

**IN THE MATTER OF THE MACQUARIE POINT MULTIPURPOSE STADIUM INTEGRATED
ASSESSMENT UNDER THE STATE POLICIES AND PROJECTS ACT 1993 (TAS)**

SUBMISSIONS OF THE HOBART CITY COUNCIL

Enforcement of Conditions

The nature of the Project of State Significance approval process

1. The clear intent of the *State Policies and Projects Act 1993* (**SPP Act**) is to, where it is duly considered altogether appropriate to do so, bypass a wide range of legislative planning approval processes and local scheme requirements in order to enable and facilitate projects which are deemed to be of State significance meeting at least two of the criteria identified by section 16(1) of the Act.
2. As the Panel are intimately familiar the consequence is that assessment of the project is deferred to an entirely different process than that ordinarily prescribed¹, ultimately culminating in an order under section 26(6) or 26(8) of the SPP Act. The effect of that order is that a permit, licence or other approval is deemed to have been issued under any Act specified in the order (**deemed permit**) per the following:

27. Effect of order approving project of State significance

(1) Where an order is made under section 26 (6) or (8) –

(a) subject to subsections (2) , (3) and (4) , the project of State significance may proceed on the conditions specified in the order; and

(b) a permit, licence or other approval is deemed to have been issued under the Act specified in the order in relation to each condition, and that Act applies as if such a permit, licence or other approval had been issued on the conditions set out in the order in relation to that Act; and

(c) the agency specified as the agency responsible for the enforcement of each condition must enforce the condition to the extent of its powers.

3. The requirement of the Panel and reflecting section 27(1)(c) of the SPP Act above, is to identify with respect to each condition the agency responsible for enforcing that condition and further that agency is required to enforce the specified conditions *to the extent of its powers* (my emphasis). This raises the question: what are the powers available to enforce any conditions attached to the deemed permit?

What are the enforcement powers of Council?

4. The starting point for consideration of the enforcement powers under the *Land Use Planning and Approvals Act 1993* (**LUPA Act**) is section 63 which relevantly reads:

¹ Noting this process does not extend to approvals required under the Building Act 2016 which will follow the usual approval process under that Act

63. *Obstruction of sealed schemes*

(1)

(2) *A person must not use land in a way, or undertake development or do any other act, that*
–

(a) is contrary to a State Policy or a planning scheme; or

(b) impedes or obstructs the execution of any such scheme; or

(c) constitutes a breach of a condition or restriction of a permit imposed by a planning authority pursuant to any such scheme or a determination of the Appeal Tribunal; or

(d) constitutes a breach of section 60S(1) or of a condition or restriction imposed under section 60ZZP, as amended or corrected, if at all, under section 60ZZW, 60ZZY or 60ZZZ, on a major project permit granted in relation to the land.

5. The mechanism through which the enforcement power is exercised by an authorised officer under the LUPA Act is by issue of firstly a notice of intention to issue an enforcement notice under section 65B (show cause process) and then an enforcement notice under section 65C of the Act.
6. Notably the SPP Act does not create enforcement powers per se, though it does require nomination of agencies responsible for enforcing the conditions imposed.²
7. Critically, section 63 of the LUPA Act does not provide an enforcement framework for an approval granted by way of order made pursuant to section 26 of the SPP Act. Section 63(2) is expressly confined to enforcement of state policies, use or development contrary to a planning scheme, conditions of planning permits imposed by a planning authority *pursuant to any such scheme* or a determination of the Appeal Tribunal or major project permits.
8. While the effect of section 27 of the SPP Act means that the order causes a permit, license or other approval to be deemed to have been issued under the LUPA Act (or any other Act identified) it does not mean that the deemed permit is issued *pursuant to a planning scheme* as referred in section 63(3)(c) of the Act. In fact, a sensible observation of the SPP Act is that it is designed to circumvent the operation of a local planning scheme within the meaning of the LUPA Act (where it is considered altogether appropriate under the SPP Act with reference to a particular project) and therefore any approval granted by order made under the Act is logically not granted pursuant to a planning scheme.
9. Therefore, in our submission notwithstanding an order made under section 26 of the SPP Act may identify conditions be imposed and specify that Council is the responsible authority for enforcing those conditions, there is no proper mechanism by which Council will be able to enforce those conditions.
10. I note that section 63(2)(a) remains relevant if the use or development entirely exceeds the scope of what is authorised by the deemed permit on the basis that the use or development is not protected by the deemed permit if it could otherwise be properly described as use or development is contrary to the applicable planning scheme or State Policy. However, an inherent limitation of this pathway is that it will only capture relatively coarse-grained deviation from the scope of the deemed permit and will not capture matters such as non-compliance with traffic and construction management plans or conservation management plans and the like which are properly regulated by the conditioning power. It is also not going to be of any utility if the deviation from the deemed permit constitutes exempt use or

² See section 26(2)(c) SPP Act

development under the relevant scheme, but the change would have had a material impact on the assessment of the project at first instance and consequential conditions were imposed to limit the extent of the approval on that basis.

11. Accordingly section 63(2) of the LUPA Act should be amended to create an offence for any person who breaches a condition of a section 27 order relating to a project of State significance. The amendment would:
 - a. ensure consistency in how conditions imposed through different statutory pathways are treated
 - b. Ensure consistency in how conditions imposed through different statutory pathways are treated;
 - c. Reinforce the authority and enforceability of section 27 orders;
 - d. Provide a clear statutory basis for compliance action where conditions of a section 27 order are not met;
 - e. Enhance public confidence in the integrity of the project of state significance assessment framework.

What agencies should be given enforcement powers?

12. Somewhat aside from the question of availability of enforcement powers is the question of whether it is appropriate that Council be the enforcement agency for the conditions. If Council are wrong about the extent of powers available under the LUPA Act and enforcement of conditions on the deemed permit may be able to be undertaken pursuant to section 63(2) of the LUPA Act, then in Council's submission as made on 16 June 2025 it is not appropriate that Council are the sole enforcement agency responsible for the conditions on the permit. As noted in that submission, enforcement powers should be explicitly granted to the Minister and relevant agencies.
13. In Council's submission it is appropriate that Council enforce conditions which pertain to impact upon its assets with all other conditions being enforced by the respective agencies responsible at a state level for the matters which concern them.
14. In our submission it is evidently the policy intent envisioned by section 27(1)(a) and (b) that there will be a multi-agency approach to the enforcement of conditions of a deemed permit. This is reflected in the nature of the SPP Act overall, which contemplates complex, multi-faceted projects involving a range of environmental, planning, infrastructure, heritage and regulatory considerations. It is quite plain that in part the purpose of the SPP Act is to displace the ordinary framework in circumstances where the ordinary approval structures and pathways would be overwhelmed from an assessment and regulatory perspective. It is through this lens that the element which enables the designation of multiple agencies for the purposes of enforcement of the conditions should be considered.
15. I note during the hearing it has been contemplated whether more than one agency could be made responsible for certain conditions. In our submission it is open to specify more than one agency as responsible for the enforcement of conditions under sections 26 and 27 of the SPP Act notwithstanding the use of the singular term "the agency" in those provisions.
16. Section 24(d) of the *Acts Interpretation Act 1931 (Tas)* (**AI Act**) expressly provides that words in the singular shall include the plural and words in the plural shall include the singular. There is no contrary intention expressed in sections 26 or 27 of the SPP Act that would displace the operation of section 24 of the AI Act. The purpose and context of the

legislation, which in fact supports the interpretation that multiple agencies may appropriately be assigned responsibility for different conditions.

17. The use of the singular “the agency” is therefore not limiting and does not preclude more than one agency being specified across different conditions, or even jointly for the same condition where functions may overlap.
18. It is our position that more than one agency *may* be specified under section 26 the SPP Act as responsible for particular conditions, and that section 27(1)(c) of the SPP Act authorises each such agency to enforce those conditions to the extent of their respective powers.
19. However, in our submission it is not appropriate for multiple enforcement agencies to be specified for individual conditions under sections 26 and 27 of the SPP Act. Where enforcement responsibility is split across multiple agencies, it introduces ambiguity as to who is accountable for enforcement and risks inconsistent or ineffective compliance monitoring. In our submission the potential benefit of having multiple agencies specified for the enforcement of a single condition is simply outweighed by the potential risks.
20. It is noted that other agencies have raised concerns that if they are solely designated as responsible for enforcement of certain conditions that they lack the specific powers to do so under their respect legislative regimes. Assuming that Council are wrong about the problematic limitation on enforcement under the LUPA Act, the powers under the Act are exercised by authorised persons by the following structure:

3. Interpretation

(1) In this Act, unless the contrary intention appears –

...

authorised officer means a person who, under section 65I , is, or is authorised to be, an authorised officer;

65I. Authorised officers

(1)

(2) A general manager of a council may authorise a person to be, for the purposes of this Act, an authorised officer in respect of the municipal area of the council.

(3) A general manager of a council is, for the purposes of this Act, an authorised officer in respect of the municipal area of the council.

(4) An authorised officer in respect of the municipal area of a council may only exercise a power of an authorised officer under this Act for the purposes of the administration or enforcement of this Act in relation to land within the municipal area.

(5) A police officer is an authorised officer for the purposes of this Act.

21. LUPA Act creates a clear statutory mechanism by which the General Manager can extend enforcement capacity beyond council staff, where doing so supports the administration and enforcement of LUPA Act.
22. In the event that the Panel form the view that is appropriate that agencies other than the Council ought be responsible for enforcing certain conditions and the consequential order made per section 26 of the SPP Act reflects that recommendation, Council proposes that the General Manager will, where appropriate, authorise officers from others agencies as

authorised officers under section 63A(2) of the LUPA Act, or the purpose of monitoring and enforcing compliance with project conditions.

23. This approach will support effective, coordinated compliance and ensures that conditions are monitored and enforced by those with relevant subject-matter expertise, consistent with public expectations of regulatory oversight.

9 July 2025