

INQUIRY INTO TRANSPORT ASSET HOLDING ENTITY

Organisation: Transport Asset Holding Entity of NSW (TAHE)

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Transport Asset Holding Entity of New South Wales Submission

Public Accountability Committee
Inquiry Into the Transport Asset Holding Entity of
New South Wales

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1. Introduction

The Transport Asset Holding Entity of New South Wales (**TAHE**) was established as a statutory State-Owned Corporation on 1 July 2020, and assumed ownership of all of RailCorp's asset base, including rail infrastructure, rolling stock, stations and facilities, plant and equipment and real property.

TAHE has been established with safety as a key corporate objective and legislative duty and will provide safe, reliable rail assets, driving economic growth through precinct investment and innovative solutions that enhance communities.

TAHE holds two classes of assets, namely regulated assets and unregulated assets.

TAHE's regulated assets as of 30th June 2021 include:

- Rail Infrastructure (including track)
- Corridor Land
- Electrified network
- Rail Signalling systems
- Assets under construction
- Network control, intangibles

TAHE's non-regulated assets as of 30th June 2021 include:

- Stations and facilities
- Rolling stock
- Depots and yards
- Land
- Assets under construction
- Systems, intangibles, plant

This provides a duality to the TAHE business model whereby in the regulated space, TAHE fulfils an assurance role, with our primary tool being audit of operator & maintainer. In the unregulated space, TAHE looks to develop underutilised assets within an extensive property portfolio for commercial return.

TAHE is governed by an independent Board that brings best practice, industry expertise and governance experience. TAHE must comply with governance and standards which ensure that commercial imperatives are not prioritised over the safety and reliability of its assets.

The establishment of TAHE has strengthened the governance and assurance mechanisms for the safe operation and maintenance of the NSW rail network. Sydney Trains and NSW TrainLink will continue to run day to day customer services and operations, and Transport for NSW will continue to determine the level and frequency of rail services.

2. Response to the Terms of Reference

2.1 Establishment of the Transport Asset Holding Entity

The creation of a TAHE as a dedicated transport asset manager, established new arrangements for transport asset management in New South Wales that reflects modern governance and financial practices. It achieved this mainly by amending the Transport Administration Act to support the consolidation of transport asset ownership and development of a TAHE by optimising the existing transport asset base to enable a more effective, efficient and commercial approach to the management of transport assets, particularly property; allowing transport operating entities to focus on their core functions of operating transport services and delivering improved customer service; and delivering on capital and recurrent budget targets.

In the 2015-16 Budget, the Government announced the creation of TAHE to manage the State's portfolio of transport assets in a more commercial way. Legislation to establish TAHE, namely the Transport Administration Amendment (Transport Entities) Act 2017 (**TAHE Act**) was introduced to Parliament in March 2017 and assented to on 11 April 2017. The TAHE Act was divided into two Schedules, each to commence on a date to be proclaimed.

On 1 July 2017, Schedule 1 of the TAHE Act commenced and the following key amendments were made to the Transport Administration Act:

- Sydney Trains and NSW Trains became stand-alone Government agencies and were no longer subsidiaries of RailCorp; and
- RailCorp’s functions were expanded to enable it to “hold, manage, operate and maintain” transport assets more generally and not be confined to just “rail infrastructure facilities”.

On 1 July 2020, Schedule 2 of the TAHE Act commenced and the following key amendments were made to the Transport Administration Act:

- RailCorp was re-named, Transport Asset Holding Entity of New South Wales and converted from a government agency to a statutory State Owned Corporation;
- The Treasurer and the Minister for Finance and Small Business became the shareholders of TAHE;
- An independent Board of Directors was appointed to TAHE, including the Transport Secretary; and
- The Minister for Transport and Roads was given the power to grant one or more operating licences to TAHE which were to be used to regulate the functions of TAHE.

2.2 Legislative Functions

The Transport Administration Act 1988 sets out the 5 principal objectives of TAHE which are:

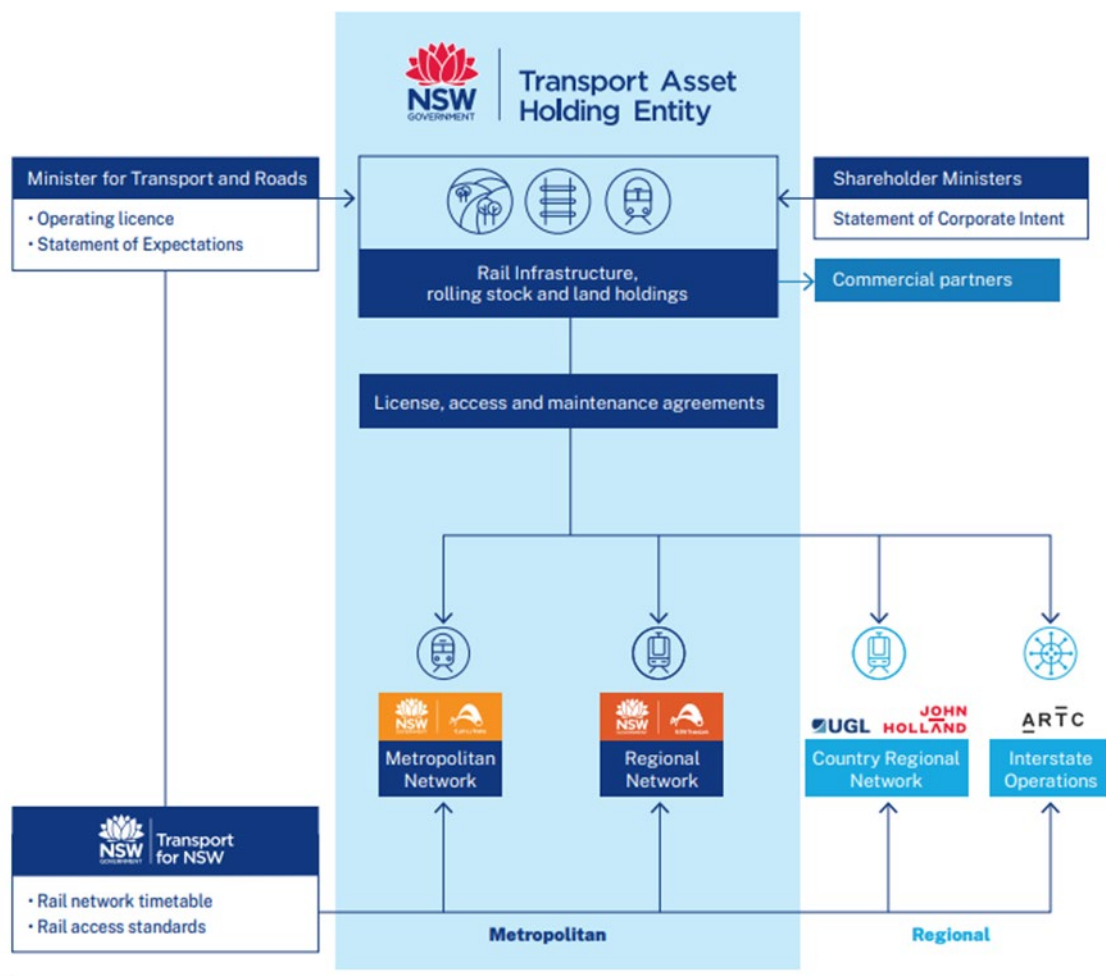
- (1) to undertake its activities in a safe and reliable manner,
- (2) to be a successful business and, to this end:
 - a. to operate at least as efficiently as any comparable businesses,
and
 - b. to maximise the net worth of the State’s investment in TAHE;
- (3) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates;

- (4) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6(2) of the Protection of the Environment Administration Act 1991; and
- (5) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.

Importantly, each of the 5 objectives are of equal importance.

2.3 TAHE Operating Model

The TAHE Operating Model depicted below, is underpinned by a Statement of Expectations and a range of new operating agreements as outlined in section 2.6.



2.4 TAHE Operating Licence

TAHE's operating licence is granted by the Minister for Transport and Roads and authorises TAHE to perform various functions which enables TAHE to strategically manage its assets to achieve its five objectives as outlined in the *Transport Administration Act 1988*. On 1 July 2021 the Minister for Transport and Roads issued TAHE with a new Operating Licence. Some of the key terms include:

- Term is for 2 years (1 July 2021 – 30 June 2023).
- In exercising its functions, TAHE is to have regard to safety integrity and the policies and objectives of the NSW Government in relation to integration of transport modes.
- TAHE must comply with the Asset Standards Requirements.
- TAHE must not carry out railway operations (as defined in the Rail Safety National Law) unless it has the written approval of the Minister.
- TAHE must not operate a Transport Service unless it has the written approval of the Minister.
- TAHE must not carry out maintenance of Transport Assets vested in or owned by it, or to be vested in or owned by it. TAHE must have in place arrangements with Sydney Trains, NSW Trains and third party operators to maintain the Transport Assets that are the subject of their respective access, licence, and operate and maintain agreements.
- TAHE must continue to work towards delivery of a list of Ongoing Projects in accordance with the relevant Cabinet approvals and the endorsed treatment of in-flight infrastructure and development projects.

2.5 Statement of Expectations

With effect from 1 July 2021, the Minister for Transport and Roads issued TAHE with a Statement of Expectations which provided TAHE with a list of asset, safety and environmental outcomes that TAHE is expected to take into account, these include:

- (a) maintain a robust assurance framework that provides sufficient oversight and assurance that assets are being managed in line with safety legislation requirements and asset management standards and that assets are performing to standards, lifecycle performance objectives, and are compliant with service objectives and long term strategy;
- (b) provide the Minister for Transport and Roads with annual reporting against asset safety and safety management outcomes;
- (c) provide an annual statement of how TAHE is meeting and balancing each of its principal objectives in the Transport Administration Act; and
- (d) fund, invest and deliver Transport Assets as prioritised by NSW Government to achieve customer and community outcomes aligning to Future Transport 2056 objectives.

2.6 TAHE Operating Agreements

A suite of new legal agreements have been executed and took effect on 1 July 2021 between TfNSW, TAHE, Sydney Trains and NSW Trains, to reflect the TAHE Operating Model across rail operations, track access, licence, agency and maintenance, project and property development, and corporate services.

These included:

- Sydney Trains and NSW Trains Rail Operations Agreements;
- TAHE Metropolitan Network Track Access Agreements (Sydney Trains and NSW Trains);
- Licence, Agency and Maintenance Deed;
- Project and Property Development Deed;
- Corporate Services Agreement; and
- Services Contract between Sydney Trains and NSW Trains.

A brief overview of each of these agreements is set out below:

2.6.1 Rail Operations Agreements (ROA)

There are separate Rail Operations Agreements between TfNSW and Sydney Trains and TfNSW and NSW Trains. Each of the Rail Operations Agreements detail the roles and responsibilities between TfNSW and Sydney Trains (under the ST ROA) and TfNSW and NSW Trains (under the NSW ROA) in relation to rail operations, including rail passenger services and bus services, network control, customer services, marketing and communication, timetabling, ticketing and revenue protection and security.

2.6.2 Track Access Agreements

Metropolitan Network Access Agreements

On 1 July 2021, TAHE entered into separate Access Agreements with Sydney Trains and NSW Trains under which TAHE provides each party access to the Metropolitan Rail Network (together with all regulated assets). These Track Access Agreements provide the access rights granted to each party and the terms and conditions of such rights.

Country Rail Network (CRN) Access Agreements

TAHE has separate Access Agreements in place with Sydney Trains and NSW Trains in respect of the Country Regional Network (CRN) which were due to expire on 30 June 2021. Those agreements were extended for a further 2 year period to 30 June 2023.

Access Agreements with 3rd Party Rail Operators

TAHE has in place a number of Access Agreements with third parties in relation to access to the Metropolitan Network and the CRN. All of these existing Access Agreements were due to expire on 30 June 2021 and were rolled over on a month to month basis, for a maximum of 3 additional months, to 30 September 2021.

TfNSW (as TAHE's agent) is leading negotiations with these third party rail operators as the intention is to enter into new access agreements with each of these third party operators.

2.6.3 Licence, Agency and Maintenance Deed (LAM Deed)

On 1 July 2021, TAHE, TfNSW, Sydney Trains and NSW Trains entered into the LAM Deed. The LAM Deed deals with the following:

- TAHE's licence of certain real and personal property assets to Sydney Trains, NSW Trains & TfNSW;
- TfNSW's licence of certain real property assets to Sydney Trains;
- Arrangements for the maintenance of TAHE assets by Sydney Trains to TfNSW standards;
- TAHE's appointment of Sydney Trains as agent to manage various arrangements with third parties; carry out various agency services and administer the Airport Link contract;
- TAHE's appointment of TfNSW as agent to manage various arrangements with third parties, carry out various real property services, administer the CRN O&M arrangements and acknowledging the existing agency arrangements under the Master Heritage Asset and Custody Management Agreement; and
- TAHE's appointment of TfNSW and Sydney Trains as agents in relation to third party access to the TAHE Metropolitan Network.

2.6.4 Project and Property Development Deed (PPDD)

On 1 July 2021, TAHE and TfNSW entered into the PPDD. This deed deals with the ongoing roles and responsibilities of TfNSW and TAHE with respect to capital projects, which are characterised as either in-flight projects or future projects.

2.6.5 Corporate Services Agreement (CSA)

On 1 July 2021 TAHE, TfNSW and Sydney Trains entered into the CSA. The CSA details the arrangements for the delivery of corporate services by TfNSW and Sydney Trains to TAHE.

2.6.6 Services Agreement between Sydney Trains and NSW Trains

The Services Agreement is between Sydney Trains and NSW Trains and details the arrangements under which Sydney Trains and NSW Trains will provide various services to each other, in particular Rolling Stock Maintenance Services; Facilities Maintenance Services; and Other operational and support services.

2.7 Safety and Asset Maintenance

Decisions about assets, including maintenance and delivery, are subject to the same robust safety standards required for NSW regulated rail assets that existed prior to the establishment of TAHE. TAHE's assets will continue to be safely managed, operated and maintained by TfNSW, Sydney Trains, NSW Trains and private operators.

The Office of the National Rail Safety Regulator will continue to have oversight of the regulatory arrangements for heavy rail assets.

Whilst TAHE is the asset owner of the Metropolitan Rail Network and the Country Regional Network (**CRN**), in addition to rolling stock, TAHE does not have effective operational control and management of rail infrastructure or operation of rolling stock for a railway.

TAHE is required to operate within the remit of an Operating Licence issued by the Minister for Transport and Roads and must not carry out railway operations (as defined in the Rail Safety National Law (**RSNL**)), must not operate a Transport Service and must not carry out maintenance of Transport assets (other than by having in place arrangements with third parties to maintain such Transport assets).

Sydney Trains, NSW Trains and the CRN private operator are the Rail Transport Operators under the RSNL responsible for the maintenance of TAHE rail assets. These entities are accountable for informing the resource prioritisation and funding requirements for all maintenance, including routine maintenance and major periodic maintenance of railway infrastructure and rolling stock to provide safe, fit for service asset condition over time.

The establishment of TAHE has added another level of governance and a third line of assurance to critically assess that risk exposures are appropriately controlled and that TfNSW, Sydney Trains, NSW Trains and private operators are complying with their legislative safety obligations, technical asset standards and contractual requirements to operate a safe and reliable rail network.

TAHE Asset, Safety and Environment sub-committee of the Board has been set up to support TAHE, its Board and its executive exercise due diligence obligations and accountabilities. The Asset Safety and Environment Committee has appointed an independent member with expertise in heavy rail asset management and safety leadership to oversee TAHE assets are safe and reliable under the management, maintenance and operation of third parties

TAHE's independent audit partner WSP, has been appointed and is executing the 2021-2022 Asset Safety and Environment Internal Audit Plan

2.8 TAHE Governance Arrangements

2.8.1 TAHE Board

The TAHE Board is comprised of:

- Bruce Morgan, Chair;
- Anne McDonald (Chair of Audit & Risk Committee);
- Trevor Bourne (Chair of Asset Safety & Environment Committee);
- Rob Sharp (Transport Secretary); and
- Benedicte Colin (Chief Executive Officer of TAHE).

The Board is highly experienced with members having served on a variety of public and private company boards, including experience across a broad range of infrastructure organisations.

2.8.2 TAHE Board Committees

The TAHE Constitution provides that the Directors may delegate any of their powers (other than those which by law must be dealt with by the Directors as a Board) to a committee or committees.

Each Committee acts in accordance with a charter approved by the Board setting out matters relevant to the composition, responsibilities, authority and reporting of the Committee.

The TAHE Board currently has three Committees:

- Audit and Risk Committee
- Asset, Safety and Environment Committee
- Remuneration and Nominations Committee.

The Asset, Safety and Environment Committee has also appointed an independent member with relevant expertise in asset management and rail safety leadership.

2.9 TAHE Commercial and Property

There are currently a number of in-flight projects (that is, projects where funding and scope has been approved as at 30 June 2020) where TAHE has appointed TfNSW as principal to deliver. TfNSW is responsible for delivering these projects according to existing funding arrangements and is required to manage all project and portfolio risks associated with those projects.

In relation to future transport infrastructure projects (that is, projects where transport infrastructure is a material component of a commercial development), TfNSW is responsible for developing the long term transport strategy across all transport modes, including multi modal prioritisation of NSW strategic initiatives. TfNSW is required to consult with TAHE during business case development to ensure that commercial opportunities are sufficiently explored.

In relation to other commercial development projects, TAHE will be accountable and responsible for those projects. TAHE will however consult with the government and its shareholders in the development of the relevant commercial strategy, which will be agreed as part of the Statement Corporate Intent and

Business Plan. TAHE will work with TfNSW and other commercial providers in the medium term to maximise outcomes for the State in line with the agreed business plan.

TAHE has appointed TfNSW to leverage off its existing expertise to lead various major commercial projects including the development of the Redfern North Eveleigh Precinct and the Central Station Renewal Program. TAHE over time will continue to collaborate with TfNSW and other commercial parties to improve Transport outcomes for NSW.

3. Conclusion

As outlined at the beginning of this submission, having been established on 1 July 2020, TAHE is only at the beginning of its journey. As the organisation grows and matures, TAHE will add value to the community by:

- Independently assuring that the assets are being maintained in line with TfNSW's standards.
- Adopting a whole of lifecycle approach to asset management to ensure that investment maximises value for money.
- Focussing on and accelerating development opportunities across its property portfolio to enhance liveability, productivity and sustainability outcomes around its stations.
- Developing complimentary revenue streams across the network that makes Transport more sustainable in the future.