

Submission to the Tasmanian Planning Commission (TPC) by the Tasmanian Symphony Orchestra (TSO) re the Macquarie Point Multi-Purpose Stadium (Stadium)

Significance of Impact to TSO

1. The TSO has filed with the TPC their Representation on the Macquarie Point Multi-Purpose Stadium dated 8 May 2025 (TSO Representation) which identifies in summary form the operational and financial impacts and risks to the continuing sustainability of the TSO as a result of the construction and operation of the Stadium.
2. The TSO Representation also sets out the three essential risk mitigation strategies to minimise the destructive impact of the Stadium construction and operation on the TSO. These, in summary, are engineering controls, management controls, and legislative controls. These are detailed in the TSO Representation together with the mitigation costs for the TSO.
3. The TSO commissioned ARUP (expert acoustic engineers) to undertake a preliminary assessment of the impact of noise and vibration and their findings are summarised in the TSO Representation (page 6) with the summary reports included separately.
4. It is clear from the ARUP assessment that the noise and vibration from the construction and operation of the Stadium will have very significant adverse effects on the usual operations of the TSO.
5. The Proponent has not undertaken a full preliminary noise and vibration impact assessment. The Noise and Vibration Assessment (21 August 2024 and 31 January 2025) prepared by AECOM for the Proponent is inadequate and does not serve the purpose of a preliminary construction noise and vibration assessment. In particular, the assessments:
 - a. do not establish appropriate thresholds of impact relevant to the TSO operations;
 - b. do not consider the spectrum of other temporal or subjective measures of annoyance, such as low frequency, impulsivity, modulation, or tonality;
 - c. do not consider time or duration of exposure relative to impacts to TSO operations;
 - d. do not consider impacts from the significant number of additional heavy ground vehicles on nearby roads (general construction);
 - e. are therefore not able to establish severity of impact nor proposed mitigation options.
6. It is unclear how the NML levels documented in the AECOM 31 January 2025 report at section 4.2 for the TSO have been determined. These are above thresholds that would impact TSO operations and noise at these levels is very likely to be audible and interfere with TSO recording, filming, streaming, and performance. It is noted that a separate report is proposed to assess impact to the TSO, however, that report is not available. Threshold and noise and vibration impacts should be established in consultation and agreement with the TSO with respect to their operational requirements.

7. The AECOM Assessment notes that the NML levels simply trigger a 'consideration' of mitigation measures. NML levels would be expected to be complied with by all practical means, and only if demonstrated that they are not possible to be met, then discussion on alternative mitigation/management strategies or compensation should occur with the TSO. It is not clear what additional mitigation (if any) would be implemented if NML levels are exceeded and how often and for how long they might be exceeded.
8. Without a more thorough preliminary construction noise and vibration assessment and detailed noise and vibration management plan, the TSO is not able to assess the potential impacts to their operation. This prevents:
 - a. the ability to quantify and or assess potential impacts and possible mitigation measures;
 - b. forward planning and or management of impacts;
 - c. assessment of potential loss of capability and revenue and or financial impacts.This presents a significant financial risk to the TSO.

Risk Mitigation Strategies

9. The Permit Conditions for the Stadium should include a detailed risk mitigation strategy to enable the TSO to continue its usual operations or be compensated where this is not possible.
10. The Tasmanian State Government has proposed a set of project permit conditions (draft Permit) in its Macquarie Point Planning Permit Bill (the Permit Bill) and we infer these conditions are those now sought by the Proponent. For that reason, we have addressed them in this submission as they are relevant to the consideration of this Planning Commission.

Engineering Controls and Flow On Effects proposed by the TSO

11. The TSO has received advice that the following measures could be undertaken to reduce some of the disruptive noise impact of the Stadium and resultant losses to the TSO during construction and operation. These protection measures are:
 - a. addition of sound absorbative materials in the roof and building envelope of Federation Concert Hall and the TSO studio;
 - b. mechanical building services systems for FCH and Orchestra Centre are upgraded to provide a higher-based level acoustic performance of the building;
 - c. upgrade sound lock doors to improve the acoustic performance of the FCH and the TSO Studio.
 - d. temporary relocation of some noise sensitive TSO activities and establishing TSO mitigation management capability.

12. These measures have been costed at \$4,219,000 plus GST (see page 13 TSO Representation).
13. The State Government, prior to the calling of an election, did indicate that it was willing to provide this funding to the TSO for these measures to be implemented.
14. These engineering controls will be critical to TSO's continued operation, both during construction and ongoing. If not directly funded by the State Government, they should be undertaken or paid by the Proponent being a consequential cost of the Stadium project or a measure for the protection of the TSO property to reduce the adverse impact of the construction and operation of the Stadium.

Preliminary Construction Noise and Vibration Impact Assessment - condition proposed by the TSO

15. For completion, it is important that a more comprehensive preliminary Construction Noise and Vibration Impact Assessment be undertaken prior to the engagement of the Contractor and during the early design phases to ensure that, as far as possible, measures can be taken in the design phase to include:
 - a. identify significant noise and vibration activities;
 - b. identify opportunities to remove or change construction activities or to reduce the impacts (e.g. piling);
 - c. identify engineering interventions (e.g. noise barriers);
 - d. require appropriate time in the construction program for alternative low-noise/vibration construction methods, or extra time for unusual scheduling of works to avoid impact to TSO operations;
 - e. ensure that the detailed noise and vibration risks and management plan requirements are captured in the design and tender documents.

Draft Permit Conditions – Construction & Design

16. Draft Permit **Condition A1** states that the development must be carried out generally in accordance with the approved plan and documentation provided in Schedule 2 unless modified by the Permit Bill or a condition of the Permit. That Schedule does not include any noise assessments or documents setting out suitable noise limits or any other noise mitigation measures. The only document in Schedule 2 that deals with noise is the 'Noise and Vibration Assessment, AECOM' dated 21 August 2024 which is totally inadequate. There is no reference in Schedule 2 to the AECOM report of 31 January 2025 and, in any event, the noise level numbers at section 4.2 of that report are not accepted as accurate by the TSO. Further assessment needs to be undertaken in agreement with the TSO.
17. Draft Permit **Condition A2** provides that use and development must comply with the conditions in the attached Schedules. The relevant schedule for the TSO is Schedule 5 Environment Protection Authority (EPA).
18. Schedule 5 **Condition G4** 'Notification Prior to Construction' provides that 14 days prior to commencement of construction of the Stadium the Director (EPA Director) must be notified

of the date on which construction is expected to commence. There is no requirement for a complete noise and vibration impact assessment and mitigation and management plan to be approved prior to construction. This should be an essential requirement.

19. A preliminary noise and vibration impact assessment would then provide the information necessary to identify the significant noise and vibration activities and consider and provide for measures to mitigate and reduce those impacts. Those measures could then be included in the design phase as well as for the construction.
20. **Condition D1** 'Design Compliance with Auditor's Site Suitability Statement' is concerned with conditions relating to the site suitability and the site environmental management plan which is related to the proper remediation of the development site (section 39F of the Macquarie Point Development Corporations Act 2012).
21. There are no conditions that prescribe the design mitigation measures relating to noise and vibration.

Detailed Noise and Vibration Management Plans in Construction Contract- conditions proposed by the TSO

22. There should be consultation with the TSO and their specialist consultants, ARUP, to plan the mitigation of the serious impacts of the noise and vibration to the TSO during the construction including:
 - a. establishing limits on noise and vibration emissions following detailed predictions which is undertaken prior to commencement of work;
 - b. monitoring of noise and vibration emissions by the Proponent/Contractor and regularly update short and long-term program of 'noisy works' and modelling for proposed works;
 - c. establish a clear communication plan to ensure that TSO is kept informed throughout the construction phase;
 - d. establish a process for TSO to raise concerns including processes for mediation;
 - e. identify and schedule periods of high sensitivity, e.g. recording and filming by TSO, when noisy works cannot be undertaken;
 - f. establish long-term noise and vibration monitoring including sharing this information with the TSO and with the Director of the EPA;
 - g. establish effective enforcement process including penalties should the contract requirements not be met by monitoring and enforcement by the Director EPA.
23. The current Permit Conditions do not address these matters at all.

Draft Permit Conditions for Construction

24. **Condition CN2** 'Construction Environment Management Plan' in broad terms prescribes the need for "measures for environmental management during construction to prevent discharge of any pollutants to the environment" and "incorporating continuous monitoring and evaluation of the effectiveness of measures specified in the construction EMP in

mitigating environmental harm or nuisance". This should contain specific references to the obligations to assess and mitigate the noise and vibration impacts of the TSO and should also have a consultation provision for the Proponent and the Contractor with the TSO.

25. **Condition CN2** paragraph 2 prescribes a requirement that the Construction EMP must include a risk assessment and comprehensive controls for all environmental hazards which then contains a list which includes noise management. A number of sub-plans are then outlined but there is no sub-plan for noise and vibration management. This should be included at a new subparagraph 2.4 and should specifically relate to the noise and vibration mitigation measures required in the construction phase of the Stadium.
26. The Permit contains a **Condition G2** at Schedule 5 'Incident Response', this states that a person responsible must immediately take all reasonable and practical actions to minimise any adverse environmental effects from the incident. But this condition is completely inadequate to prevent and minimise serious and material environmental harm being caused to the TSO by the construction of the Stadium. There should also be a requirement that these 'incidents' be reported to the Director Environment Protection Authority (EPA) and that there is consultation with any affected parties. Further, if the TSO suffers losses as a result of an 'incident', the provisions of the Environmental Management and Pollution Control Act 1994 (EMPCA) should apply regarding offences and compensation.
27. Without an adequate enforcement mechanism, conditions will be worthless for the protection of all other affected parties.
28. Likewise, there is a complaint register established by Schedule 5 **Condition G3** which, is a public complaint register. However, there are no review mechanisms by the Director EPA regarding the manner in which the complaint is resolved and any mitigation measures implemented, and no enforcement provisions attached to this.
29. **Condition CN3** 'Operating Hours During Construction' provides construction is to occur between 0700 hours and 1800 hours Monday to Friday and 0800 hours and 1800 hours on weekends. The TSO's usual operations both with concerts and recordings will occur during these timeframes.
30. There should be a further condition that the Contractor must consult and give notice to the TSO of construction activities in advance particularly of very noisy activities. Further, there be an attempt to reach agreement regarding any alternatives which may be available for scheduling by the Contractor. If this is not possible, then there should be a provision that compensation will be paid to the TSO for its inability to conduct its usual operations or suffering interference to its operations, during those time periods (as detailed at p.13 TSO Representation).

Operational Controls for the continuing operation of the Stadium conditions proposed by TSO

31. There should be specific conditions which set out operational controls to mitigate the serious impacts of noise and vibration to the TSO during the operation of the Stadium once constructed. This should include the following measures:

- a. A detailed set of conditions outlining the limitation on the number and type of events to be conducted at the Stadium;
- b. Conditions for ongoing operation of the Stadium with respect to the emission of noise, vibration and setting limits and times of operation;
- c. Conditions requiring consultation and agreement between the Stadium operators and the TSO regarding scheduling and particularly addressing potential conflicts between the two venues, including mediation processes;
- d. Effective enforcement of these measures by the Director EPA

Draft Permit Conditions

- 32. The current draft Permit conditions do not include any limitations on the number and types of events to be conducted at the Stadium. There are also no conditions relating to the limits for emission of noise and vibration during events at the Stadium.
- 33. The current proposed Permit does not contain any conditions requiring consultation and agreement between the Stadium operators and the TSO regarding scheduling and addressing potential conflicts.
- 34. The only limitation appears to be the hours which are set out at **Condition D2**, but these hours of operation are very wide and will include all operational times for the TSO.
- 35. **Condition D12** provides for an Operational Noise Management Plan.
- 36. This plan must be submitted to the regulator which, at Schedule 8 of the Permit is deemed to be the Secretary for State Growth, in consultation with the Hobart City Council and TasPorts. However, it is not required to be approved. There is no approval mechanism.
- 37. Further, there is no requirement for consultation with the TSO or any other sensitive receiver, and this is obviously critical for appropriate conditions to be set.
- 38. Whilst the conditions of the Operational Noise Management Plan include noise monitoring and a complaints handling response procedure there is no enforcement mechanism. The only measure is that the Plan is "made available to the Secretary of State Growth".
- 39. **Condition D12** states that reference should be made to the findings and recommendations of the 'Noise and Vibrations Assessment', that appears to be the August 2024 assessment which was totally inadequate and did not include any assessment on the specific operations of the TSO.
- 40. There are no enforcement provisions for the operational noise management plan as set out at **Condition D12**. The TSO submits there should be an enforcement process for the Director EPA who has the appropriate expertise to enforce the conditions of a comprehensive Operational Noise Management Plan.
- 41. **Condition D13** provides for 'Post-Occupation Review of Event Operations'. There is a requirement that key stakeholder engagement findings should be reviewed and that this includes third party impacts on their assets or operations. Whilst this includes a number of

bodies, including TasPorts, State Roads, and City of Hobart, it does not include the TSO and it should include the TSO.

Enforcement and Compliance

- 42. The Permit Bill and the draft Permit fail to set out any effective enforcement measures for the Permit conditions.
- 43. Without appropriate enforcement mechanisms, if breaches occur TSO will not have any remedy to recover their losses or to ensure that breaches do not continue.
- 44. The TSO proposes that Director of the EPA is best qualified and best placed to enforce Permit conditions, particularly related to noise and vibration.
- 45. The EMPCA has provisions relating to offences for non-compliance of licence conditions at section 42C subsections 4, 5, 6, 7, 8, and 9, and general enforcement measures are set out as follows:

Part IV – Enforcement Provisions

Division 1 - Information to be Supplied

Division 2 - Environment Protection Notices

Division 3 - Civil Enforcement

Division 4 - General Offences

Division 5 - Environmental Infringement Notices

- 46. There are also powers of authorised officers and council officers set out at Part VII Division 1 and relevant miscellaneous provisions which would be applicable at Part VII Division 2 sections 97, 98, 98AA, 98A, 100, and 101.
- 47. The **Permit Bill** provides at **section 16** that the Minister will be responsible for compliance with permits. With all due respect, this will be a very ineffective and inappropriate compliance measure.
- 48. **Section 17 of the Permit Bill** provides for enforcement of compliance with permit conditions and refers to conditions brought taken to have been issued under a relevant Act and provides that the Act will apply to those conditions as if the Permit had been issued and existed under the provisions of the Act. This provision should apply to Schedule 5 Conditions under the draft Permit as if it were issued under the EMPCA. But otherwise the EMPCA will have no effect for other matters.
- 49. It is unclear as to which provisions of the EMPCA will apply. There is a statement at the end of **Schedule 5 L01 EMPCA** which states that

“The activity must be conducted in accordance with both the conditions in this document and the obligations of the Environmental Management Pollution and Control Act 1994 (EMPCA) and subordinate regulations. The conditions of this document do not replicate legislative obligations; therefore you should ensure you are aware of your obligations under EMPCA and subordinate regulations”.

50. It is however unclear as to which provisions apply under the EMPCA because of the coverage of different activities and licences under that legislation.
51. Further, **section 34 of the Permit Bill** places limitations on rights of appeal and excludes:
- 1(d) all rights in respect of the seeking, granting or enforcement of injunctions under any Act or common law, are extinguished; and
 - 1(e) no other actual proceeding may be brought –
in respect of any permit issued, or anything done, in good faith, under this Act or in accordance with this Act.
 - (2) For the purposes of subsection (1) anything done under this Act or in accordance with this Act, includes any action, decision, process, matter, and thing arising out of or relating to –
 - (a) a term or condition of a relevant permit requiring that a person apply for such other permits, licences or other approvals as may be necessary for the proposed development; or
 - (c) an action, decision, process, matter or thing made, or refused to be made, under another Act as authorised under this Act.

There is ambiguity as to whether these provisions would prevent a prosecution by the Director EPA or a civil claim under the EMPCA by the TSO for losses resulting from a breach of the permit conditions.

Summary

52. Without effective permit conditions the TSO is unlikely to be a sustainable entity.
53. Given the TSO's significant contribution to the culture of our community, and the Tasmanian brand it essential that conditions be put in place to ensure that the TSO is able to continue to operate with a Stadium.
54. It is clear that the current proposed Permit Conditions are totally insufficient and inadequate to ensure this.

Dated 19 June 2025



Audrey Mills
Dobson Mitchell Allport
Lawyers on behalf of the Tasmanian Symphony Orchestra

[Redacted signature area]