under section 22B of the Public Authorities (Financial Arrangements) Act, providing a Crown guarantee of the OCA's performance of its obligations under certain project documents.

The other main public sector party is the **Sydney Organising Committee for the Olympic Games (SOCOG)**, which is constituted under the Sydney Organising Committee for the Olympic Games Act 1993. SOCOG's primary objective is to organise and stage the Olympic Games in Sydney in the year 2000.

In addition to contracting in this role, SOCOG has entered into various Multi-Use Arena project contracts on behalf of Sydney Paralympic Organising Committee Limited (SPOC), whose primary objective is to organise and stage the Paralympics in Sydney in the same year.

The *private sector sponsor* of the Millennium consortium is the construction company **Abigroup Limited** ("Abigroup"), which holds all of the equity in a series of project vehicle companies that have formed a partnership to undertake the project.

The main private sector *parties to the contracts* as originally signed\* (**Figure 3**) are:

- **Millennium Agent Pty Limited** ("Millennium Agent"), which has contracted with the OCA to finance, plan, design, construct, commission, lease, operate, maintain and repair the Multi-Use Arena and plan, help to design, construct and commission the adjacent car park and public domain facilities. In doing so Millennium Agent is acting, under the Partnership Agreement, Multi-Use Arena Partnership of 13 June 1997 and an associated Acknowledgement of Nominee and Agent and Undertaking of Nominee and Agent of 31 July 1997, as the agent of six project vehicle companies that have formed a partnership, called the Multi Use Arena

Partnership, to undertake the project. Under this Partnership Agreement, four of these partners, MUA Partner No 1 Pty Limited, MUA Partner No 2 Pty Limited, MUA Partner No 3 Pty Limited and MUA Partner No 4 Pty Limited, each have a 20% interest in the partnership, while two, MUA Partner No 5 Pty Limited and MUA Partner No 6 Pty Limited, each have a 10% interest. All the partners, and Millennium Agent, are wholly owned by Abigroup.

- **Millennium Contractors Pty Limited** ("Millennium Contractors"), which has contracted with the OCA to design and construct the OCA-funded portions of the Multi-Use Arena. Millennium Contractors is wholly owned by Abigroup.
- **AIDC Australia Limited** ("AIDC Australia"), acting both as the Agent and as the Security Agent for **AIDC Ltd** ("AIDC"), which was to provide up to \$40.5 million of construction debt finance to the Multi Use Arena Partnership, repayable on 1 January 2001, followed by up to \$35.5 million of amortising debt finance over 15 years.\*
- **Obayashi Corporation** ("Obayashi"), one of the world's largest general contractors and construction companies, which is acting as head contractor for carrying out the design and construction obligations of Millennium Agent and Millennium Contractors to the OCA, and which in turn has sub-contracted these obligations to **Abigroup**.
- **LMI Sydney Pty Limited** ("LMI Sydney"), which was to have been responsible to Millennium Agent for carrying out Millennium Agent's operation, maintenance and repair obligations to the OCA during the initial years of the arena's 31½-year operating term.† LMI Sydney was a joint venture company formed and equally owned by LMI/HHI, Ltd, a Texas limited partnership doing business as Leisure Management International, and International Sports Facilities Management Pty Limited.

\* Following the late 1997 purchase of AIDC and AIDC Australia by UBS Australia Limited, and UBS Australia's on-sale of the project's debt finance agreement to BankWest, the rights and obligations of AIDC and AIDC Australia under the project's contracts were transferred to BankWest and UBS Australia, as described in section 8 of this report. Sections 2 to 7 of this report summarise the contracts *as originally signed*, before the transfers described in section 8 took effect.

† These tasks have since been taken over by Millennium Agent itself.

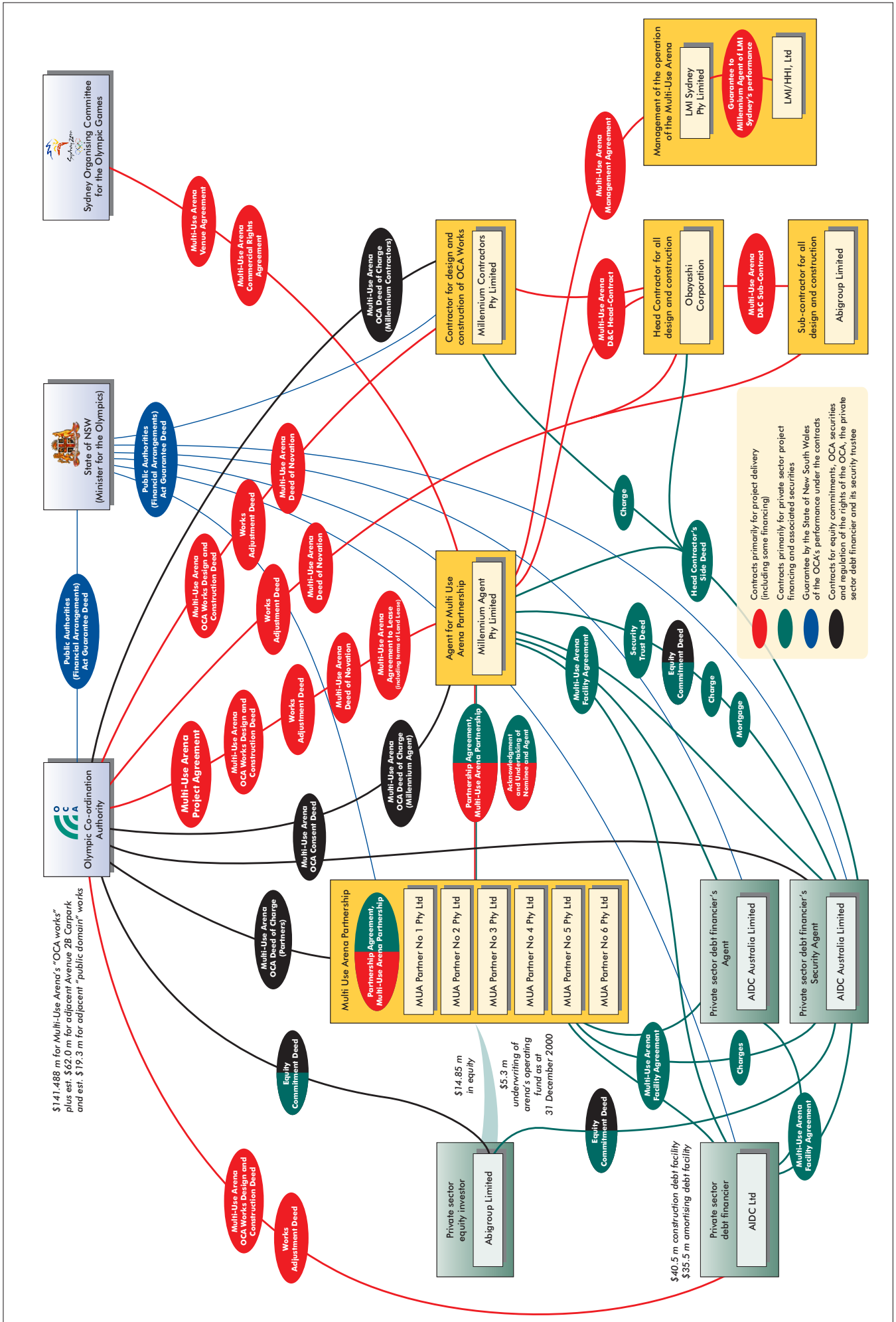


Figure 3. Contractual structure of the Multi-Use Arena project, showing the parties that were the original signatories to the contracts, as summarised in sections 2 to 7 of this report.

## 2.2 Contractual structure

The contractual structure of the project — inasmuch as the contracts potentially affect public sector risks and benefits — is summarised in *Figure 3*.

The core contract is the **Multi-Use Arena Project Agreement** between the OCA and Millennium Agent. This agreement permits and obliges Millennium Agent — which in all the contracts is acting as agent for the Multi Use Arena Partnership under the **Partnership Agreement, Multi-Use Arena Partnership** and an **Acknowledgement of Nominee and Agent and Undertaking of Nominee and Agent** — to:

- Finance, plan, design, construct and commission the Multi-Use Arena, apart from specified works to be undertaken for and financed by the OCA under the OCA Works Design and Construction Deed
- Plan, design, construct and commission the adjacent Avenue 2B Carpark and “public domain” areas, apart from designs to be prepared by the OCA for the public domain works.
- Procure the operation, maintenance and repair of the Multi-Use Arena during the term of a lease from the OCA to Millennium Agent, in the form of the Land Lease annexed to the Multi-Use Arena Agreement to Lease, from the completion of the Multi-Use Arena (apart from some limited post-Olympics works) and the first two phases of the carpark — due by 31 August 1999 — until 31 January 2031 or any earlier termination of the agreement.
- Make the Multi-Use Arena available to SOCOG and SPOC for the Olympic Games, the Paralympics and earlier Cultural Olympiad and “test” events, as set out in the Venue Agreement and the Commercial Rights Agreement.
- Yield up possession of the Multi-Use Arena to the OCA on 31 January 2031 or any earlier termination of the agreement.

The OCA has also entered into the **OCA Works Design and Construction Deed**, with Millennium Contractors, Millennium Agent and AIDC, for Millennium Contractors, under the supervision and management of Millennium Agent, to plan, design, construct and commission the portions of the arena to be funded by the OCA, in a manner fully integrated with the works to be carried out under the Project Agreement.

The scopes of the arena works to be funded by the OCA under this deed and the arena works to be funded by Millennium Agent under the Project Agreement have been adjusted, to reflect lower interest rates, under the **Works Adjustment Deed**.

Millennium Agent and Millennium Contractors have contracted with Obayashi, under the **Multi-Use Arena D&C Head-Contract**, for Obayashi to assume responsibility for their design, construction and commissioning obligations under the Project Agreement and OCA Works Design and Construction Deed.

In turn, Obayashi has sub-contracted most of its obligations to Abigroup, under the **Multi-Use Arena D&C Sub-Contract**.

The **Multi-Use Arena Deed of Novation**, between the OCA, Millennium Agent, Millennium Contractors, Obayashi and Abigroup, effectively provides that if the Project Agreement is terminated, the OCA may step into the shoes of Millennium Agent and Millennium Contractors under the D&C Head-Contract, and/or Obayashi under the D&C Sub-Contract, and deal directly with Obayashi or Abigroup so that construction can continue.\*

Under the **Agreement to Lease** between the OCA and Millennium Agent, as agent for the Multi Use Arena Partnership, the OCA has:

- Granted Millennium Agent and its contractors rights of access to the construction site for the arena, the carpark and the surrounding precinct, and
- Agreed to grant Millennium Agent the **Land Lease**, for the land occupied by the arena itself, from practical completion of the arena (other than the limited post-Olympics works) and the first two phases of the carpark until 31 January 2031 or any earlier termination date.

Millennium Agent’s Project Agreement obligations to the OCA to operate, maintain and repair the arena during the term of this lease were mirrored in the **Multi-Use Arena Management Agreement** between Millennium Agent and LMI Sydney, which was originally going to be the arena’s operator. LMI Sydney’s performance of its obligations to Millennium Agent under this Management Agreement were guaranteed to Millennium Agent by LMI/HHI, Ltd, doing business as Leisure Management International, in a deed dated 12 August 1997.†

Under **Multi-Use Arena OCA Deeds of Charge** the partners to the Multi Use Arena Partnership, Millennium Agent and Millennium Contractors have granted the OCA floating charges over all their project assets — ranking second only to the security interests of their debt financier — to secure the

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\* This Multi-Use Arena Deed of Novation, dated 7 August 1997, should not be confused with a later Deed of Novation, dated 21 October 1997, that transferred most of the rights and obligations of AIDC and AIDC Australia to BankWest, as described in section 8 of this report.

† The Multi-Use Arena Management Agreement was subsequently terminated, with OCA’s consent, on 27 April 1998, with Millennium Agent itself taking over the operation of the arena.

obligations of Millennium Agent and Millennium Contractors to the OCA under the key project contracts. Other “securities” required from Millennium Agent are set out in the Project Agreement itself.

A range of securities for Millennium Agent’s debt financing arrangements with AIDC are being held by the Security Agent, AIDC Australia, under charges granted by the Multi Use Arena Partnership’s partners, Millennium Agent and Millennium Contractors, a Security Trust Deed between Millennium Agent and AIDC Australia and a mortgage of the Land Lease in favour of AIDC Australia. Under the **Multi-Use Arena OCA Consent Deed** between the OCA, the Security Agent and Millennium Agent, these financier’s securities will have priority over the OCA’s securities under the OCA Deeds of Charge. The OCA Consent Deed also regulates the manner in which the parties may exercise their rights if Millennium Agent defaults on its obligations or if the OCA otherwise becomes entitled to terminate the Project Agreement, the Agreement to Lease or the Land Lease.

Under the **Public Authorities (Financial Arrangements) Act Deed of Guarantee** between the Minister for the Olympics (on behalf of the State of NSW), the OCA, Millennium Agent, the six partners in the Multi Use Arena Partnership, Millennium Contractors, AIDC and AIDC Australia (as Agent and Security Agent for the debt financier), the State of NSW has unconditionally and irrevocably guaranteed the OCA’s performance under the Project Agreement, the Agreement to Lease, the Land Lease, the OCA Works Design and Construction Deed, the OCA Consent Deed and the OCA Deeds of Charge, and any other project contracts approved by the Treasurer, to all the other parties to these contracts.

Under the **Equity Commitment Deed** Abigroup has promised the OCA that it will not sell down its undertaking in the project without the OCA’s consent, and has also promised the debt financier’s Security Agent that it will make its equity commitment to the project and underwrite the arena’s operating cash flows to 31 December 2000 to the extent of \$5.3 million.

The **Venue Agreement**, between SOCOG and Millennium Agent, specifies the terms on which the arena will be made available to SOCOG, rent-free, for the Olympic and Paralympic Games and various “test” and Cultural Olympic events prior to the Olympics. The **Commercial Rights Agreement** between SOCOG and Millennium Agent regulates various marketing and operational activities.

## 2.3 Conditions precedent

The substantive provisions of most of the project contracts outlined above and discussed below were subject to a series

of conditions precedent, and were not to become binding until all of these conditions were either satisfied or waived.

For example, the Project Agreement (other than its provisions relating to its conditions precedent, earthworks for the carpark, the lodgment of applications for modification of the arena’s development consent, OCA assistance in the obtaining of other approvals, the preparation and submission of design documentation and an asset management plan, and the establishment and operation of a design working group), the OCA Works Design and Construction Deed, the Agreement to Lease, the OCA Consent Deed, the D&C Head-Contract and the D&C Sub-Contract were subject to the following conditions precedent:

- The execution of all the other “project documents”, as defined in the agreement and including most of the key contracts outlined above, except for the Land Lease. This condition precedent was satisfied on or before 12 August 1997, when LMI/HHI, Ltd’s guarantee of LMI Sydney’s performance under the Management Agreement was signed.
- The granting of all necessary Ministerial consents, including consent under the Public Authorities (Financial Arrangements) Act. This condition precedent was satisfied on 8 October 1997.
- The granting of development consents for the arena and carpark in a form not materially different to draft development consents exhibited to the Project Agreement or otherwise in a form acceptable to the parties. This condition precedent was satisfied on 21 October 1997.
- The receipt by the OCA of \$20 million in security bonds. This condition precedent was satisfied on 5 September 1997.
- A ruling from the Australian Taxation Office in a form acceptable to the OCA. This condition precedent was satisfied by the issuing of a private ruling by the Australian Taxation Office on 3 October 1997.
- The taking out of insurance policies as specified in the agreement and in a form acceptable to the OCA. This condition precedent was satisfied on or before 25 September 1997.
- The execution of a Government guarantee of the OCA’s obligations under the defined “project documents”, in accordance with the Public Authorities (Financial Arrangements) Act. This condition precedent was satisfied on 20 October 1997.
- An audit, to the satisfaction of the OCA, of a “base case financial model” exhibited to the Project Agreement. This condition precedent was satisfied on 23 September 1997.
- An agreement by the OCA, Millennium Contractors, Millennium Agent and the private sector debt financier,

AIDC, on “base swap offer rates” to be used for interest rate adjustments of the OCA-funded and Multi Use Arena Partnership-funded works and contract price under the OCA Works Design and Construction Deed. This condition precedent was satisfied on 23 October 1997.

If these conditions precedent had not been either satisfied or waived within four months of the signing of the Project Agreement, or any other period agreed between the OCA and Millennium Agent, either party would have had the

right to terminate the Project Agreement and the Agreement to Lease by giving seven days’ notice.

Because all the conditions precedent listed above were satisfied on or before 23 October 1997, the Project Agreement, the OCA Works Design and Construction Deed, the Agreement to Lease, the OCA Consent Deed, the D&C Head-Contract and the D&C Sub-Contract became binding on that date.

The Works Adjustment Deed took effect on 19 February 1998.

## 3 The Project Agreement and the OCA Works Design and Construction Deed

Key features of the obligations of the OCA, Millennium Agent and Millennium Contractors under the Project Agreement and the OCA Works Design and Construction Deed of 31 July 1997, as supplemented by the Agreement to Lease of 31 July 1997, the OCA Consent Deed of 31 July 1997, the D&C Head-Contract of 31 July 1997, the D&C Sub-Contract of 31 July 1997, the Multi-Use Arena Deed of Novation of 7 August 1997 and the Works Adjustment Deed of 19 February 1998, are summarised below.

As already indicated, in these and all the other project contracts Millennium Agent is acting as the agent of the Multi Use Arena Partnership under the Partnership Agreement, Multi-Use Arena Partnership of 13 June 1997 and in accordance with an Acknowledgement of Nominee and Agent dated 31 July 1997 and an Undertaking of Nominee and Agent dated 31 July 1997.

### 3.1 Millennium Agent's fundamental obligations and general acceptance of project risks

Millennium Agent's fundamental obligations under the Project Agreement, as supplemented by the other contracts listed above, are to:

- Finance, plan, design, construct and commission the arena, apart from specified "OCA works" to be undertaken for and financed by the OCA under the OCA Works Design and Construction Deed.

The interactions between Millennium Agent's works (the "Partnership works") and the "OCA works", and the respective scopes of these works, are also governed by the OCA Works Design and Construction Deed. In practice, as discussed below, all the design and construction of the "OCA works" will be undertaken as if they formed part of the "Partnership works" under the Project Agreement (and, in turn, the D&C Head-Contract with Obayashi), the only difference being that they will be paid for by the OCA, rather than Millennium Agent.

- Plan, design, construct and commission the adjacent carpark and "public domain" areas, apart from designs to be prepared by the OCA for the public domain works.

- Procure the operation, maintenance and repair of the arena during the term of a lease from the OCA to Millennium Agent, in the form of the Land Lease annexed to the Multi-Use Arena Agreement to Lease, from the completion of the arena (other than some post-Olympics works) and the first two phases of the carpark — due by 31 August 1999 — until 31 January 2031 or any earlier termination of the agreement.
- Make the arena available to SOCOG and SPOC for the Olympic Games, the Paralympics and earlier Cultural Olympiad and "test" events, as set out in the Venue Agreement and the Commercial Rights Agreement.
- Yield up possession of the arena to the OCA on 31 January 2031 or any earlier termination of the agreement.

Subject to specific terms in the Project Agreement discussed below, Millennium Agent accepts (as against the OCA) all the risks associated with the project, including the risk that revenue from the arena may be less than expected by the Millennium Agent and its advisers.

More specifically,

- Millennium Agent is solely responsible for all expenses and damages associated with conditions encountered on the construction site, the clearing of the construction site, latent conditions, contamination, heritage and archaeological items and endangered flora or fauna on the construction site.
- Although the OCA is to pay for the "OCA works" on the arena under the OCA Works Design and Construction Deed, Millennium Agent accepts all risks in relation to these OCA works as if they were part of the "Partnership works".

The Project Agreement does not restrict the OCA in the exercise of any of its functions and powers under any legislation, fetter the discretion of the OCA and the Government on whether or not to proceed with other facilities at Homebush Bay, or limit or restrict the ability of the Government to construct or operate any other sporting or entertainment venues.



## 3.2 Scopes of the 'Partnership works' and 'OCA works'

The "Partnership works" are:

- All works for the arena itself — as specified in a detailed design brief exhibited to the Project Agreement — other than the "OCA works", which are identified in another brief exhibited to the OCA Works Design and Construction Deed, as adjusted by the Works Adjustment Deed (see below)
- All works for the carpark, as specified in another part of the design brief exhibited to the Project Agreement, and
- All works (other than designs to be prepared by the OCA) for the "public domain", again as specified in the design brief exhibited to the Project Agreement.

Under the OCA Works Design and Construction Deed the final scope of the "OCA works" on the arena, and hence the final scope of the "Partnership works" on the arena, were to be determined in the light of interest rate movements between 31 July 1997 and the date of "financial close" under the Multi Use Arena Partnership's private sector debt funding arrangements, which turned out to be 23 October 1997. The parties to the OCA Works Design and Construction Deed expressly acknowledged that the briefs defining the works to be carried out and funded by Millennium Agent and the OCA under the various contracts, and thus the contract prices, would be amended, as soon as practicable, in accordance with a formula set out in an attachment to the OCA Works Design and Construction Deed, and that the changes would be recorded, as necessary, in a **Works Adjustment Deed**. This deed was subsequently agreed by the OCA, Millennium Agent, Millennium Contractors, Obayashi, Abigroup and AIDC and took effect on 19 February 1998. Because interest rates fell between 31 July and 23 October 1997, the scope of the "OCA works", and hence the amount of money to be paid by the OCA to Millennium Contractors under the OCA Works Design and Construction Deed, has been reduced (from \$141,800,000 to \$141,488,000), while the scope of the "Partnership works", and hence the private sector's financial contribution to the project, has been correspondingly increased. An increase in interest rates would have had the opposite effect.

The first phase of the carpark works, as defined in the design brief exhibited to the Project Agreement, and the western portion of the public domain works immediately adjacent to the carpark, as also defined in the design brief, are due for completion by 31 December 1998. The second phase of the carpark as defined in the design brief, the rest of the public domain works and the arena itself (comprising both its "Partnership works" component under the Project Agreement and its "OCA works" component under the

OCA Works Design and Construction Deed and the Project Agreement, but excluding certain post-Olympics works) are due to be completed by 31 August 1999.

The OCA was entitled to elect, prior to 31 December 1997, to include defined "third phase" carpark works in this second phase of the carpark works, with the contract price for the carpark (including "provisional sum" estimates totalling \$2,900,000) being adjusted downwards, from \$61,989,245 to \$60,173,995, if it did so. The OCA chose not to make this election, so the "third phase" carpark works will now be carried out after the Olympics, in a manner designed to minimise disruption and inconvenience to the carpark's operators and users, and must be completed by 30 April 2001.

Millennium Agent must also complete post-Olympics works on the arena itself, as defined in the design brief and an exhibit to the OCA Works Design and Construction Deed, by 30 April 2001.

## 3.3 Development consents, building approvals and other approvals

Under the Project Agreement Millennium Agent was required to prepare an application for development consent for the arena itself and lodge this application with the OCA, so that it could be determined by the Minister for Urban Affairs and Planning in accordance with the Environmental Planning and Assessment Act. It was also required to prepare and lodge an application for the February 1996 development consent for Homebush Bay roads and infrastructure to be modified so as to permit 3,500 rather than 3,000 car parking spaces in the Avenue B carpark.

These applications, in line with draft applications exhibited to the Project Agreement, were lodged with the OCA on 29 August 1997, and the Minister for Urban Affairs and Planning granted his consent to both applications on 22 October 1997. The terms of the arena's development consent were in accordance with those of a draft consent exhibited to the Project Agreement, and both Millennium Agent and the OCA have promised, under that agreement, to comply with the obligations imposed on them by the conditions of this consent.

Millennium Agent will be solely responsible for any costs, losses or damages arising from any legal action to restrain or remedy a development consent breach of the Environmental Planning and Assessment Act, or from consequential delays to the "Partnership works".

Millennium Agent is also required to submit applications for Local Government Act Building Approvals with the OCA, which is the approving authority for these applications under the Olympic Co-ordination Authority Act.

Millennium Agent may appeal to the Land and Environment Court if any building approval is inconsistent with the Project Agreement, but it will be solely responsible for all costs, losses and damages arising from such an appeal, including delays in the “Partnership works”, and if its appeal is not finally disposed of in time to meet a project delivery program exhibited to the Project Agreement the OCA will be entitled to terminate the Project Agreement without any liability for Millennium Agent’s costs, losses or damages, but subject to certain obligations to pay the debt financier’s Security Agent under the terms of the OCA Consent Deed, as discussed in section 3.7 below.

Millennium Agent will also be solely responsible for any costs, losses or damages arising from any legal action by another person to restrain or remedy a building approval breach of the Local Government Act, or an endangered fauna breach of the National Parks and Wildlife Act or the Threatened Species Act, or from consequential delays to the works.

### 3.4 Design and construction of the project

#### General design and construction obligations

Millennium Agent has warranted that the designs of the arena, carpark and public domain works, other than designs to be prepared by the OCA for access control, cash payment/validation and closed circuit television equipment in the arena and for the public domain, will be fit for purpose and completed in accordance with the requirements of the Project Agreement.

Millennium Agent is obliged to comply with the design brief exhibited to the Project Agreement, and must prepare design documentation and an asset management plan and submit them for progressive review by the OCA so that it may monitor this compliance.

Millennium Agent is also obliged to construct the arena, carpark and public domain works with good workmanship and materials, in accordance with the design brief, design documentation and other required construction documentation, and to ensure each element is fit for its intended purpose.

The OCA may require Millennium Agent to take corrective action if it believes an element of the works is not being constructed in accordance with the requirements of the Project Agreement. If a corrective action plan prepared by Millennium Agent for the arena does not satisfactorily address the OCA’s concerns, Millennium Agent will be liable to pay the OCA the greater of the cost of correcting the defect and the decrease in the residual value of the arena at the end of its 31½-year operating term, as determined by an independent expert. Similarly, if a corrective action plan

for the carpark or the public domain does not satisfactorily address the OCA’s concerns, Millennium Agent will be liable to pay the OCA the greater of the cost of correcting the defect and the decrease in the value of the carpark or public domain.

Before practical completion of specified components of the works, Millennium Agent must submit appropriate certifications by surveyors, consultants and Obayashi.

#### Co-ordination and integration of the ‘Partnership works’ and the ‘OCA works’

The basic premises of the OCA Works Design and Construction Deed are that it is desirable to co-ordinate and integrate the “Partnership works” and the “OCA works”, and that by entering into this deed the OCA will not have any obligation greater than would be the case if the “OCA works” formed part of “Partnership works” under the Project Agreement, other than the OCA’s obligation to pay Millennium Contractors for carrying out the “OCA works”.

Accordingly,

- Millennium Contractors will perform the “OCA works” under the OCA Works Design and Construction Deed on the same terms and conditions as Millennium Agent is required to undertake the “Partnership works” on the arena, with integration of the design and construction of the “OCA works” and the “Partnership works”, and will complete the “OCA works” by the dates for practical completion of the arena under the Project Agreement.
- Millennium Agent will manage and supervise the performance of the “OCA works” for the OCA, including any variations to these works, as if they formed part of the “Partnership works” under the Project Agreement, and will procure their practical completion by the dates for practical completion under the Project Agreement.
- Apart from the OCA’s obligation to pay for the “OCA works”, the rights and obligations of the OCA (on the one hand) and Millennium Agent and Millennium Contractors (on the other) in respect of the “OCA works” will generally be determined under the Project Agreement as if the “OCA works” formed part of the “Partnership works” under the Project Agreement.
- As against the OCA, each of Millennium and Millennium Contractors has accepted the risks of any delays or defects in, or claims for losses or injuries arising from, the “OCA works” as if they formed part of the “Partnership works”.
- Millennium Agent has indemnified the OCA against any claims by Millennium Agent or Millennium Contractors concerning the “OCA works”, other than

claims concerning the OCA's obligation to pay for these works, and has also indemnified the OCA against any claims by others, to the extent that the OCA would have been indemnified by Millennium Agent under the Partnership Agreement if the "OCA works" had formed part of the "Partnership works".

- Millennium Contractors has similarly indemnified the OCA against any claims by Millennium Agent, Millennium Contractors or Abigroup concerning the "OCA works", other than claims concerning the OCA's obligation to pay for these works.

### Interfaces with other Homebush Bay developments

Millennium Agent is responsible for managing and co-ordinating the interfaces of the arena, carpark and public domain works with works on adjacent developments, and is required to give contractors carrying out other works in the Homebush Bay area reasonable access to the arena, carpark and public domain construction site. While the OCA accepts no responsibility for the interfaces between various contractors at Homebush Bay, it has established a construction co-ordination committee to assist in managing these interfaces. The OCA is entitled to grant easements over the arena, carpark and public domain site, provided they do not substantially derogate from Millennium Agent's rights under the Project Agreement and the Agreement to Lease.

### Construction access

Millennium Agent and its contractors have non-exclusive access to the construction site under the Agreement to Lease (see section 4.1). Under the Project Agreement, the OCA has provided Millennium Agent with access to this site through a designated access route, which Millennium Agent has acknowledged may be temporarily impeded by other works in the Homebush Bay area. Millennium Agent is responsible for any damage it may cause to the designated access route.

### Intellectual property

Millennium Agent has warranted to the OCA that it has title, copyright or adequate licences to all design and construction documentation and that there is no breach of any intellectual property rights in this documentation or materials. All title, copyright or adequate licences were assigned to the OCA when the Project Agreement came into effect on 23 October 1997, and title and copyright in all future design and construction documentation will, as between the OCA and Millennium Agent, belong to the OCA.

### Services and supplies

Millennium Agent is responsible for the provision and connection of all services, fuel and other materials required for the project, except for specified items to be supplied by the OCA, such as street furniture for the public domain areas. Millennium Agent will be responsible for any defects in these OCA-supplied items other than defects discovered during joint inspections after their delivery or caused by a manufacturing defect, but will not warrant that any OCA-supplied items are fit for their intended purpose.

### Plans and site security

Millennium Agent is responsible for complying with an occupational health, safety and rehabilitation plan, an employee relations plan, a local industry plan, quality assurance plans and an environmental plan agreed between the parties and exhibited to the Project Agreement. Millennium Agent also bears responsibility for the security of the arena, carpark and public domain works and their construction sites until each part of the works is completed, and for performing the works in a safe manner.

### Employee relations

Among other things, the parties are bound to comply with the NSW Code of Practice for the Construction Industry. The risk of costs and delays which may result from industrial disputes rests with Millennium Agent.

### Native title

The OCA has indemnified Millennium Agent for all its costs arising from proceedings or delays to the "Partnership works" as a result of any existing or future native title law, a native title claim under the Native Title Act (Cth) or an application under the Aboriginal and Torres Strait Islander Heritage Act (Cth) that would, if successful, substantially derogate from its rights under the Agreement to Lease, other than a claim or application based on artefacts on or near the site. Millennium Agent must take reasonable steps to mitigate these costs. If such a law, claim or application is made, Millennium Agent and Millennium Contractors must continue to perform their obligations under the Project Agreement and the OCA Works Design and Construction Deed unless they are otherwise directed by the OCA, a court or tribunal or the law.

### OCA payments for the carpark and public domain 'Partnership works'

The OCA is to pay Millennium Agent an "OCA contract price" for the two "turnkey" elements of the "Partnership works", the carpark and the public domain works, in accordance with certification, inspection and payment proce-

dures set out in the Project Agreement and an attached payments schedule.

The estimated prices for these works are:

- \$61,989,245 for the carpark
- \$19,265,414 for the public domain works.

The carpark estimates include provisional sums totalling \$2.9 million, and the public domain estimate includes provisional sums totalling \$14.75 million. The OCA has a discretion whether to proceed with any or all of the works covered by these provisional sums, and the “OCA contract price” will be adjusted to reflect the works that do proceed and the amounts tendered by subcontractors and suppliers for these works.

If the OCA is overdue on any payments it will be liable for interest equal to average 30-day bill reference rate quoted by Reuters BBSY (or, failing that, Westpac), plus 2% per annum.

### OCA payments for the arena ‘OCA works’

The OCA is to pay Millennium Contractors an “OCA works contract price” for the “OCA works” in accordance with certification and payment procedures set out in the OCA Works Design and Construction Deed and a payments schedule (extending to November 1998) annexed to this deed.

The contract price for these works in the OCA Works Design and Construction Deed as signed on 31 July 1997 is \$141,800,000. As discussed in section 3.2 above, this sum was subject to changes in the respective scopes of the arena’s “OCA works” and “Partnership works” in the light of interest rate movements between 31 July 1997 and the date of “financial close” under the Multi Use Arena Partnership’s private sector debt funding arrangements, which turned out to be 23 October 1997. Because interest rates fell during this period, the “OCA works contract price” has been reduced to \$141,488,000, while the private sector’s financial contribution to the project has been correspondingly increased.

The OCA was entitled to defer any payments that were due to Millennium Contractors before 30 June 1998 until 31 July 1998, by giving Millennium Contractors a promissory note for each deferred payment in the form of a promissory note annexed to the OCA Works Design and Construction Deed. Millennium Contractors was obliged to sell any such promissory notes to the Multi-Use Arena Partnership’s debt financier, AIDC.\*

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\* In practice, the OCA did not defer its payments. Accordingly, on 30 June 1998 UBS Australia — which as described in section 8 of this report had by then taken over AIDC’s rights and obligations under the OCA Works Design and Construction Deed — released the OCA from all its obligations to UBS Australia under that deed. The OCA, in turn, released UBS Australia from all its obligations to the OCA under the OCA Works Design and Construction Deed.

If the OCA is overdue on any payments it will be liable for interest equal to average 30-day bill reference rate quoted by Reuters BBSY (or, failing that, Westpac), plus 2% per annum.

### Variations

The OCA may order variations to the carpark and public domain “Partnership works” under the Project Agreement and variations to the arena “Partnership works” and “OCA works” under the OCA Works Design and Construction Deed.

Millennium Agent and/or Millennium Contractors, as applicable, must advise the OCA on the time and cost implications of the variation, including the direct costs and, in the case of “major” variations that they believe may delay practical completion of part of the project, the estimated extent of this delay, the estimated costs of any acceleration of work that might be ordered by the OCA to overcome or minimise this delay, and the delay costs expected to be incurred by Millennium Agent or Millennium Contractors because of the variation. (“Major” variations are variations valued at more than \$500,000, other than specific possible variations, identified in the Project Agreement, concerning possible changes to the carpark’s fire sprinklers and façade.)

The OCA may then, in addition to ordering the variation, direct Millennium Agent to accelerate the “Partnership works”, or procure Millennium Contractors to accelerate the “OCA works”, to overcome or minimise the extent or effects of any delay arising from the variation. The OCA will be liable to pay Millennium Agent or Millennium Contractors, as the case may be,

- 105% of the direct design and construction costs they incur in effecting the variation, excluding any payments to Obayashi for off-site overheads and profits, *plus* any financing costs incurred in financing the variation prior to payment by the OCA, in both cases as valued by the parties or as determined by an independent expert under the dispute-resolution procedures discussed in section 3.6 below. In the case of a variation to enhance the carpark’s façade, however, Millennium Agent will be entitled to be paid only 100% of its direct design and construction costs, again excluding any payments to Obayashi for off-site overheads and profits.
- In the case of “major” variations, the acceleration costs incurred by Millennium Agent or Millennium Contractors in complying with any OCA acceleration direction, or, if no such direction is issued, the actual delay costs they incur. Again, these costs are to be valued as agreed between the parties or as determined by an independent expert.

- Reasonable costs incurred by Millennium Contractors in estimating the value of any “major” variation to the arena itself that does not proceed.

If a variation reduces the design or construction costs of the carpark or public domain “Partnership works”, the Project Agreement’s “OCA contract price” for these works, to be paid by the OCA to Millennium Agent, will be correspondingly reduced.

Similarly, if a variation reduces the design and construction cost of the “OCA works”, Millennium Contractor will have to pay this cost saving to the OCA.

If a variation requires the modification of a development consent or building approval, Millennium Agent or Millennium Contractors, as the case may be, is to prepare the necessary applications and the OCA is to pay all the associated costs.

### Completion

Millennium Agent is required to achieve “milestone completion” of specified “milestone events” for the arena and the carpark by dates set out in a schedule to the Project Agreement.

As indicated earlier, it is also required to achieve practical completion of:

- The first phase of the carpark works, as defined in a design brief exhibited to the Project Agreement, and the western portion of the public domain works immediately adjacent to the carpark, as also defined in this design brief, by 31 December 1998.
- The second phase of the carpark as defined in the design brief, the rest of the public domain works and the arena itself (comprising both its “Partnership works” component under the Project Agreement and its “OCA works” component under the OCA Works Design and Construction Deed and the Project Agreement, but excluding its post-Olympics works) by 31 August 1999.
- The “third phase” carpark works, again as defined in the design brief, by 30 April 2001.
- Post-Olympics works on the arena, as defined in the design brief and an exhibit to the OCA Works Design and Construction Deed, by 30 April 2001.

(The same dates for practical completion are set in Millennium Agent and Millennium Contractor’s D&C Head-Contract with Obayashi. Under Obayashi’s D&C Sub-Contract with Abigroup, Abigroup must achieve practical completion four weeks earlier than these dates, except for its post-Olympics work on the arena itself, which must be completed by 30 April 2001.)

Except as otherwise set out in the Project Agreement, principally in relation to extensions of time as discussed below, Millennium Agent bears the risk of all delays to the

“Partnership works” and (with Millennium Contractors) the “OCA Works”, and all costs arising from such delays.

Millennium Agent will be liable to pay liquidated damages to the OCA of:

- \$40,000 per day for any failure to meet any of the “milestone” dates for the arena and the carpark.
- \$10,000 per day for the first 56 days, and \$20,000 per day thereafter, for any failure to meet the agreed date for practical completion of the first phase of the carpark and the western portion of the public domain works.
- \$40,000 per day for any failure to meet the agreed date for practical completion of the arena (other than the limited post-Olympics works) and the second phase of the carpark, as extended (if at all) under the Project Agreement.
- \$10,000 per day for any failure to make the rest of the public domain works available for safe 24-hour pedestrian use, and commission all services and substantially complete all visual finishes in this area, by the agreed date for practical completion of all the public domain works.

Millennium Contractors will also risk possible termination of the Project Agreement in these circumstances (see section 3.7 below).

There is no limit on the total amount of liquidated damages payable by Millennium Agent.

### Extensions of time

Millennium Agent may, if certain procedural pre-conditions are met, be entitled to an extension to a “milestone” date and/or a date for practical completion, by a period determined by the OCA, if the “Partnership works” or “OCA works” are delayed, or likely to be delayed, because of:

- A *force majeure* event, as defined in the Project Agreement (events whose effects could not have been prevented by a prudent, experienced and competent contractor or operator, such as an earthquakes, sabotage, floods, enemy acts, etc, but *not* including industrial disputes)
- An act or omission by the OCA under the Project Agreement, including a breach of contract
- A discriminatory change in NSW law that specifically and only affects the project (or the project and other privately owned and operated venues in the Homebush Bay area
- A “major” variation directed by the OCA
- A delay of more than 10 weeks, after the signing of the Project Agreement, in the issuing of the project’s devel-

opment consents, other than a delay caused by Millennium Agent

- A court order restraining Millennium Agent or Millennium Contractors from carrying out the project, in response to a legal challenge to a development consent or building approval after it has had to be modified as a result of an OCA variation order
- A suspension or cessation of work by Millennium Agent or Millennium Contractors necessitated by an existing or new native title law, a native title claim under the Native Title Act (Cth) or an application under the Aboriginal and Torres Strait Islander Heritage Act (Cth).

Millennium Agent will be eligible for an extension of time in these circumstances only if:

- It has strictly complied with its Project Agreement obligations concerning the cause of the delay
- It has not caused or contributed to the cause of the delay, and has taken all necessary steps to prevent the delay and avoid or minimise its consequences
- It has actually been delayed in its work in a manner that will prevent it from achieving the milestone or practical completion, and has notified the OCA and provided details within 14 days of the start of the delay
- Any direction by the OCA to accelerate work, as discussed below, applies only to part of the delay
- In the case of an application based on a “major” variation, it has complied with requirements to notify the OCA of any notices or instructions that it believes amount to a variation direction.

The OCA may also unilaterally grant an extension of time, even if none of the above circumstances applies.

As a partial or complete alternative to granting Millennium Agent an extension of time, the OCA may elect to issue an acceleration direction under the Project Agreement or the OCA Works Design and Construction Deed, requiring the acceleration of construction works, provided it pays the acceleration costs incurred by Millennium Agent or Millennium Contractors, as agreed with the OCA or otherwise as determined under the dispute resolution mechanisms established under these contracts (see section 3.6 below).

### Defects liability

Millennium Agent will be responsible for rectifying any defects in “Partnership works” or the “OCA works” arising:

- In the case of the arena’s building monitoring and control system, within two years of practical completion of the arena (other than its post-Olympics works) and the second phase of the carpark

- In the case of the rest of the arena, within one year of practical completion of the arena (other than its post-Olympics works) and the second phase of the carpark
- In the case of the first phase of the carpark, within one year of practical completion of this phase and the adjacent western portion of the public domain
- In the case of the second phase of the carpark, within one year of practical completion of this phase and the arena (other than its post-Olympics works)
- In the case of the third (post-Olympics) phase of the carpark, if this work has not been incorporated into the pre-Olympics phase 2, within one year of practical completion of this third phase
- In the case of the western portion of the public domain, within two years of practical completion of these works and phase 1 of the carpark
- In the case of the rest of the public domain, within two years of practical completion of these works.

In addition, Millennium Agent must maintain and repair certain items in the carpark, as specified in the design brief exhibited to the Project Agreement, during the defects liability periods for the relevant phases of the carpark.

### Construction security bonds under the Project Agreement

Millennium Agent has procured three “security bonds” for a total of \$20 million, in the form of unconditional, irrevocable bank undertakings in favour of the OCA or otherwise on terms satisfactory to the OCA.

The OCA has the right to access these security bonds prior to practical completion of the arena (other than its post-Olympics works) and the second phase of the carpark if Millennium Agent owes it money under any of the provisions of the Project Agreement or the OCA Works Design and Construction Deed. After that date, the OCA may access the security bonds if Millennium Agent owes it money under the design and construction provisions of the Project Agreement or under specified insurance provisions of this contract.

The security bonds will be reduced to \$10 million upon the completion of the arena, the second phase of the carpark and all the public domain, provided all liquidated damages and other payments owing to the OCA have been paid, and to \$2 million 12 months later, provided all notified defects have been corrected. This remaining balance will be returned to Millennium Agent upon the completion of the post-Olympic works on the arena and the post-Olympics third phase works on the carpark (if any), or at the end of all the project’s defects liability periods except that for phase 3 of the carpark, if this occurs later.

Other OCA securities and their relationships to securities held by Multi Use Arena Partnership's debt financier are summarised in section 6 of this report.

### 3.5 Operation, maintenance and repair of the arena under the Project Agreement

#### General obligations

Millennium Agent will be obliged to:

- Operate the arena throughout the period between practical completion of the arena (other than its post-Olympics works) and the second phase of the carpark, currently due by 31 August 1999, and 31 January 2031 or any earlier termination of the Project Agreement ("the term"). The only exception to this will be during the Olympic Games, the Paralympic Games, Cultural Olympiad events and a "test event" prior to the games, when SOCOG will operate the arena in accordance with the Venue Agreement.
- Maintain and repair the arena throughout the term, apart from any repairs arising from SOCOG's use of the arena.

The operation, maintenance and repair of the arena by Millennium Agent must be in accordance with:

- All approvals, permits, licenses, etc issued by government authorities
- The OCA's *Environment Strategy*, *Masterplan Report*, *Transport Strategy* and *Landscape Strategy* for Homebush Bay
- A series of operational plans, procedures and manuals, including asset management, operating and maintenance, quality assurance, environmental management and emergency response plans, that are exhibited in outline form to the Project Agreement, that in most cases will be finalised and updated as pre-conditions to practical completion of the arena (other than its post-Olympics works) and then updated, at specified intervals or as necessary, during the term
- Other strategies and standards specified in the Project Agreement, including the best practices and standards recognised internationally by operators and managers of venues with comparable characteristics
- Any conditions imposed by insurance policies for the project, as discussed in section 3.6 below.

Millennium Agent must ensure that any entity it uses to perform its operation, maintenance and repair obligations is reputable, has sufficient experience, expertise and ability, has instituted arrangements to ensure the appropriate skills and resources are available, is of sufficiently high financial and commercial standing, and is appointed on an arms-

length commercial basis. Millennium Agent must provide the OCA with prior written details on all such entities and the proposed terms and conditions of their appointment.

Subject to the Venue Agreement (see section 5.1 below), Millennium Agent will be entitled to all revenues from the operation of the arena, except for some situations expressly provided for in the Project Agreement, such as the OCA's right to a percentage of revenues from the operation of hospitality tents in the arena's precinct. The rent to be paid by Millennium Agent to the OCA under the Land Lease will, however, be linked to the returns achieved by the project's equity investors, as discussed in section 4.2 below.

The OCA will not be responsible for any costs associated with events held at the arena. Except during the Olympics and Paralympics, Millennium Agent must pay the OCA the reasonable costs of cleaning the arena's precincts after any event at the arena expected to attract more than 5,000 people and providing any off-site event security and traffic marshalling requested by Millennium Agent.

#### Availability for the Olympics and Paralympics

Millennium Agent is required to make the arena available to SOCOG and SPOC for the Olympics and Paralympics in accordance with the Venue Agreement summarised in section 5.1 below. During these periods, Millennium Agent's rights and the OCA's obligations with respect to carparking facilities at Homebush Bay will be suspended.

#### Government hire of the arena

Millennium Agent has acknowledged that the OCA will be entitled, on behalf of the Government, to hire and use the arena during the term for major international sporting events, including the Commonwealth Games and regional games, and has agreed that the arena must be reasonably capable of being reconfigured, without unreasonable expense, for major gymnastic events.

The OCA will pay Millennium Agent a commercial fee for any such use of the arena, to be determined in accordance with principles set out in a schedule to the Project Agreement.

#### Community events

Millennium Agent must establish and maintain, throughout the term, a comprehensive, pro-active community relations program to ensure community participation and involvement at the arena.

The OCA may elect to require this program to include up to three "community events" at the arena per year, at times to be arranged by the OCA with Millennium Agent's approval. The OCA will hire the arena for these events, but will not be liable for any of the costs unless the nature of the event would impose undue materials, set-up, security,

insurance, dismantling, clean-up or similar costs on Millennium Agent, in which case the OCA and Millennium Agent are to endeavour to agree, in advance, on the additional costs to be reimbursed by the OCA. Millennium Agent may not charge for admission to these community events and will not be responsible for ticketing these events. Food, drinks and merchandise will be able to be sold by charity and volunteer groups, as well as Millennium Agent's own outlets, during these events.

### Approvals

Millennium Agent must obtain and comply with all necessary government approvals for the operation of the arena, other than approvals specifically to be obtained by the OCA under the Project Agreement, such as the project's development consent.

### Naming rights

Millennium Agent may not grant any naming rights for the arena that commence before 1 January 2001 without the prior written consent of the OCA, which may withhold its consent in its absolute discretion. Naming rights commencing after 1 January 2001 may also not be granted before that date without the OCA's consent, but in this case the OCA may not unreasonably withhold its consent if it is satisfied the details will remain confidential until after 1 January 2001.

### Major maintenance and repair

Millennium Agent will be responsible for the routine and planned preventative maintenance, replacement, rehabilitation and repair of the arena itself and all plant, equipment, furniture, fittings, etc in the arena. It must establish a major maintenance bank account to fund its major maintenance obligations.

Quarterly deposits to this account are to be made by Millennium Agent during the term, in priority to its debt financing repayment obligations and distributions to the Multi Use Arena Partnership's partners, so that this account has sufficient funds for major maintenance in accordance with Millennium Agent's obligations under an asset management plan to be agreed between the OCA and Millennium Agent.

In specified circumstances during the last ten years of the term, Millennium Agent may also be required to provide the OCA with a \$10 million bank guarantee, increasing by \$2 million per year (both indexed to the CPI from 31 July 1997), to secure its operation, maintenance and repair obligations.

### Event co-ordination

Millennium Agent has agreed to participate in an events co-ordination committee, which will comprise, among others, transport operators and other Homebush Bay venue operators, to co-ordinate the staging of events in the Homebush Bay area. Among other things, it must prepare and submit annual draft events plans to the OCA and this committee, in accordance with an outline exhibited to the Project Agreement, and report on each major event at the arena.

### Changes to the arena

Prior to the end of the Paralympics, Millennium Agent may not make or permit any changes to the arena without the OCA's prior written approval, other than changes required by SOCOG under the Venue Agreement. After the Paralympics, only structural changes and changes inconsistent with Millennium Agent's asset management plan or the OCA's design brief for the arena, as exhibited to the Project Agreement, will require the OCA's prior written approval.

### Commercial activities in the arena's precincts

The OCA has agreed that during the term — apart from during Royal Easter Shows — only LMI Sydney or its nominee will be entitled to carry on any food, drink or merchandising business in the arena's precincts within two hours of any event in the arena with an anticipated attendance of more than 5,000 people.\*

The rights of LMI Sydney or its nominee to operate in this area at these times will be subject to commercial terms to be agreed between the OCA and LMI Sydney. Among other things, on days when an arena event is expected to attract more than 5,000 people, other than during Royal Easter Shows, LMI Sydney or its nominee will be entitled to erect and operate hospitality tents for the arena's patrons in the arena's precincts, subject to the payment to the OCA of 5% of the gross revenues derived from these hospitality tents.

Notwithstanding these provisions, the OCA will be entitled to establish kiosks around the arena's pylons to be operated by other parties, provided it has first offered Millennium Agent the right to establish and operate these kiosks on a mutually agreed commercial basis.

The OCA has agreed to consult with Millennium Agent in relation to proposals for the development of an area of land across Olympic Boulevard opposite the Olympic stadium (Plaza Park). The OCA must also consult with LMI

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\* These Project Agreement provisions continue to apply despite the termination of the Multi-Use Arena Management Agreement in May 1998 and Millennium Agent's assumption of LMI Sydney's roles as the operator of the arena.



Sydney or its nominee concerning any OCA proposals for food, drink or merchandising businesses on the walkway to the Olympic Park railway station. LMI Sydney or its nominee must be given an opportunity to tender for any such concessions on the walkway to the railway station during the term.\*

### OCA estate management

The OCA is to provide estate management services for the public areas of the “urban core” of Homebush Bay, including the maintenance of public spaces and facilities, landscaped areas, roads and the railway station, traffic management, the operation and maintenance of car parks, security services and the cleaning of public areas.

During the term Millennium Agent must make quarterly payments to the OCA of an “estate levy” of \$500,000 per year, indexed to the CPI from 31 July 1997.

### Public transport and car parking

The OCA is to procure the provision of the railway station and rail loop, a regional bus system and the Homebush Bay road system by 1 July 1999, and will maintain these systems during the term.

On 20 June 1996 the Department of Transport and the OCA entered into a Memorandum of Understanding, exhibited to the Project Agreement, for the provision of public transport to Homebush Bay. Under this memorandum the department has agreed to take all necessary steps to ensure the provision of safe, effective and efficient public transport services, sufficient to meet anticipated demand as agreed at meetings of the events co-ordination committee, but subject to system capacity limits during commuter peak periods. The Memorandum of Understanding is not legally enforceable, and the OCA will not be liable to Millennium Agent for any failure by the Department or the OCA to perform its terms.

The OCA has undertaken that by 1 July 1999 it will have provided 6,500 car parking spaces in the Homebush Bay area, not counting any spaces available in the Avenue 2B carpark next to the arena by then, and that during the term — other than during the Olympics and Paralympics — it will maintain 10,000 car parking spaces and at least 100 coach parking spaces in the Homebush Bay area.

Except for the Olympics and Paralympics period, Millennium Agent will be entitled, on an annual basis, to reserve up to 500 of these car parking spaces for events expected to be held at the arena, in the Avenue 2B carpark unless events at other Homebush Bay venues force the OCA to limit the

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\* These Project Agreement provisions continue to apply despite the termination of the Multi-Use Arena Management Agreement in May 1998 and Millennium Agent’s assumption of LMI Sydney’s roles as the operator of the arena.

number of spaces able to be reserved in this carpark. Millennium Agent will have to pay the OCA for all reserved spaces, whether they are used or not, except for any unoccupied reserved spaces that the OCA’s carpark operator is able to fill by releasing them to the general public after the arena’s main event has commenced.

The OCA has expressly made no warranties to Millennium Agent that the Avenue 2B carpark will in fact be able to be emptied within the one-hour period specified in its design brief.

### Competition from the Sydney Entertainment Centre

There are no restrictions in any of the project’s contracts on the NSW Government’s rights to establish or maintain competitive arenas, including the Sydney Entertainment Centre in Darling Harbour.

The Project Agreement and the Land Lease (discussed in section 4 below) expressly recognise, however, that with the advent of the Multi-Use Arena at Homebush Bay the Government might elect to close the Sydney Entertainment Centre or change its use so that it will not materially compete with the Multi-Use Arena during the term of the Land Lease.

If the Government makes such an election on or before 1 January 2001, and the OCA gives Millennium Agent written notice of this intention on or before that date, Millennium Agent will be liable to pay the OCA “supplemental rent” amounts as specified in the Land Lease, totalling \$7 million, on top of the rent otherwise payable under that lease (see section 4.2 below).

If the Sydney Entertainment Centre resumes material competition with the Multi-Use Arena after the first of these “supplemental rent” payments has been made, the OCA will have to refund a proportion of each supplemental rent instalment that has been prepaid, calculated on the basis of the numbers of days between the payment date and the end of the lease with and without competition from the Sydney Entertainment Centre, plus daily interest of 6.5% per annum.

Any disputes between the OCA and Millennium Agent about whether the Sydney Entertainment Centre is competing with the Multi-Use Arena, or about any refunds, may be referred by either party for expert determination under the dispute resolution procedures discussed in section 3.6 below.

The parties have agreed, however, that the Sydney Entertainment Centre will not be materially competing with the Multi-Use Arena if its use is limited to exhibitions, trade shows, conventions, product launches, corporate meetings, banquets, community-related events without entry fees and

events that cannot be reasonably accommodated by the arena, plus no more than three events per calendar year that do compete with the arena and could be reasonably accommodated by the arena.

### 3.6 Miscellaneous general provisions of the Project Agreement

#### Rates and taxes

Millennium Agent will be liable for all land-based rates, taxes and charges levied on the arena land after the commencement of the Land Lease, and for all other rates, taxes and charges levied in respect of the project at any time (e.g. sales tax, excise duty and stamp duty).

As discussed above, it must also make quarterly payments to the OCA of an “estate levy” of \$500,000 per year, indexed to the CPI from 31 July 1997.

#### Changes in law

If there is a discriminatory change in NSW law that specifically and only affects :

- The Multi Use Arena project, or
- The project and other privately owned or operated venues within the Homebush Bay area,

and this change has a “material adverse effect” on:

- Millennium Agent’s ability to carry out the project in accordance with its key contracts,
- The ability of Millennium Agent or the Multi Use Arena Partnership’s partners to repay their debt financier(s), or
- The ability of the Multi Use Arena Partnership’s partners to earn the real after-tax internal rate of return that a notional corporate taxpayer with an equity investment in this partnership is predicted to receive over the term under a “base case” financial model exhibited to the Project Agreement,

the OCA must negotiate in good faith with Millennium Agent with a view to enabling Millennium Agent to:

- Repay its debt financier(s) in accordance with its debt financing contracts, and
- Give the Multi Use Arena Partnership’s partners the lower of:
  - The after-tax equity return they would have received but for the discriminatory change in NSW law — based on the project’s historical performance, economic cycles and the growth cycle of their business, or, in the absence of sufficient historical information, the distributions in the “base case” financial model — and

- The after-tax return the partners were originally predicted to receive under the “base case” financial model, plus 2%.

The OCA and Millennium Agent have agreed that any such negotiations will take a flexible approach and that they will consider amending the project’s contracts, varying the term, varying their financial and other contributions and any other actions that might be appropriate. If they are unable to agree within 30 days of the OCA’s being notified by Millennium Agent of the discriminatory change of law, or within any further period upon which both parties agree, either party may refer the matter to an independent expert for a binding determination in accordance with the Project Agreement’s dispute resolution procedures discussed below.

The risk of all other changes in law (e.g. federal and other State changes) is borne by Millennium Agent, except for the native title and Aboriginal heritage indemnity provided by the OCA.

#### Loss or damage and insurance

Millennium Agent bears the risk of loss or damage to the arena until the end of the term, and also bears the risk of loss or damage to the first, second and third phases of the carpark and the two portions of the “public domain” works until their respective dates of practical completion.

During these periods, and unless otherwise provided in the Project Agreement, principally after certain *force majeure* events, as discussed below, Millennium Agent must make good any loss or damage at its own cost.

Millennium Agent has also indemnified the Government and the OCA against all property and personal injury claims arising from the “Partnership works” or the operation, maintenance or repair of the arena. Under the OCA Works Design and Construction Deed the OCA is similarly indemnified against claims arising from the “OCA works”.

During the delivery phase of the project Millennium Agent is required to effect and maintain specified insurance policies for contract works or construction risks, transit insurance, public liability insurance for at least \$100 million, professional indemnity insurance for at least \$50 million, employers’ liability and workers’ compensation insurance, motor vehicle insurance for at least \$20 million, advance business interruption insurance and directors’ and officers’ liability insurance for at least \$10 million.

After practical completion of the arena and during the term of the Land Lease, Millennium Agent is required to effect and maintain specified insurance policies for the arena, covering industrial special risks, third party legal liability insurance for at least \$100 million, employers’ liability and workers’ compensation insurance, motor vehicle insurance for at least \$20 million, business interruption insurance, directors’ and officers’ liability insurance for

at least \$10 million and other insurance as reasonably required by the OCA.

All these insurances must be on terms approved by the OCA and, in some cases, must be in the joint names of Millennium Agent, the OCA and others with insurable interests under the project's contracts. Millennium Agent has promised the OCA that it will comply with the conditions of all insurance policies applying during the term of the Land Lease.

If any part of the arena, the carpark or the public domain is damaged or destroyed during the period for which Millennium Agent bears the risk of loss or damage, Millennium Agent must, after allowing a reasonable time for inspections by the insurers, take immediate steps to clear any debris and begin initial repairs. It must also consult with the OCA to agree on the steps to be taken to repair or replace the damaged works, implement these steps and manage the repair and reinstatement activities.

Under the Project Agreement, Millennium Agent must apply all the insurance proceeds it receives for the repair and reinstatement of the "Partnership works" and "OCA works". Under the OCA Consent Deed, however,

- If the insurance proceeds received for any event or series of events are \$30 million or less (indexed to the CPI), the proceeds must be applied for the repair and reinstatement of the arena itself, rather than the "Partnership works" and "OCA works" more generally
- If the insurance proceeds received are in excess of \$30 million (indexed to the CPI), and the OCA, Millennium Agent and AIDC Australia (as security agent for the project's debt financier) agree that:
  - There are sufficient funds to repair or reinstate the arena within a reasonable time
  - Millennium Agent is able to meet its obligations to repay the debt financier substantially in accordance with the debt financing arrangements, and
  - It is economically viable to repair or replace the arena,

the proceeds must again be applied for the repair and replacement of the arena. However, if the three conditions listed above are not satisfied after the completion of negotiations by a dispute resolution committee under the Project Agreement (as described below) or in any event after three months (or longer, if agreed by AIDC Australia), AIDC Australia may require some or all of the insurance proceeds to be applied to satisfy Millennium Agent's obligations to the debt financier, with the balance (if any) being paid to an account established by the OCA and Millennium Agent and then applied, under the Project Agreement, for the repair and reinstatement works.

## Confidentiality

The OCA and Millennium Agent are both subject to confidentiality restrictions.

## Force majeure

As already indicated, under the Project Agreement *force majeure* events include events beyond the control of Millennium Agent, such as earthquakes, sabotage, floods, enemy acts, etc but *not* industrial disputes, and must be such that Millennium Agent could not have prevented the effects of the event by taking those steps which a prudent, experienced and competent contractor or operator would have taken.

If a *force majeure* event, as so defined, occurs, any of Millennium Agent's obligations under the Project Agreement that are affected by the event are suspended, as are any affected obligations of Millennium Agent and Millennium Contractors under the OCA Works Design and Construction Deed, but in both cases only to the extent that they are affected and only for so long as they are affected.

Millennium Agent is obliged to use its best endeavours to promptly remedy the effects of a *force majeure* event. This expressly includes an obligation to make any reasonable expenditure of funds which may mitigate or avoid its effects.

If Millennium Agent was obliged under the Project Agreement to insure against the *force majeure* event, or has in fact done so, it must promptly commence to reconstruct, rectify or replace the affected works. Any insurance proceeds are to be applied for these tasks unless they exceed \$30 million (indexed to the CPI), in which case the OCA Consent Deed provisions just discussed will apply.

If the insurance proceeds are insufficient to fully undertake the reconstruction works because Millennium Agent has failed to maintain the relevant policy in accordance with the terms of the policy or the Project Agreement, Millennium Agent remains obliged to reconstruct, rectify or replace the affected works within a reasonable time. Again, in these circumstances any insurance proceeds are to be applied for these tasks unless they exceed \$30 million (indexed to the CPI), in which case the OCA Consent Deed provisions just discussed will apply.

On the other hand, if the *force majeure* event is one which Millennium Agent was not required to insure against, or if the insurance proceeds are not sufficient to fully undertake the required rectification works even though Millennium Agent has taken out and maintained insurance in accordance with the Project Agreement and the terms of the policies, the OCA and Millennium Agent must meet together to try to agree on an appropriate course of action.

In these circumstances, if the parties agree on reconstruction, rectification or replacement terms, or if they agree to provide sufficient funds for these works, Millennium Agent must procure the prompt commencement of these works and their completion within a reasonable time.

But if Millennium Agent is unable or unwilling to fund such works, and the parties are unable to reach agreement within 90 days of a *force majeure* event occurring before practical completion of the arena (except for its post-Olympics works) and the second phase of the carpark, or within 180 days of a *force majeure* event occurring after that date, the OCA may terminate the Project Agreement by giving 20 days' notice, with the consequences summarised in section 3.7 below.

### Dispute resolution and expert appraisal

If a dispute about the project arises between the OCA and Millennium Agent, either party may refer the dispute to a dispute resolution committee comprising three representatives of each party.

The Project Agreement also specifies certain circumstances, such as disputes about quality assurance plans during design and construction, disputes about whether OCA notices concerning Millennium Agent's compliance with design, construction and corrective action requirements constitute a variation and disputes about acceleration costs for carpark and public domain works accelerated by the OCA to overcome or minimise a delay, in which a dispute *must* be referred to this committee. Similarly, the OCA and Millennium Contractors have agreed in the OCA Works Design and Construction Deed that all disputes about the "OCA works", other than disputes having to be referred directly for expert determination as described below, must be referred to the disputes resolution committee as if the "OCA works" formed part of the "Partnership works".

If a dispute is not resolved within 20 days of being referred to the dispute resolution committee, or if a committee vote is not unanimous, or if the committee so decides, the dispute is to be referred immediately to the chief executive officers of the OCA and Millennium Agent, or their delegates. The CEOs are obliged to meet promptly and attempt to resolve the dispute in good faith. Their joint decisions, in writing, will be contractually binding on the OCA and Millennium Agent.

If the matter is not resolved within ten days of being referred to the CEOs, either party may require it to be determined by an expert appraisal.

The Project Agreement and the OCA Works Design and Construction Deed also stipulate, or provides the option of, a determination by an expert appraisal under the Project Agreement and/or the OCA Works Design and Construction

Deed in other specified circumstances, such as a determination of cost savings to Millennium Agent associated with any non-complying design documentation or any non-complying asset management plan, disputes about acceleration costs for arena works accelerated by the OCA to overcome or minimise a delay, disputes about direct, delay or acceleration costs associated with an OCA variation to any of the works, disputes about whether a discriminatory change of law has had a "material adverse effect", failures to agree on an approach to overcome such an effect and disputes about whether the Sydney Entertainment Centre is materially competing with the arena or about any "supplemental rent" refunds payable to Millennium Agent because of a resumption of competition (see section 3.5 above).

The independent expert, as agreed between and appointed by both parties or otherwise as appointed by the Institute of Arbitrators, Australia, may proceed in any manner he or she thinks fit, acting as an expert and not as an arbitrator. The costs of the expert will be shared equally by the OCA and by Millennium Agent or Millennium Contractor. His or her determination will be final and binding on the parties unless it requires one of them to pay more than \$5 million (indexed to the CPI from 31 July 1997) or unless a party gives notice of its intention to initiate proceedings in a court or other tribunal within 14 days, and the expert's determination must be followed by the parties unless or until it is reversed, overturned or changed by any subsequent litigation proceedings.

## 3.7 Termination of the Project Agreement

The Project Agreement will terminate at the end of the term on 31 January 2031, unless it is terminated earlier, as discussed below, or unless the term is shortened or extended in response to discriminatory change in law having a "material adverse effect".

Upon termination of the Project Agreement for any reason, Millennium Agent must:

- Yield up the arena (including its plant and equipment) and its land in a fully functional condition which complies with the design brief, the agreed operating and maintenance standards, the asset management plan and the various operating and maintenance plans
- Transfer to the OCA the balance of the major maintenance account, and
- Do all other reasonable things necessary to enable OCA to operate the arena at a level at least equal to that immediately before the termination.

Upon termination of the Project Agreement, property in the arena will vest in the OCA free from any encumbrance.

The OCA Works Design and Construction Deed will automatically terminate when the Project Agreement is terminated, except for indemnities against certain types of claims provided to the OCA by Millennium Agent and Millennium Contractors.

The indemnity provided by the OCA to Millennium Agent for native title and related claims will also terminate, except for any costs, losses or damages advised to the OCA within 14 days or about which Millennium Agent could reasonably have become aware only after the date of termination.

The other consequences of termination vary, depending on which party terminates the Project Agreement and on what basis. The various circumstances are summarised below.

(a) Discretionary termination by the OCA, without cause, prior to practical completion of the pre-Olympics arena and carpark

At any time prior to practical completion of the pre-Olympics arena (i.e. the arena other than its post-Olympics works) and phases 1 and 2 of the carpark, the OCA may terminate the Project Agreement without cause, and without needing to give Millennium Agent any reasons or justification, by giving Millennium Agent five days' written notice.

If the OCA terminates the Project Agreement on this basis, it must:

- Return the security bonds to Millennium Agent.
- Pay Millennium Agent, within 30 days, an amount determined in accordance with a schedule to the Project Agreement. For the arena itself, this amount is intended to reflect –
  - The costs to Millennium Agent or the partners to the Multi Use Arena Partnership of breaking their contracts with their contractors, debt financier and suppliers of products and services
  - Millennium Agent's debts to its debt financier, and
  - The net present value (at a discount rate of 30.3%) of forecast distributions to the partners under the "base case" financial model exhibited to the Project Agreement.

For the carpark and the public domain works, the amount to be paid by the OCA will be the sum of:

- Any unpaid amounts for completed works
- The costs of any ordered goods or materials that will have to be paid for by Millennium Agent, and
- Millennium Agent's reasonable costs in removing labour, plant and equipment from the construction site.

Under the Deed of Novation between the OCA, Millennium Agent, Millennium Contractors, Obayashi and Abigroup, the OCA may, by giving notice within 30 days of terminating the Project Agreement, step into the shoes of Millennium Agent and Millennium Contractors under the D&C Head-Contract, or may step into the shoes of Obayashi under the D&C Sub-Contract. In this way the OCA may deal directly with the design and construction contractors so that construction can continue. (These novation arrangements are discussed in more detail at the end of this section of this report.)

Under the OCA Consent Deed, the Security Agent (AIDC Australia) for the private sector debt financier has expressly acknowledged the OCA's right to complete the construction of the arena, and the OCA has undertaken that if it does so the arena will be completed substantially in accordance with the design brief exhibited to the Project Agreement and will be operated, in a manner entirely within the OCA's discretion, by an operator or lessee chosen by the OCA in consultation with the Security Agent.

(b) Termination by the OCA for a Millennium Agent default prior to practical completion of the pre-Olympics arena and carpark

Prior to practical completion of the pre-Olympics arena and the second phase of the carpark — and in addition to the OCA's rights to terminate the Project Agreement without cause, as outlined above, or because of delays in a building approval appeal or a *force majeure* event, as discussed in sections 3.3 and 3.6 above and later in this section — the OCA may terminate the Project Agreement, with different consequences, if certain events remains unremedied within "cure" periods specified in the Project Agreement.

The events that may lead to termination by the OCA under these provisions are:

- A failure by Millennium Agent to achieve milestone completion by the relevant milestone date, followed by a failure to achieve this milestone completion within 28 days of a notice by the OCA to do so.
- A failure by Millennium Agent to achieve practical completion of the first phase of the carpark and the western portion of the public domain works by the due date (31 December 1998 or a later date if an extension of time has been granted), followed by a failure to achieve practical completion within 120 days of a notice by the OCA to do so.
- A failure by Millennium Agent to achieve practical completion of the arena (other than its post-Olympics works) and the second phase of the carpark by the due date (31 August 1999 or a later date if an extension of time has been granted), followed by a failure to achieve

practical completion within 28 days of a notice by the OCA to do so.

- A failure by Millennium Agent to achieve practical completion of the rest of the public domain by the due date (31 August 1999 or a later date if an extension of time has been granted), followed by a failure to achieve practical completion within 90 days of a notice by the OCA to do so.
- A transfer or loss by Millennium Agent of its right to occupy the arena, without the OCA's prior written consent, except in accordance with the Project Agreement.
- Any of the project's key contracts, other than the private sector debt financing contracts, becoming wholly or otherwise materially void or becoming unenforceable against Millennium Agent
- An amendment by Millennium Agent of any of the project's key contracts to which it is a party, other than the private sector debt financing contracts, except with the OCA's prior consent or, failing that, after resolution of the issue under the Project Agreement's dispute resolution procedures discussed in section 3.6 above.
- A material default by Millennium Agent on any of its other material obligations under the Project Agreement or any other project contract to which the OCA is a party, followed by a failure by Millennium Agent to start to remedy the default (if this can be done) within 20 days of a notice by the OCA to do so, followed by a failure to complete the remedy within a reasonable time as specified by the OCA in its notice.
- An "event of insolvency" (as defined in the Project Agreement), in relation to Millennium Agent, any of the Multi Use Arena Partnership's partners, Millennium Contractors or Obayashi, which has or will have a "material adverse effect".
- A displayed intention by Millennium Agent to permanently abandon the project.

Under the OCA Works Design and Construction Deed, the OCA and Millennium Agent have expressly acknowledged that a default by Millennium Agent in supervising and managing the "OCA works" and/or a default by Millennium Contractors in performing the "OCA works" may give rise to a right by the OCA to terminate the Project Agreement, and hence also the OCA Works Design and Construction Deed.

If any of the events listed above occurs, under the Project Agreement the OCA may terminate the Project Agreement by giving Millennium Agent 60 days' notice of its intention to do so, during which time Millennium Agent has the right to remedy the event. So if (for example) Millennium Agent were to fail to achieve practical completion of the pre-

Olympics arena and the second phase of the carpark by the due date, the total "cure" period under the Project Agreement would be 88 days: the initial 28 days following the OCA's first notice to complete these works, followed by the 60 days' notice of the OCA's intention to terminate the Project Agreement.

However, if the OCA reasonably believes, at any time during the 60-day notice period, that Millennium Agent is not making reasonable efforts to remedy the event during this period, it may terminate the Project Agreement immediately, after giving Millennium Agent seven days' notice of its intention to do so.

The OCA may not exercise any of these termination rights if the event being relied upon was materially caused by an OCA breach of the Project Agreement, or if an OCA breach has delayed or prevented its being remedied.

Under the OCA Consent Deed, the OCA must notify the debt financier's Security Agent, AIDC Australia, whenever it issues a notice to Millennium Agent in connection with any of the events listed above, and if requested by the Security Agent it must also provide the Security Agent with copies of all the documents it issues to Millennium Agent concerning the event. Millennium Agent must keep the Security Agent informed of all the measures being taken or proposed to remedy the event.

In conjunction with Millennium Agent's rights to remedy the event under the Project Agreement, the Security Agent also has the right, under the OCA Consent Deed and the debt financing contracts, to remedy or procure the remedy of the event. The OCA has undertaken, if requested, to provide the Security Agent and its agents, consultants and contractors with all necessary access to the arena, carpark and public domain sites, and to provide the Security Agent with all the information it has that is relevant to any remedial action by the Security Agent.

As the OCA has expressly acknowledged in the OCA Consent Deed, the Security Agent (AIDC Australia) and the debt financier (AIDC) have rights under the financier's securities — at this stage, a series of fixed and floating charges between the Security Trustee and Millennium Agent, the Multi Use Arena Partnership's partners and Millennium Contractors — to assume the rights and obligations of Millennium Agent under the key project contracts, including those to which the OCA is a party.

Accordingly, the OCA has undertaken in the OCA Consent Deed not to terminate the Project Agreement for a Millennium Agent default prior to the practical completion of the pre-Olympics arena and the second phase of the carpark — except under the "discretionary termination without cause" provisions described above, in which case the OCA must pay the compensation due to Millennium Agent into a nominated account of Millennium Agent with

AIDC — unless the OCA has first given notice of the relevant event to the Security Agent and the Security Agent, the financier or Millennium Agent have not remedied the event in the applicable “cure” period, or the Security Agent has advised the OCA that the financier does not intend to take any action to remedy the event.

The Security Agent must keep the OCA informed of the details of its plans relating to the event, including alternative courses of action it is considering and the progress being made in implementing its plans.

Among other things, the Security Agent may:

- Appoint a receiver or agent to perform some or all of Millennium Agent’s obligations under the Project Agreement
- Engage others acceptable to the OCA to perform some or all of these obligations, and/or
- Dispose of Millennium Agent’s rights under the Project Agreement to others acceptable to the OCA, in which case the transferee must assume Millennium Agent’s obligations under the Project Agreement until it is terminated or on another basis acceptable to the OCA.

Millennium Agent may remedy an event by novating the D&C Head-Contract or the D&C Sub-Contract to a replacement head contractor or sub-contractor only with the OCA’s prior written consent. The OCA may not unreasonably withhold its consent if it has been provided with the details, if the proposed replacement contractor is a reputable corporation with (in the OCA’s opinion) sufficient expertise and ability and sufficiently high financial and commercial standing to carry out Millennium Agent’s obligations under the project’s contracts, if the terms and conditions of the proposed novation are acceptable to the OCA, if the proposed replacement contractor has agreed to be bound by the relevant project contracts and if the OCA bears none of the associated enquiry, procurement, and contract preparation, negotiation and execution costs.

If the Security Agent appoints a receiver (or similar) for Millennium Agent under the debt financier’s securities, this will be taken to remedy any prior “insolvency event” relating to Millennium Agent, so long as the receiver performs, or procures the performance of, Millennium Agent’s obligations under the project’s contracts.

If the OCA does terminate the Project Agreement prior to the practical completion of the pre-Olympics arena and the second phase of the carpark because of any of the events listed above, it will not be liable to pay any compensation to Millennium Agent and will be entitled to take action to recover liquidated and other damages from Millennium Agent. As already discussed, it will also have full control over the arena, the car park and the public domain.

Under the OCA Consent Deed, however, the OCA will have to:

- Pay the Security Agent, within 30 days of the termination, 70% of Millennium Agent’s debts and associated costs, *plus* 70% of the net costs to Millennium Agent of unwinding or terminating any interest rate hedging arrangements in connection with the financing of the project, *less* 70% of all equity committed to the project under the Equity Subscription Agreement but not yet subscribed.
- Pay the Security Agent the remaining 30% — which will accrue interest at the Reuter’s BBSY reference rate plus 1.00% until 1 January 2001 and 1.75% thereafter — by paying it 30% of any surplus cashflows generated by its operation of the arena, and/or any lease payments to the OCA under any lease of the arena, and/or from the proceeds of any sale of the arena by the OCA after it is completed, once the OCA has used these proceeds to recover its costs and losses from its completion of the arena, the termination of the Project Agreement and the operation of the arena, net of any income received by the OCA and the proceeds of the security bonds.

#### (c) Termination by the OCA for a building approval appeal delay

The OCA may terminate the Project Agreement, on 14 days’ notice to Millennium Agent, if a building approval appeal lodged by Millennium Agent is not disposed of in time to meet the project’s delivery program.

In these circumstances the OCA will not be liable to Millennium Agent for any of Millennium Agent’s costs, losses, expenses or damages, and the OCA must promptly return the security bonds to Millennium Agent. As already discussed, the OCA will also have full control over the arena, the carpark and the public domain.

Under the OCA Consent Deed, however, if the Project Agreement is terminated prior to practical completion of the pre-Olympics arena and the second phase of the carpark, the OCA will have to:

- Pay the Security Agent, within 30 days of the termination, 70% of Millennium Agent’s debts and associated costs, *plus* 70% of the net costs to Millennium Agent of unwinding or terminating any interest rate hedging arrangements in connection with the financing of the project, *less* 70% of all equity committed to the project under the Equity Subscription Agreement but not yet subscribed.
- Pay the Security Agent the remaining 30% — which will accrue interest at the Reuter’s BBSY reference rate plus 1.00% until 1 January 2001 and 1.75% thereafter — by paying it 30% of any surplus cashflows generated

by its operation of the arena, and/or any lease payments to the OCA under any lease of the arena, and/or from the proceeds of any sale of the arena by the OCA after it is completed, once the OCA has used these proceeds to recover its costs and losses from its completion of the arena, the termination of the Project Agreement and the operation of the arena, net of any income received by the OCA and the proceeds of the security bonds.

(d) Termination by the OCA for a Millennium Agent default after practical completion of the pre-Olympics arena and carpark

After the completion of the pre-Olympics arena and the second phase of the carpark, the OCA may terminate the Project Agreement if certain events remains unremedied within “cure” periods that are specified in the Project Agreement and may be extended under the OCA Consent Deed.

The events that may lead to termination by the OCA in this situation include:

- A failure by Millennium Agent to achieve practical completion of the eastern portion of the public domain by the due date (31 August 1999 or a later date if an extension of time has been granted), followed by a failure to achieve practical completion within 90 days of a notice by the OCA to do so.
- A material failure by Millennium Agent to operate, maintain and repair the arena in accordance with the Project Agreement, followed by a failure by Millennium Agent to cure this failure within 28 days of a notice by the OCA to do so.
- A transfer or loss by Millennium Agent of its right to occupy the arena, without the OCA’s prior written consent, except in accordance with the Project Agreement.
- Any of the project’s key contracts, other than the private sector debt financing contracts, becoming wholly or otherwise materially void or becoming unenforceable against Millennium Agent
- An amendment by Millennium Agent of any of the project’s key contracts to which it is a party, other than the private sector debt financing contracts, except with the OCA’s prior consent or, failing that, after resolution of the issue under the Project Agreement’s dispute resolution procedures discussed in section 3.6 above.
- A material default by Millennium Agent on any of its other material obligations under the Project Agreement or any other project contract to which the OCA is a party, followed by a failure by Millennium Agent to start to remedy the default (if this can be done) within 20 days of a notice by the OCA to do so, followed by a

failure to complete the remedy within a reasonable time as specified by the OCA in its notice.

- An “event of insolvency” (as defined in the Project Agreement), in relation to Millennium Agent, any of the Multi Use Arena Partnership’s partners, Millennium Contractors or Obayashi, which has or will have a “material adverse effect”.
- A displayed intention by Millennium Agent to permanently abandon the project.

If any of these events occurs, the OCA may issue a notice to Millennium Agent, requiring it to rectify or procure the rectification of the event within a reasonable period specified in the notice. Millennium Agent may seek an extension of this period, and if Millennium Agent is diligently pursuing a remedy the OCA must grant a reasonable extension as necessary to enable Millennium Agent to remedy the event. If the event is an “insolvency event”, the remedy period may not be extended beyond 12 months.

If the default is not remedied within the period specified, as extended, the OCA may require Millennium Agent to replace LMI Sydney with a new operator and remedy the default as soon as practicable, and in any event within 60 days.\*

The OCA may terminate the Project Agreement, by giving 20 days’ notice, if either:

- The default is not remedied within the cure period specified in the original notice to Millennium Agent, as extended, or
- Millennium Agent does not comply with the OCA’s subsequent requirements, if any, to replace the operator and remedy the default.

During this 20-day notice period Millennium Agent has the right to remedy the default.

The OCA may not exercise these termination rights if the event being relied upon was materially caused by an OCA breach of the Project Agreement, or if an OCA breach has delayed or prevented its being remedied.

Under the OCA Consent Deed, the OCA must notify the debt financier’s Security Agent, AIDC Australia, whenever it issues a notice to Millennium Agent in connection with any of the events listed above, and if requested by the Security Agent it must also provide the Security Agent with

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\* These Project Agreement provisions are specific to LMI Sydney. Although they continue to apply despite the termination of the Multi-Use Arena Management Agreement in May 1998 and Millennium Agent’s assumption of LMI Sydney’s roles as the operator of the arena, if Millennium Agent appoints a new operator — with the OCA’s prior written consent being required in some circumstances — the OCA has no equivalent power under the Project Agreement to require Millennium Agent to appoint a replacement for this operator in order to remedy a default.



copies of all the documents it issues to Millennium Agent concerning the event. Millennium Agent must keep the Security Agent informed of all the measures being taken or proposed to remedy the event.

In conjunction with Millennium Agent's rights to remedy the event under the Project Agreement, the Security Agent also has the right, under the OCA Consent Deed and the debt financing contracts, to remedy or procure the remedy of the event. The OCA has undertaken, if requested, to provide the Security Agent and its agents, consultants and contractors with all necessary access to the arena, carpark and public domain, subject to the Agreement to Lease and the Land Lease, and to provide the Security Agent with all the information it has that is relevant to any remedial action by the Security Agent.

As the OCA has expressly acknowledged in the OCA Consent Deed, the Security Agent (AIDC Australia) and the debt financier have rights under the financier's securities — a series of fixed and floating charges between the Security Trustee and Millennium Agent, the Multi Use Arena Partnership's partners and Millennium Contractors, and (after the granting of the Land Lease) a mortgage over this lease — to assume the rights and obligations of Millennium Agent under the key project contracts, including those to which the OCA is a party.

Accordingly, the OCA has undertaken in the OCA Consent Deed that if the Security Agent is diligently pursuing a remedy, the OCA will not terminate the Project Agreement for a Millennium Agent default after practical completion of the pre-Olympics arena and the second phase of the carpark, unless the relevant event has not been remedied in the applicable Project Agreement "cure" period plus a further period of 12 months.

The Security Agent must keep the OCA informed of the details of its plans relating to the event, including alternative courses of action it is considering and the progress being made in implementing its plans. Among other things, it may:

- Appoint a receiver or agent to perform some or all of Millennium Agent's obligations under the Project Agreement
- Engage others acceptable to the OCA to perform some or all of these obligations, and/or
- Dispose of Millennium Agent's rights under the Project Agreement to others acceptable to the OCA, in which case the transferee must assume Millennium Agent's obligations under the Project Agreement until it is terminated or on another basis acceptable to the OCA.

Millennium Agent may remedy an event concerning any uncompleted pre-Olympics public domain works or post-Olympics arena or carpark works by novating the D&C Head-Contract or the D&C Sub-Contract to a replacement

head contractor or sub-contractor, but only with the OCA's prior written consent. The OCA may not unreasonably withhold its consent if it has been provided with the details, if the proposed replacement contractor is a reputable corporation with (in the OCA's opinion) sufficient expertise and ability and sufficiently high financial and commercial standing to carry out Millennium Agent's obligations under the project's contracts, if the terms and conditions of the proposed novation are acceptable to the OCA, if the proposed replacement contractor has agreed to be bound by the relevant project contracts and if the OCA bears none of the associated enquiry, procurement, and contract preparation, negotiation and execution costs.

Similarly, Millennium Agent or the Security Agent may remedy an event by novating the arena's operation and maintenance contracts to a replacement operator, or by appointing a replacement operator, but only with the OCA's prior written consent.\*

The OCA may not unreasonably withhold its consent if it has been provided with the details, if the proposed replacement operator is a reputable corporation with (in the OCA's opinion) sufficient expertise and ability and sufficiently high financial and commercial standing to carry out the arena operator's obligations under the project's contracts, if the terms and conditions of the proposed novation or appointment are acceptable to the OCA, if the proposed replacement operator has agreed to be bound by the relevant project contracts or another basis agreed with the OCA, and if the OCA bears none of the associated enquiry, procurement, and contract preparation, negotiation and execution costs.

Again, the Security Agent may remedy an event by selling the arena, in accordance with its rights and those of the debt financier under the debt financing arrangements, but only with the OCA's prior written consent.

The OCA may not unreasonably withhold its consent if it has been provided with the details, if the proposed purchaser is a reputable corporation with (in the OCA's opinion) sufficient expertise and ability and sufficiently high financial and commercial standing to carry out Millennium Agent's obligations under the project's contracts, if the terms and conditions of the proposed sale are acceptable

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\* These OCA Consent Deed provisions are *not* specific to the arena operator being LMI Sydney, and continue to apply despite the termination of the Multi-Use Arena Management Agreement in May 1998 and Millennium Agent's assumption of LMI Sydney's roles as the operator of the arena.

If Millennium Agent appoints a new operator in the future — with the OCA's prior written consent being required in some circumstances — Millennium Agent or the Security Agent may still remedy an event by appointing a replacement operator with the OCA's prior written consent.

to the OCA, if the proposed purchaser has agreed to be bound by the relevant project contracts, and if the OCA bears none of the associated enquiry, procurement, and contract preparation, negotiation and execution costs.

If the Security Agent appoints a receiver (or similar) for Millennium Agent under the debt financier's securities, this will be taken to remedy any prior "insolvency event" relating to Millennium Agent, so long as the receiver performs, or procures the performance of, Millennium Agent's obligations under the project's contracts.

If the OCA does terminate the Project Agreement after the practical completion of the pre-Olympics arena and the second phase of the carpark because of any of the events listed above, it will not be liable to pay any compensation to Millennium Agent and will be entitled to take action to recover liquidated and other damages from Millennium Agent.

#### (e) Termination by the OCA for *force majeure*

As discussed in section 3.6 above, the Project Agreement may be terminated because of a *force majeure* event only if this event is one which Millennium Agent was not required to insure against, or if the insurance proceeds are not sufficient to fully undertake the required rectification works even though Millennium Agent has taken out and maintained insurance in accordance with the Project Agreement and the terms of the policies.

In these circumstances the OCA and Millennium Agent are to meet together to try to agree on an appropriate course of action. If they are unable to agree within 90 days of the *force majeure* event (if it occurs before practical completion of the pre-Olympics arena and the second phase of the carpark), or 180 days if it occurs after that, the OCA may terminate the Project Agreement by giving 20 days' notice.

If the OCA terminates the Project Agreement in these circumstances for a *force majeure* event affecting the arena, it must:

- Within 180 days, pay Millennium Agent the market value (to a lessee) of the lease of the arena land and improvements, as if the Project Agreement and Land Lease had not been terminated.
- Return the security bonds.

If there are any insurance proceeds, Millennium Agent must assign to the OCA any rights under the insurances relating to the relevant works and pay the balance of these proceeds to the OCA, after taking out any amounts due and owing to Millennium Agent's debt financier.

As already discussed, the OCA will also have full control over the arena, the carpark and the public domain.

If such a termination occurs before the practical completion of the pre-Olympics arena and the second phase of the

carpark, under the OCA Consent Deed the OCA will have to:

- Pay the Security Agent, within 30 days of the termination, 70% of Millennium Agent's debts and associated costs, *plus* 70% of the net costs to Millennium Agent of unwinding or terminating any interest rate hedging arrangements in connection with the financing of the project, *less* 70% of all equity committed to the project under the Equity Subscription Agreement but not yet subscribed.
- Pay the Security Agent the remaining 30% — which will accrue interest at the Reuter's BBSY reference rate plus 1.00% until 1 January 2001 and 1.75% thereafter — by paying it 30% of any surplus cashflows generated by its operation of the arena, and/or any lease payments to the OCA under any lease of the arena, and/or from the proceeds of any sale of the arena by the OCA after it is completed, once the OCA has used these proceeds to recover its costs and losses from its completion of the arena, the termination of the Project Agreement and the operation of the arena, net of any income received by the OCA and the proceeds of the security bonds.

#### (f) Termination by Millennium Agent for an OCA breach

If the OCA breaches its obligations to negotiate to overcome a "material adverse effect" arising from a discriminatory change in State law, to indemnify Millennium Agent for native title applications or to provide public transport infrastructure and car parking facilities, and this breach occurs or continues after the end of the Paralympic Games, Millennium Agent may issue a notice to the OCA requiring it to rectify or procure the rectification of the breach within a reasonable period specified in the notice.

The OCA may seek an extension of this period, and if the OCA is diligently pursuing a remedy Millennium Agent must grant a reasonable extension as necessary to enable the OCA to remedy the breach.

If the breach is not remedied within the period specified, as extended, Millennium Agent may terminate the Project Agreement by giving 60 days' notice of its intention to do so, during which time the OCA will continue to have the right to remedy its breach.

If the breach is not remedied by the end of this 60-day notice period, and Millennium Agent elects to terminate the Project Agreement, the OCA must, within 60 days, pay Millennium Agent compensation in accordance with a schedule to the Project Agreement. This compensation is similar to that payable by the OCA if it terminates the agreement without cause prior to the completion of the pre-Olympics arena and the second phase of the carpark.

## Novation of the D&C Head-Contract and D&C Sub-Contract

If the Project Agreement is terminated by the OCA on any of the bases discussed above,

- The OCA Works Design and Construction Deed will be automatically terminated, except for indemnities against certain types of claims provided to the OCA by Millennium Agent and Millennium Contractors, as already described, and
- Under the Deed of Novation between the OCA, Millennium Agent, Millennium Contractors, Obayashi and Abigroup, the OCA may, within 30 days, give Obayashi, as head contractor under its D&C Head-Contract with Millennium Agent and Millennium Contractors, a notice requiring it to novate this D&C Head-Contract in favour of the OCA, with the OCA effectively stepping into the shoes of Millennium Agent and Millennium Contractors so that design, construction and commissioning work may continue.

If the OCA does not give Obayashi such a notice within three business days of any termination of the Project Agreement by the OCA, the rights and obligations of Millennium Agent, Millennium Contractors and Obayashi under the D&C Head-Contract and the rights and obligations of Obayashi and Abigroup under the D&C Sub-Contract are suspended until the end of the 30-day period, or until the

OCA gives Obayashi a notice stating whether it will require the D&C Head-Contract to be novated. The OCA will be liable to pay Obayashi for the reasonable costs it incurs as a result of such a suspension.

If the OCA does not give Obayashi a notice to novate the D&C Head-Contract within 30 days of terminating the Project Agreement, the D&C Head-Contract will be deemed to have terminated immediately upon the termination of the Project Agreement.

Similarly, if the D&C Head-Contract (as novated, if this has occurred) is terminated by the OCA, other than for a breach of the D&C Head-Contract by Obayashi arising wholly and directly from a breach of the D&C Sub-Contract by Abigroup, the OCA may, within 30 days, give Abigroup a notice requiring it to novate the D&C Sub-Contract in favour of the OCA, with the OCA effectively stepping into the shoes of Obayashi under that sub-contract.

Again, if the OCA does not give Abigroup such a notice within three business days of any termination of the D&C Head-Contract (as novated) by the OCA, the rights and obligations of Obayashi and Abigroup under the D&C Sub-Contract are suspended until the end of the 30-day period, or until the OCA gives Abigroup a notice stating whether it will require the D&C Sub-Contract to be novated. The OCA will be liable to pay Abigroup for the reasonable costs it incurs as a result of such a suspension.

## 4 The Agreement to Lease and the Land Lease

### 4.1 The Agreement to Lease

The Agreement to Lease, between the OCA and Millennium Agent,

- Grants Millennium Agent access to the construction sites for the arena, carpark and public domain works, and
- Provides for the Land Lease to be granted to Millennium Agent upon practical completion of the arena (other than its post-Olympics works) and the second phase of the carpark.

#### Construction site access

The OCA has granted Millennium Agent and its contractors, employees and other invitees access, possession and use of specified construction site areas:

- Prior to the satisfaction of all the Project Agreement's conditions precedent (23 October 1997), for earthworks for the carpark
- Prior to practical completion of the pre-Olympics arena, the first two phases of the carpark and the public domain works, for the construction and commissioning of these works
- After the Paralympics and prior to practical completion of the third phase of the carpark, for the construction and commissioning of these works.

#### Easements

The OCA has undertaken to grant easements over the arena precinct for the services and utilities needed for the arena's construction and operation, subject to the OCA's approving any easement's location and dimensions.

#### Indemnity

Millennium Agent has indemnified the OCA against any property loss or damage, economic loss or personal injury claims resulting from Millennium Agent's use and occupation of the construction sites, except to the extent of any losses and claims attributable to gross negligence, intentional acts or wilful omissions by the OCA or its employees and agents.

#### Grant of the Land Lease

The OCA has agreed to grant and Millennium Agent has agreed to accept the Land Lease, which will commence upon practical completion of the pre-Olympics arena and

the second phase of the carpark, currently due by 31 August 1999.

The terms and conditions of this lease are annexed to the Agreement to Lease.

The Agreement to Lease includes a brief description of the land to be leased. In essence this will comprise the footprint of the arena itself (within its walls, gates and turnstiles), plus the strata of its verandahs, overhangs and external columns beyond this footprint. The dimensions, areas and boundaries of the land to be leased may be subject to minor changes, but not so as to adversely affect the project. Millennium Agent must notify the OCA of the final boundaries as soon as practicable, and plans of consolidation or subdivision of the surveyed land must then be registered by the OCA within six months.

#### Termination

Either party may terminate the Agreement to Lease if the Project Agreement is terminated. Otherwise the agreement will end on 31 January 2031.

### 4.2 The Land Lease

#### Term

The lease will commence upon practical completion of the pre-Olympics arena and the second phase of the carpark and will end on 31 January 2031. It may be terminated earlier by either party if the Project Agreement is terminated.

#### Possession

Millennium Agent will be granted exclusive possession of the arena's land (as described above) for the term of the lease, subject to the Project Agreement and rights reserved by the OCA to construct, maintain and use water, gas, communications and similar services on or over the leased land, to access or grant easements over the land for such services and to conduct inspections of the land and the arena during business hours or on reasonable notice. In exercising these reserved rights, the OCA will be obliged not to substantially derogate from Millennium Agent's rights to use and enjoy the land and will be obliged to minimise disturbance to or interference with Millennium Agent's performance of its obligations or exercising of its rights under the Project Agreement and the lease. The OCA will also have to make good any damage it causes to the land or

the arena, and has indemnified Millennium Agent against any losses it incurs as a result of the OCA's exercising of these rights reserved under the lease.

Millennium Agent, the arena's operator (if this is not Millennium Agent) and persons authorised by them will also have the right to access other parts of the arena precinct, as designated by the OCA from time to time, for vehicular access to the arena and in order to carry out and remove any fitout works required by SOCOG under the Venue Agreement (see section 5 below), maintain and repair the exterior of the arena, instal and service lights, signs, etc and comply with Millennium Agent's other contractual obligations and exercise its other contractual rights.

Pedestrians will have to be granted unrestricted access to and egress from the arena via the arena precinct, in a manner that meets all statutory requirements for emergency access to and egress from such facilities.

#### Profit-sharing rent and other payments by Millennium Agent

The rent payable by Millennium Agent to the OCA at the end of each "rent period" under the lease will depend on the pre-tax returns achieved by the Multi Use Arena Partnership partners on their equity investments, if any, in the project.

The "rent periods" under the lease will be from the start of the lease until the next 30 June, each subsequent 12 months entirely within the term of the lease, and the period from the last 1 July during the term until the end of the lease.

If the equity investors' internal rate of return (IRR) on distributions paid to or payable to the partners up to the end of a "rent period" is less than 25%, no rent will be payable. If their IRR is between 25% and 30%, the rent will be 25% of the cash otherwise available for distribution to the partners. If their IRR is between 30% and 35%, the rent will be 50% of the cash otherwise available for distribution to the partners, and for an IRR of more than 35% it will be 75% of the cash otherwise available for distribution to the partners.

In addition to these rent payments, if the NSW Government elects before 1 January 2001 to close the Sydney Entertainment Centre or change its use so that it will not

materially compete with the Multi-Use Arena during the term of the lease, and the OCA gives Millennium Agent written notice of this intention on or before that date, Millennium Agent will be liable to pay the OCA "supplemental rent" amounts of:

- \$2 million on the later of 30 April 2003 and the date on which the Sydney Entertainment Centre is actually closed or has its use changed, if this occurs before 1 October 2003
- \$2 million one year later
- \$2 million one year later, and
- \$1 million one year later.

As discussed earlier in section 3.5, if the Sydney Entertainment Centre resumes material competition with the Multi-Use Arena after the first of these "supplemental rent" payments has been made, the OCA will have to refund a proportion of each supplemental rent instalment that has been prepaid, calculated on the basis of the numbers of days between the payment date and the end of the lease with and without competition from the Sydney Entertainment Centre, plus daily interest at the rate of 6.5% per annum.

If the arena is damaged or destroyed the IRR-dependent rent payable by Millennium Agent will not abate, but the dates for payment of any as-yet-unpaid "supplemental rent" will be extended by a period equal to the period the arena is not able to be operated as an indoor sport and entertainment venue. There will be no restrictions on the type or number of events able to be held at the Sydney Entertainment Centre while the arena is not able to be operated as an indoor sport and entertainment venue.

Millennium Agent will be liable for all utility and service charges attributable to its use of the land and all council rates, water rates, land taxes and estate levies.

#### Indemnity

Millennium Agent will indemnify the OCA against any property damage, economic loss or personal injury claims arising from Millennium Agent's use and occupation of the land, except to the extent of any losses and claims attributable to gross negligence, intentional acts or wilful omissions by the OCA or its employees and agents.

# 5 Arrangements for the Olympics and Paralympics

## 5.1 The Venue Agreement

This agreement between SOCOG and Millennium Agent, dated 31 July 1997, specifies the terms on which the arena will be made available to SOCOG, rent-free, for the Olympic and Paralympic Games, a pre-Olympics “test” event and pre-Olympics Cultural Olympiad events.

The agreement will terminate on 31 December 2000, unless it is terminated earlier on the grounds discussed below.

### Test event

Millennium Agent has granted SOCOG, for no rent, an exclusive right to occupy, use and control the arena for up to 14 days during November and/or December 1999 to organise and conduct a pre-Olympics “test” event at the arena, with the nature and dates of this event to be notified by SOCOG by 30 June 1999. SOCOG is not obliged to conduct such a test event, and will not be liable to compensate Millennium Agent if an event is not held.

Millennium Agent will have limited rights to access the arena during the test event, to perform its obligations under the Venue Agreement and the Project Agreement or to meet other legal requirements.

### Cultural Olympiad events

Millennium Agent has granted SOCOG, for no rent, an exclusive right to occupy, use and control the arena to organise and stage up to three Cultural Olympiad events at the arena, with the number and dates of these events to be negotiated in good faith by Millennium Agent and SOCOG in accordance with the Commercial Rights Agreement, as discussed in section 5.2 below. Each of these events will be of no more than one day’s duration, unless Millennium Agent agrees otherwise. SOCOG is not obliged to conduct any such events, and will not be liable to compensate Millennium Agent if an event is not held.

Millennium Agent will have limited rights to access the arena during these Cultural Olympiad events, to perform its obligations under the Venue Agreement and the Project Agreement or to meet other legal requirements.

## The Olympic and Paralympic Games

Millennium Agent has granted SOCOG, for no rent, an exclusive right to occupy, use and control the arena from 1 September 2000 to 22 November 2000 (“the Games period”), to organise and stage the Olympic Games and the Paralympic Games. Millennium Agent must ensure the arena is in its “as built” condition, as specified in its design brief, except for fair wear and tear, at the start of this period, with all defects rectified, all VIP areas freshly painted and refurbished if necessary and the arena in a clean condition.

Millennium Agent will have limited rights to access the arena during this period, to perform its obligations under the Venue Agreement and the Project Agreement or to meet other legal requirements.

### SOCOG fitout works

SOCOG will have access to the arena between 22 May 2000 and 31 July 2000 (“the pre-Games period”) to conduct SOCOG-funded fitout works for the Olympic and Paralympic Games, as described in an appendix to the Venue Agreement.

During this period the Multi Use Arena Partnership will also be using the arena for its own events. For this reason, Millennium Agent must provide SOCOG with a preliminary program of events scheduled for the pre-Games period and SOCOG must, in turn, provide Millennium Agent with a full brief of the proposed SOCOG fitout works by 1 April 1999. SOCOG and Millennium Agent must then negotiate in good faith to agree, within 30 days, on a program to co-ordinate the SOCOG fitout works with the Multi Use Arena Partnership’s events and any other SOCOG activities at the arena during the pre-Olympics period. If the parties cannot agree, this program will be determined through mediation or by an independent expert, in accordance with the Venue Agreement’s dispute resolution procedures, by 30 May 1999. Although SOCOG must work with Millennium Agent to minimise disruption to the latter’s business activities, it will not be liable to Millennium Agent for any disruption that does arise from the SOCOG fitout works, provided SOCOG does not affect any of the arena’s corporate suites.

SOCOG will be responsible, at its own cost, for the carrying out, maintenance, repair and removal of all the

SOCOG fitout works. It must remove these fitout works as soon as practicable, and in any event by —

- In the case of any fitout works for the test event — the end of the test event period, although some of these fitout works may be left in the arena for the Olympics, as agreed between the parties by 30 September 1999 or, failing that, through mediation or by an independent expert by 31 October 1999
- In the case of the fitout works for the Olympics and Paralympics — 31 December 2000.

SOCOG must also make good any damage caused by the fitout works and reinstate the arena to the condition it was in immediately prior to the test event or the Games period.

FF&E, services, utilities and staff  
to be available for SOCOG's use

During the periods SOCOG will use the arena, Millennium Agent must, in accordance with procedural arrangements set out in the Venue Agreement,

- Procure that all fittings, furnishings and equipment ordinarily located at the arena when it is operating are available for use by SOCOG, the International Olympic Committee (IOC), the Australian Olympic Committee (AOC), SPOC, the International Paralympic Committee (IPC), the Australian Paralympic Federation (APF), any other Olympic or Paralympic body and any organisation granted concession rights by SOCOG under the Commercial Rights Agreement.
- Use its reasonable endeavours to make other arena fittings, furnishings and equipment available, and procure the removal of any fittings, furnishings and equipment that are not made available, if SOCOG requires this to be done, at Millennium Agent's expense.
- Procure the provision of certain building services, utilities and other services, unless SOCOG notifies Millennium Agent that it does not require them.
- Provide SOCOG with certain arena operational staff.

The Venue Agreement and its appendices specify principles under which SOCOG will be liable to pay Millennium Agent for part of the costs of complying with these obligations. SOCOG will also be liable to pay Millennium Agent for any utilities used by SOCOG during the periods SOCOG will use the arena, and for other direct venue costs incurred by Millennium Agent during these periods, as agreed between SOCOG and the Millennium Agent.

During the periods SOCOG will use the arena, SOCOG may adapt or alter existing services to the arena, other than its building services, and/or use substitute services, provided the adapted, altered or new services do not interfere with any existing service. SOCOG may also, at its own cost, enter

into alternative arrangements for the supply of electricity, gas, water or telecommunications, paying for the costs of disconnection and reconnection of Millennium Agent's suppliers.

### Maintenance, repair and liability for damage

Consistently with the obligations imposed on Millennium Agent under the Project Agreement and the Land Lease, Millennium Agent is generally obliged to maintain and repair the arena, including its fittings, furnishings and equipment, at its own cost, except in relation to building services and utilities required by SOCOG, for which SOCOG will provide limited reimbursement. However, SOCOG is liable to repair or replace, at its own cost, any damage caused SOCOG or SOCOG's employees, contractors, agents, etc during the test event, the Cultural Olympiad events or the Games period.

### 'Clean venue' requirements

A "clean venue" requirement will apply during the test event, the Cultural Olympiad events and the Games period, under which the rights of Millennium Agent's concession holders must be extinguished or suspended and all their signage, materials and other equipment must be covered or removed.

### Insurance

Millennium Agent is required to effect and maintain specified insurance policies for industrial special risks (under the Project Agreement), public liability, product liability and completed operations insurance and employer's liability and workers' compensation. These policies must include principal's indemnity coverage for SOCOG, the IOC, the AOC, SPOC and the IPC.

The parties may agree to "value in kind" insurance arrangements with insurance sponsors of the Olympic and/or Paralympic Games.

SOCOG will reimburse Millennium Agent for the incremental cost of any additional SOCOG insurance requirements beyond the requirements already imposed by the Project Agreement. SOCOG may also require Millennium Agent to increase its public liability insurance at SOCOG's cost.

SOCOG is itself obliged to effect public liability, product liability and completed operations insurance and employer's liability and workers' compensation insurance policies in relation to the SOCOG fitout works, with principal's indemnity coverage for Millennium Agent, the IOC, the AOC, SPOC and the IPC.

## Dispute resolution

The Venue Agreement sets out agreed procedures for dispute resolution, including direct negotiations, mediation and binding expert determination.

## Indemnities

Millennium Agent has indemnified SOCOG, the IOC, the AOC, SPOC, the IPC and the APF, and their directors, officers and employees, against all losses, claims, actions, liability, damages or costs caused by:

- Any non-compliance by Millennium Agent with its obligations under the Venue Agreement.
- Any breach of a representation or warranty made by Millennium Agent under the Venue Agreement.
- Any negligent, wilful or malicious act, omission or default, or any mis-use of the arena or the property of SOCOG or SOCOG's concession holders, by Millennium Agent or its employees, agents, licensees, volunteers, contractors, subcontractors, consultants or advisers.
- Any dangerous, defective or malfunctioning property installed by or for Millennium Agent, other than the SOCOG fitout works and any property installed by or for SOCOG.

In return, SOCOG has indemnified Millennium Agent and its directors, officers and employees against all losses, claims, actions, liability, damages or costs caused by:

- Any non-compliance by SOCOG with its obligations under the Venue Agreement.
- Any breach of a representation or warranty made by SOCOG under the Venue Agreement.
- Any negligent, wilful or malicious act, omission or default, or any mis-use of the arena or the property of Millennium Agent or its concession holders, by SOCOG or by any employee, agent, contractor, consultant, customer, workman, volunteer worker, sponsor, supplier, invitee, client or visitor of SOCOG, any SOCOG licensee, sub-licensee or concession holder or any other person or organisation at the arena at SOCOG's invitation or direction (other than Millennium Agent's employees etc).
- Any dangerous, defective or malfunctioning property installed by or for SOCOG.

## Termination

The Venue Agreement sets out circumstances under which the agreement may be terminated before 31 December 2000. These are:

- Automatic termination, unless the parties agree otherwise, 14 days after a termination of the Host City

Contract by the International Olympic Committee under which Sydney loses the Olympic Games.

- Automatic termination, unless the parties agree otherwise, 14 days after termination of the Project Agreement, the Agreement to Lease and/or the Land Lease for any reason prior to practical completion of the pre-Olympics arena and the second phase of the carpark, or for any reason other than a default by Millennium Agent after that date.
- Termination by SOCOG if the Project Agreement, the Agreement to Lease and/or the Land Lease are terminated for a default by Millennium Agent after practical completion of the pre-Olympics arena and the second phase of the carpark.
- Immediate automatic termination upon the termination of the Commercial Rights Agreement.

Millennium Agent may not bring any claims against SOCOG or any other Olympic or Paralympic body as a result of such a termination, and SOCOG may claim damages or compensation from Millennium Agent only under the last two of the circumstances listed above.

## 5.2 The Commercial Rights Agreement

This agreement between SOCOG and Millennium Agent, dated 31 July 1997,

- Establishes joint marketing arrangements between SOCOG and Millennium Agent, including jointly staged ground-breaking and opening ceremonies
- Restricts other marketing by Millennium Agent and numerous other parties
- Seeks to protect the marketing programs of SOCOG, SPOC and Millennium Agent against "ambush" marketing, and
- Sets out arrangements to facilitate the Cultural Olympiad events, through good-faith negotiations between SOCOG and Millennium Agent on their dates, staffing requirements, the payment by SOCOG of a percentage of gate receipts and the joint sale of corporate suites and perimeter signage.

The Commercial Rights Agreement will terminate on 31 December 2000, unless it is terminated earlier, which may occur on the same grounds as for the Venue Agreement (see above) or upon the termination of the Venue Agreement itself.

The provisions of the Commercial Rights Agreement (and also, under the Commercial Rights Agreement, the Venue Agreement) are subject to the Olympic Charter. If the Olympic Charter applicable at the time of the Olympic Games in 2000 differs from the Olympic Charter applying when the Commercial Rights Agreement was signed, the later version will prevail.



## 6 OCA securities and the OCA Consent Deed

### 6.1 The OCA Deeds of Charge

On 31 July 1997 the OCA entered into three separate Multi-Use Arena OCA Deeds of Charge, with:

- The six partners of the Multi Use Arena Partnership
- Millennium Agent, and
- Millennium Contractors.

These securities are in addition to the construction-phase performance security bonds held by the OCA under the Project Agreement itself, as discussed in section 3.4 of this report.

Under the OCA Deed of Charge with the **partners**, the chargors have granted the OCA a floating charge over:

- All the subscription moneys received from Abigroup under the Equity Commitment Deed, and
- All other project assets

in order to secure their obligations to the OCA under any of the key project contracts.

[Under the Equity Commitment Deed, Abigroup has promised the OCA that unless the OCA consents,

- Prior to practical completion of the pre-Olympics arena and the second phase of the carpark, Abigroup will legally and beneficially own all the issued capital of each of the partners and none of the partners will dispose of any part of its interest in the partnership, and
- After that date, Abigroup will own and directly or indirectly control at least 51% of the aggregate partnership interests.]

Similarly, under their OCA Deeds of Charge **Millennium Agent** and **Millennium Contractors** have granted the OCA a floating charge over all their current and future interests in the project assets.

These charges are subordinate only to charges granted by the chargors to the Security Agent, AIDC Australia, to secure their debt financing arrangements. They may be enforced by the OCA if:

- The OCA becomes entitled to terminate the Project Agreement for a default by Millennium Agent, or
- Millennium Agent fails to comply with its obligations under the Project Agreement upon the expiration or earlier termination of that agreement.

### 6.2 The OCA Consent Deed

This deed, between the OCA, Millennium Agent and the Security Agent (AIDC Australia) and dated 31 July 1997,

- Records the OCA's consent to the first-ranking fixed and floating charges between the security Agent and the Multi Use Arena Partnership's partners, Millennium Agent and Millennium Contractors
- Records the Security Agent's consent to the OCA Deeds of Charge
- Regulates the priorities between these securities
- Regulates the manner in which the parties may exercise their rights if Millennium Agent defaults on its obligations or if the OCA otherwise becomes entitled to terminate the Project Agreement, the Agreement to Lease or the Land Lease.

The deed will terminate when Millennium Agent repays all its term debt.

The effects of the OCA Consent Deed on the insurance proceeds provisions and the default, "cure" and termination provisions of the Project Agreement and the OCA Works Design and Construction Deed have already been summarised in sections 3.6 and 3.7 of this report. The same default, "cure" and termination effects also apply in the case of any other events or circumstances that would entitle the OCA to terminate the Agreement to Lease or the Land Lease.

The other main provisions of the OCA Consent Deed are summarised below.

#### Ranking of securities

Each of the debt financier's securities has priority over any OCA security over the same property. The OCA has agreed that once the first debt drawdown has been made, it will not enforce or exercise its rights under the OCA securities without the Security Agent's consent.

#### 'Finance defaults'

The Security Agent has agreed to notify the OCA of the occurrence and circumstances of any default under the private sector's debt financing arrangements. Except where a delay would materially affect the debt financier, it will also notify the OCA in writing before taking any action to enforce the financier's securities.

## Amendment of project documents

If any of the project's private sector debt financing documents is varied, modified or replaced without the written consent of the OCA, the OCA's liabilities under the key project contracts will be no greater than if there had been no variation, modification or replacement.

The Security Agent has undertaken that:

- The debt financing documents will not be varied, modified or replaced in any way that might adversely affect the rent payable to the OCA under the Land Lease.
- It and the debt financier will not transfer or assign any of their rights, interests or obligations under the debt

financing documents without the OCA's consent, which may not be unreasonably withheld, or unless the transferee is a financial institution with a Standard & Poor's (or equivalent) credit rating of not less than A-.

Similarly, the OCA has undertaken not to supplement or amend the terms of the contracts to which it is a party — other than minor or technical variations or variations which could not reasonably affect the interests of the financier — without the prior written consent of the Security Agent, whose consent may not be unreasonably withheld or delayed.

## **7 The PAFA Act Deed of Guarantee**

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Under the Public Authorities (Financial Arrangements) Act Deed of Guarantee of 20 October 1997, between the Minister for the Olympics (under delegation from the Treasurer and on behalf of the State of NSW under section 22B of the Public Authorities (Financial Arrangements) Act 1987), the OCA, Millennium Agent, the six partners in the Multi Use Arena Partnership, Millennium Contractors, AIDC and AIDC Australia (as Agent and Security Agent for the debt financier), the State of NSW unconditionally and irrevocably guarantees OCA's performance under the Project Agreement, the Agreement to Lease, the Land Lease, the OCA Works Design and Construction Deed, the OCA Consent Deed and the OCA Deeds of Charge, and any other project contracts approved by the Treasurer, to all the other parties to these contracts.

This guarantee is a continuing obligation, remaining in force until seven months after the terms of the Project Agreement and the other main project contracts, or until seven months after any earlier termination of the contracts.

The State's liability under the guarantee will continue even if the OCA is discharged from any or all of its obligations under the contracts for any reason whatsoever, including the termination or novation of the project contracts or the abolition of the OCA.

The State must perform the obligations it has guaranteed within 21 days of a written notice to do so being served by any of the private sector parties to the guaranteed contracts. Such a demand may be made at any time, provided a written notice has previously been served on the OCA, giving it 21 days to remedy a failure to perform its obligations, and the OCA has failed to do so.

## 8 Subsequent changes to contractual arrangements

### 8.1 Transfers of rights and obligations of AIDC and AIDC Australia to BankWest and UBS Australia

In the project contracts as originally signed and as summarised in sections 2 to 7 of this report, AIDC was the Multi-Use Arena Partnership's debt financier and AIDC Australia was AIDC's Agent and Security Agent.

Subsequently, following the purchase of AIDC and AIDC Australia by UBS Australia and UBS Australia's on-sale of the project's debt finance agreement to BankWest, the rights and obligations of AIDC and AIDC Australia under most of the project contracts were transferred to BankWest under a **Deed of Novation**, dated 21 October 1997, between AIDC, AIDC Australia, BankWest, Millennium Agent, the six Multi-Use Arena Partnership partners, Millennium Contractors, Abigroup, Obayashi and the OCA, with the novations being effective as of 20 October 1997.

This Deed of Novation, and subsequent notifications in accordance with that deed, did not affect AIDC's rights and obligations under the OCA Works Design and Construction Deed, the Works Adjustment Deed or the Public Authorities (Financial Arrangements) Act Deed of Guarantee.

On 3 February 1998, however, the Commonwealth Minister for Finance issued a **declaration**, under sections 33K and 33L of the Australian Industry Development Corporation Act 1970 (Cth), that all the assets, rights and obligations of AIDC under the OCA Works Design and Construction Deed, the Public Authorities (Financial Arrangements) Act Deed of Guarantee and all other contracts relating to the transactions governed by these deeds had been vested in UBS Australia. This declaration, gazetted by the Commonwealth on 13 February 1998, effectively put UBS Australia into the shoes of AIDC under the OCA Works Design and Construction Deed and the Public Authorities (Financial Arrangements) Act Deed of Guarantee.

Because the OCA had not signed the Works Adjustment Deed when this declaration was made — it did so later, on 19 February 1998 — AIDC's obligations under the Works Adjustment Deed were not transferred to UBS Australia by the declaration. These obligations were accepted and assumed by UBS Australia under a **Deed Poll** by UBS Australia, in favour of the OCA, AIDC, Millennium Agent,

Millennium Contractors, Obayashi and Abigroup, on 21 May 1998.

### 8.2 Revised arrangements for the operation of the arena

In another change since the original contracts were signed, the **Multi-Use Arena Management Agreement** between Millennium Agent and LMI Sydney, which was to have been the arena's operator, was terminated on 27 April 1998. Under revised private sector commercial arrangements, Millennium Agent has taken over the operation of the arena itself.

Millennium Agent's obligations to the OCA for the operation, maintenance and repair of the arena, as summarised in this report, are not affected by this change.

In accordance with the requirements of the Project Agreement, Millennium Agent obtained the OCA's prior written consent to the termination of its Management Agreement with LMI Sydney.

Minor amendments may be made to the Project Agreement and other contracts to reflect the fact that LMI Sydney is no longer the operator of the arena. These amendments will effectively place any future operator in the same position as that of LMI Sydney prior to the termination of the Multi-Use Arena Management Agreement.

### 8.3 New name for the arena

A new name for the Multi-Use Arena, the "Sydney SuperDome", was announced on 10 August 1998, at the official unveiling of the arena by the Minister for the Olympics.

This name change does not affect any of the contractual arrangements summarised in this report.

### 8.4 Overview of revised contractual links

*Figure 4*, which may be compared with *Figure 3*, summarises the contractual links between the new parties following the Deed of Novation of 20 October 1997, the Commonwealth Minister for Finance's declaration of 3 February 1998, the UBS Australia Deed Poll of 21 May 1998 and the termination of the Multi-Use Arena Management Agreement.

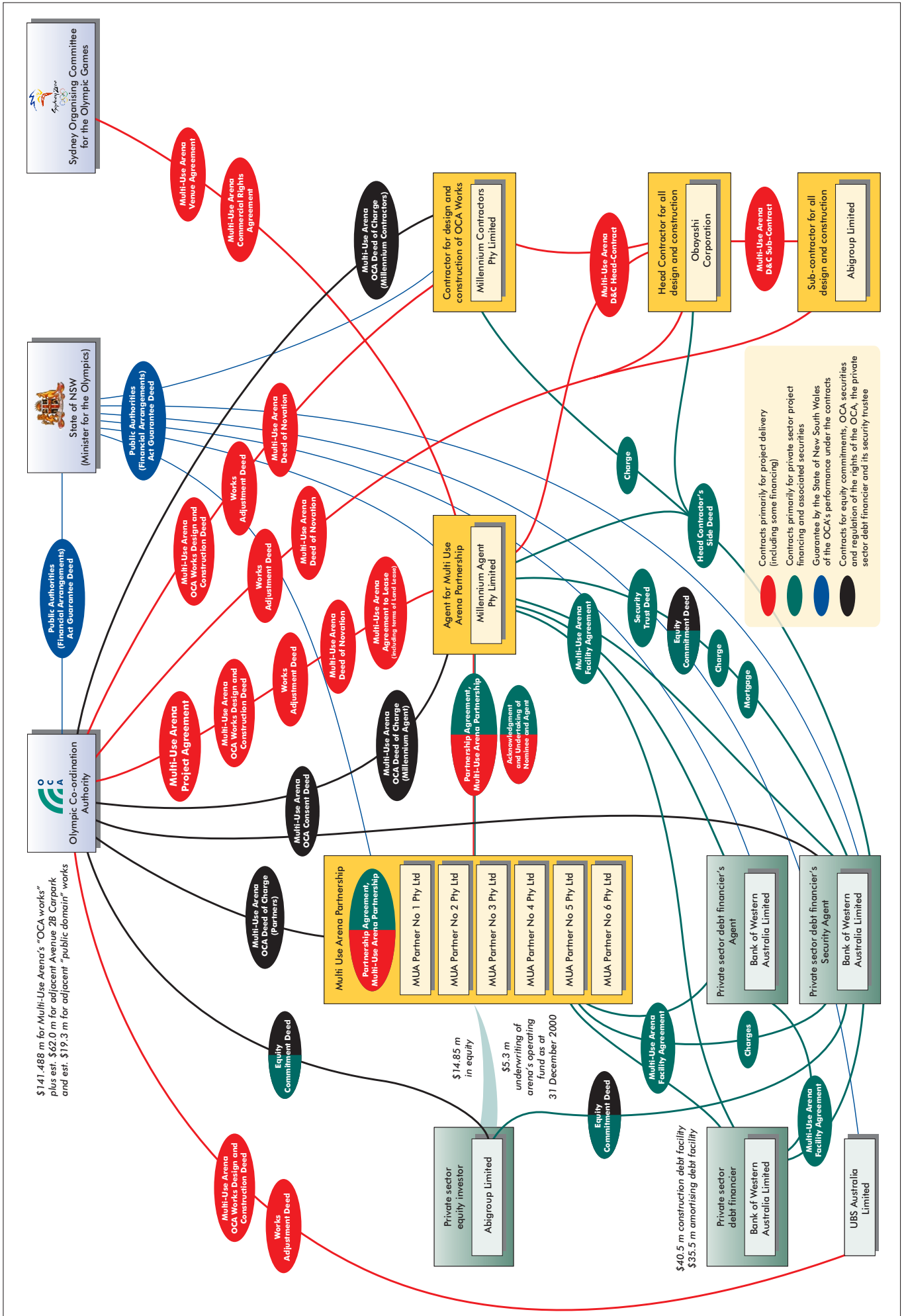


Figure 4. Contractual structure of the Multi-Use Arena project, after the transfer of AIDC and AIDC Australia's rights and obligations to BankWest and UBS Australia.

## 9 Public sector financial benefits and costs

In common with other key facilities and infrastructure for the Olympic and Paralympic Games, such as the adjacent Olympic stadium and the Olympic village, the Multi-Use Arena (now known as the “Sydney SuperDome”) will play an important role in ensuring the realisation of the substantial economic benefits to Sydney, New South Wales and Australia that are expected to flow from the Games.

In addition, by providing a world-class indoor entertainment venue with a significantly higher capacity and more modern facilities than comparable existing venues, the arena is likely to continue to generate ongoing economic benefits for the community after the Games, as well as a significant revenue stream for New South Wales.

In assessing alternative ways of meeting the essential need for a multi-use arena for the Olympics, and their likely relative economic and financial performance, the OCA:

- Developed a “benchmark” design concept for the arena. Among other things, this “benchmark” was intended to provide the three shortlisted private sector proponents with a clear understanding of the standard of facility expected by the Government.
- Evaluated the proposals received from the shortlisted private sector proponents against the forecast design, delivery, operational and financial performance of this “benchmark” arena concept.
- Selected the Millennium proposal because, among other things, it minimised the costs and financial risks to the public sector and maximised the arena’s economic and public sector financial benefits.

The “benchmark” arena concept provided 15,900 seats for gymnastics during the Olympics, 20,000 seats in a post-Olympics “centre stage” configuration and 18,800 seats in a post-Olympics basketball configuration. Its estimated

capital cost was \$196.2 million (June 1997 dollars). The conceptual design was prepared by the OCA’s architectural adviser, Hellmuth, Obata & Kassabau, the capital cost estimates were prepared by Currie and Brown, and the assumed event schedule and operations and marketing plan were prepared and costed by KPMG and Mr Tom Benzel, a New York-based operations adviser to the OCA. In comparison, the Millennium arena will cost an estimated \$197.2 million, \$141.5 million of which will be contributed by the OCA and an estimated \$55.7 million of which will be contributed by the private sector.

Similarly, a “benchmark” Avenue 2B Carpark design was prepared for the OCA by consulting engineers Hyder Consulting and costed by Currie and Brown at \$63.5 million (June 1997 \$). In comparison, the OCA is paying Millennium Agent \$62.0 million (including an estimated \$2.9 million in provisional sums) for its design, construction and commissioning work on the carpark now being built.

*Table 1* shows KPMG estimates, reviewed by Westpac, of the financial performance, for the NSW public sector, of the Millennium consortium’s arena.

This KPMG study used risk-adjusted net present value analysis of the direct costs and benefits to the Government of the arenas, with a real discount rate of 7% (11.3% nominal) for all cashflows except those funded through operating cashflows, which were discounted at a real rate of 15% to reflect the additional risk. KPMG’s predictions with a discount rate of 7% nominal for all cashflows except those funded through operating cashflows are also shown.

The Millennium arena estimates in *Table 1* ignore any IRR-dependent rent paid to the OCA under the Land Lease (see section 4.2). KPMG has estimated that this rent has a net present value of \$2.2 million at a 25% real discount rate and \$7.4 million at a real discount rate of 15%.

**Table 1. Estimated net present financial costs to the NSW public sector for the Millennium Multi-Use Arena (1997 \$, ignoring profit-sharing rent payable to the OCA under the Land Lease)**

Financial discount rate on cashflows other than those depending on operating cashflows	7% real (11.3% nominal)	7% nominal (2.9% real)
Net present value of public sector cost if Sydney Entertainment Centre continues to compete	\$129.3 m	\$133.9 m
Net present value of public sector cost if Sydney Entertainment Centre does not compete	\$125.8 m	\$130.5 m

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