

## **INQUIRY INTO TRANSPORT ASSET HOLDING ENTITY**

**Organisation:** KPMG

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11 November 2021

Dear Committee Secretary,

### **Public Accountability Committee Inquiry into the Transport Asset Holding Entity**

KPMG Australia (KPMG) supports the work of the Public Accountability Committee and its Inquiry into the Transport Asset Holding Entity (TAHE).

This submission provides important context around KPMG's advisory work for the New South Wales Government in relation to TAHE, particularly after the hearing of the Inquiry held on 8 November 2021. We are concerned that evidence provided to the Committee on that day by a former KPMG Partner may have left Committee members with a perception of KPMG's role in this matter that was incorrect and indeed, unfair. The evidence, provided under parliamentary privilege, was misleading, either by omission or design as part of a campaign of misinformation.

KPMG has made it clear it supports its people and firmly stands by the independent advice provided to the NSW Government on matters related to TAHE. We have strongly rejected the allegations of wrongdoing made by the former KPMG Partner Mr Brendan Lyon. Furthermore, KPMG recognises it holds a privileged position as a trusted adviser to the NSW Government and understands our support is often sought by public sector clients because our professional teams are able to offer deep expertise and objective advice on complex matters.

The establishment of the TAHE has been a multifaceted project that represents the culmination of almost a decade of a work across many government agencies. First flagged in the 2013-14 Half-Yearly Review, the NSW Government formally announced the initiative as part of the 2015-16 Budget and enabling legislation then followed.

In line with Government policy, the NSW Department of Premier and Cabinet, NSW Treasury and Transport for NSW were involved in a collaborative process to achieve TAHE's successful commissioning and have been seeking KPMG's advice on various matters during the process. It is important to state that, at all times, KPMG recognises the need to prioritise the interests of the NSW Government and the NSW community ahead of the discrete priorities or demands of individual departments. We also understand it is not unreasonable to expect that, on occasion, different elements within the machinery of government might disagree on important matters of public policy, or in fact seek their own advice.



KPMG celebrates having a diverse set of experienced and highly skilled partners - reasonable and intelligent minds often differ on important matters of public policy. With all of our clients, we firmly believe the consideration of contested views and alternative approaches will often lead to stronger outcomes.

To assist the Committee, this submission addresses the misinformation contained in the 8 November 2021 hearing on a verifiable basis. This is not about criticising individuals. Rather, we are focused on ensuring the Committee has a complete set of facts. KPMG does not make this submission lightly. However, given the most serious nature of the allegations raised in the hearing about KPMG, our people, our processes and our clients, we felt that it was wrong to leave baseless claims unchallenged.

### *KPMG TAHE engagements*

The facts are that we undertook specific and distinct projects regarding TAHE in 2020 that were the subject of discussion under parliamentary privilege on 8 November 2021.

Together with their respective KPMG teams, the engagements called upon the public policy background of Mr Lyon, then working in our Infrastructure and Projects practice, and the well credentialed accounting and reporting expertise of KPMG Partner Ms Heather Watson in our CFO Advisory services team.

- 1 In April 2020 KPMG entered into an agreement with Transport for NSW to provide TAHE with **Operational and Accounting Advice**. This engagement brought together the expertise of both Mr Lyon and Ms Watson. Mr Lyon was responsible for maintaining the primary relationship with Transport for NSW and led the engagement, whereas Ms Watson provided accounting expertise. In May 2020, Mr Lyon delivered this report to Transport for NSW.

In late May 2020 Transport for NSW sought further advice from Mr Lyon and did not seek further advice from Ms Watson. Ms Watson would continue to be retained to provide ongoing accounting advice to NSW Treasury on TAHE matters.

- 2 In June 2020, KPMG was engaged by Transport for NSW to assist in developing a future long-term operating and financial model for TAHE (**Operating and financial model report**). Mr Lyon led this engagement and KPMG's Lead Partner for Planning and Infrastructure Economics Mr Paul Low was appointed as the engagement quality control review partner. Transport for NSW indicated to Mr Lyon that the report did not require an accounting element. As a result, Ms Watson was not involved in the development of the report.
- 3 In October 2020, KPMG's CFO Advisory services team was engaged by NSW Treasury to assist in the development of a Financial Impact Statement for TAHE (**Accounting report**). This piece of work included the provision of accounting advice in line with the Government's framework of budgetary reporting, as well as



an assessment on the reasonableness of the NSW Treasury assumption as they relate to TAHE. Ms Watson led this engagement, and a partner was appointed as the engagement quality control reviewer.

These projects were in addition to the TAHE cost and access pricing model (CAPM) which was awarded in 2016-17 and subsequently updated in February 2021, and the TAHE Financial Model in August 2017. The **Accounting report** was a continuation of ongoing work being provided by KPMG. For further detail please see the Appendix for the timeline of engagements.

The **Accounting report** was provided to NSW Treasury on 3 November 2020. The **Operating and financial model report** was provided to Transport for NSW on 8 November 2020.

Following the delivery of the reports, KPMG was asked to clarify how each report operated together. KPMG confirmed that both reports provided objective information, with the **Operating and financial model report** providing a long-term operating model and financial model for TAHE and the **Accounting report** providing advice in relation to the reasonableness of the assumptions used in preparing the Financial Impact Statement for budgetary reporting purposes. KPMG stands by both reports.

#### *Alleged conflict of interest*

KPMG has well-established processes in place to manage any potential conflicts. At all times, we have acted in an appropriate and ethical manner in providing independent advice to our clients on these matters. KPMG notes that there was a mistaken belief that the preliminary views in the reports detailed above were contradictory. KPMG strongly asserts that they were not. This has erroneously been referred to as a conflict of interest.

To avoid overlap with the **Operating and financial model report**, the **Accounting report** expressly did not include longer-term considerations as to TAHE's operating model and commerciality. Instead, the approach considered existing facts and contemporary data against the relevant requirements of the relevant financial and budgetary reporting frameworks and standards.

During 2020 and 2021, KPMG undertook several actions to ensure that independent and ethical advice was provided to our clients including:

- 1 In late May 2020, KPMG established a Conflicts Oversight and Governance Committee (**COGC**) and its first meeting was held in early June 2020. The COGC was led by three KPMG Partners with the express aim to effectively and proactively manage the risk of real or perceived commercial conflicts which may emerge through work undertaken by one or more KPMG teams working with different NSW Government agencies on the creation and operationalisation of TAHE. The COGC



did not have a Chair, as was alleged in evidence provided to the Committee by Mr Lyon on 8 November 2021.

- 2 A 'rapid review' by three partners with relevant expertise not working on the projects regarding TAHE was conducted in November 2020. Again, based on the key findings of the review, KPMG determined that the engagements had different scopes, were for different purposes and were not in conflict with each other.
- 3 An internal client acceptance, conflicts and relationship review was conducted in May 2021. It examined the effectiveness of conflict checking procedures and the rationale for acceptance of each engagement. The review found that internal risk management processes were completed and no deficiencies were found.

While the above reviews found no conflict, it was found that KPMG had a mindset that the two departments within the same state government represented a single client. This was addressed and subsequent training on effective management of inter-agency relationships has been delivered to government sector engagement leaders by KPMG Risk Management Partners since July 2020.

#### *Safety of the TAHE operating model*

The **operating and financial model report**, nor indeed any of KPMG's reports, did not include scope to provide advice around the safety of the TAHE operating model. Safety assessments are clearly the responsibility of the appropriate regulators. The engagement teams for any project covered in this response did not include qualified rail safety experts and therefore KPMG does not hold a view regarding the safety of the TAHE operating model. Any claims regarding safety from Mr Lyon do not reflect advice that KPMG was authorised or credentialed to provide under the engagement parameters at the time.

#### *Allegations of bullying and harassment*

KPMG takes matters relating to bullying and harassment most seriously, the firm proactively encourages its people and partners to call out any instances of inappropriate conduct and poor behaviour so any such matters can be addressed immediately. These actions are enshrined in the firm's Global Code of Conduct which guides all KPMG people in setting out a clear process for anyone seeking advice or wanting to report inappropriate or unethical behaviour. This process is regularly updated and communicated to our people including through KPMG training programs. In addition, and to make it easier for our people to raise issues, KPMG in Australia has established a range of internal systems to facilitate complaints, including via anonymous and third-party options.



### *Conclusion*

KPMG well understands its roles and responsibilities in supporting NSW Government agencies. KPMG has not, at any time, advocated a policy position with respect to TAHE. That rightly remains a decision for the NSW Government. We emphasise that our role is to provide objective information and advice to agencies on TAHE matters and we continue to meet that need.

We are committed to continuing to engage in a constructive manner with the Public Accountability Committee on the Inquiry process.



Appendix: Timeline of KPMG engagements

To assist in the establishment of the facts, KPMG has prepared the below timeline of relevant engagements in relation to TAHE.

Date	Engagement	Action	Description
2016	Transport for NSW	Engagement Contract	<p>Reference: TAHE CAPM Model</p> <p>KPMG won a competitive tender with Transport for NSW in 2016 to develop a cost and access pricing model (CAPM). KPMG created a suite of six models that collectively generate maximum allowable revenue amounts in respect of parts of the NSW rail networks.</p> <p>That model was developed and provided to Transport for NSW in 2017, after which it belonged to them.</p>
August 2017 – December 2018	Transport for NSW	Engagement Contract	<p>Led by: CFO Advisory services. Engagement team included Ms Watson</p> <p>Reference: TAHE Financial Model</p> <p>Successful in a competitive process. Commenced work in August 2017 – completed end of 2018.</p> <p>Scope that included:</p> <p>Provision of accounting and taxation advice on a range of scenarios</p>



			Development of a detailed financial model that reflected accounting and taxation assumptions across those scenarios.
<b>20/03/2019</b>	Treasury	Engagement Contract	Lead Partner: Ms Watson Reference: New Accounting Standards
<b>3/02/2020</b>	Treasury	Work commenced on Fiscal risk management strategy for Transport Asset Holding Entity (TAHE) Project	Lead Partner: Ms Watson Reference: Fiscal risk management strategy for Transport Asset Holding Entity (TAHE) Project
<b>14/04/2020</b>	Transport for NSW	Engagement Letter (preceding formal contract)	Lead Partner: Mr Lyon (engagement involved Ms Watson) Reference: Operational and Accounting Advice
<b>17/04/2020</b>	Treasury	Engagement Contract ( <i>work having commenced on 3 February 2020; proposal issued 12 February 2020</i> )	Lead Partner: Ms Watson Reference: Fiscal risk management strategy for Transport Asset Holding Entity (TAHE) Project
<b>11/05/2020</b>	Transport for NSW	Engagement Contract	Lead Partner: Mr Lyon (engagement involved Ms Watson) Reference: Operational and Accounting Advice
<b>18/05/2020</b>		Report issuance	TAHE Initial assessment of options





			Lead Partner: Mr Lyon (engagement included Ms Watson)  Reference: Operational and Accounting Advice
<b>4/06/2020</b>	Transport for NSW	Contract variation (variation of the Operational and Accounting Advice contract)	Extension of fees and timing  Lead Partner: Mr Lyon  Reference: Operating and financial model report
<b>1/07/2020</b>	TAHE	Established	TAHE established as a State Owned Corporation
<b>3/11/2020</b>	Treasury	Report issuance	TAHE Assessment of assumptions used for accounting estimates  Lead Partner: Ms Watson Reference: Accounting report – issued under Fiscal risk management strategy for Transport Asset Holding Entity (TAHE) Project
<b>8/11/2020</b>	Transport for NSW	Report issuance	TAHE: Long-term operating model assessment  Lead Partner: Mr Lyon Reference: Operating and financial model report
<b>10/03/2021</b>	TAHE	Engagement Contract	Lead Partner: Ms Watson  TAHE – CAPM update 2021