

**REPORT ON PROCEEDINGS BEFORE**

**PUBLIC ACCOUNTABILITY COMMITTEE**

**TRANSPORT ASSET HOLDING ENTITY**

**CORRECTED**

**At Macquarie Room, Parliament House, Sydney on Monday, 15 November 2021**

**The Committee met at 9:30 am**

**PRESENT**

Mr David Shoebridge (Chair)

Ms Abigail Boyd  
The Hon. Scott Farlow  
The Hon. John Graham  
The Hon. Trevor Khan  
The Hon. Daniel Mookhey  
The Hon. Peter Poulos

\* Please note:

[inaudible] is used when audio words cannot be deciphered.

[audio malfunction] is used when words are lost due to a technical malfunction.

[disorder] is used when members or witnesses speak over one another.



**The CHAIR:** Welcome to the third hearing of the Public Accountability Committee inquiry into the Transport Asset Holding Entity, otherwise known as TAHE. Before I commence I acknowledge the Gadigal people, who are the traditional owners of the land on which this Parliament sits. I also pay our collective respects to their Elders past, present and emerging. Today we will be hearing from Ms Heather Watson and Mr Paul Low, partners at KPMG Australia, as well as Mr Rodd Staples, the former secretary of Transport for NSW. I thank each of the witnesses for making themselves available to give evidence about this important matter.

I would like to make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live by the Parliament's website and a transcript of today's hearing will be placed on the Committee's website when it becomes available. I note in that regard there is some delay in relation to Hansard and we will make it available as soon as possible. In accordance with the broadcasting guidelines, media representatives are reminded to take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to what witnesses say in their evidence today, it does not apply to what witnesses say outside the hearing following the conclusion of their evidence. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, I urge all witnesses to stick to the issues rather than the personalities in today's hearing.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and would like more time to respond, they may take a question on notice. Written answers to questions on notice are to be provided within 21 days. If witnesses wish to hand up a document or if they are to receive a document, that will occur through the Committee staff who are here to assist. With reference to audibility today, I remind Committee members and witnesses to speak into the microphone as clearly as they can. I also urge everybody, if they have not already, to put their mobile phones on silent for the duration of the hearing.

**HEATHER WATSON**, Partner, KPMG Australia, affirmed and examined

**PAUL LOW**, Partner, KPMG Australia, before the Committee via videoconference, affirmed and examined

**The CHAIR:** Thank you very much for coming today. You now have an opportunity, if you wish to take it, to give a brief opening statement. Am I looking to you, Ms Watson, for that?

**Ms WATSON:** Thank you, Chair. We will both give an opening statement; it will be brief. My name is Heather Watson, I am the national public sector lead for KPMG's CFO Advisory practice and focus most of my service delivery on New South Wales agencies. I support government agencies on their reporting. While this is generally related to financial and budgetary reporting at the whole-of-government level, from time to time it can extend to non-financial reporting and to information to meet the needs of internal stakeholders. I have more than 25 years' accounting and auditing experience, with significant expertise in public sector reporting that includes a decade at the NSW Audit Office.

In my advisory roles I have directly supported the New South Wales Parliamentary Budget Officer with his work on State budget and forward estimates projections. During my professional career I have worked with and led multidisciplinary teams serving various agencies and sectors across multiple jurisdictions. I have a Bachelor of Commerce from the University of New South Wales and I am a chartered accountant. I am a Fellow of Chartered Accountants Australia and New Zealand and have held various governance roles over the past decade within this organisation, including chair and vice chair of the State Council and being elected to an international role representing New South Wales' 30,000 members in member oversight of the Chartered Accountants Board.

I have also over my career developed materials for the Chartered Accountants Program, a globally recognised industry qualification, including the provision of public sector specific content. I have worked collaboratively with New South Wales agencies on the establishment of TAHE since 2017. There has been significant focus on TAHE accounting in recent times and I am hopeful that in our discussions today I can assist the Committee with its important work. Thank you, Chair.

**The CHAIR:** Thanks very much, Ms Watson. Mr Low.

**Mr LOW:** Thank you, Committee Chair, and thank you members for the opportunity to join you this morning. My name is Paul Low and I lead KPMG's National Infrastructure, Government and Healthcare industry group. I am also a partner in our Infrastructure, Assets and Places division within KPMG. I am in Brisbane. I have more than 25 years' experience in transport and infrastructure policy and planning, urban planning and economic development and wider public policy at the State and local government level, as well as time in the corporate sector with a major infrastructure asset owner and operator.

Prior to joining KPMG 11 years ago I held senior executive roles in the Queensland and New South Wales public services in the areas of transport and roads, planning and infrastructure, economic development and Premiers and Cabinet. I am aware I was referenced in the evidence provided by Mr Lyon on 8 November 2021 and my responsibilities cover a number of the areas canvassed by the Committee today. Given my credentials and understanding of the subject matter raised in evidence to the inquiry, I trust I can be of assistance to your work today. My role with respect to KPMG's work involving TAHE was as the Engagement Quality Review Partner, or the "second partner" in mid-2020 to finalisation of KPMG's report to Transport for NSW [TfNSW] in November 2020. My role was to provide support to our team and Mr Lyon in his engagement with TfNSW, and to ensure the engagement was completed as per the scope agreed with TfNSW and in line with KPMG's standards and expectations.

In addition, although not a founding member, I was invited to attend the Conflicts Oversight and Governance Committee. [COGC]. The oversight committee 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 the work undertaken by one or more of KPMG's teams working with New South Wales government agencies. I thank the Chair for the opportunity to provide an opening statement and welcome any questions.

**The CHAIR:** Thank you both for your brief opening statements. We will commence questioning through the Opposition. Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** Thank you, Chair, and thank you, Ms Watson, for your attendance today and also thank you, Mr Low, for joining us today as well, which I understand you did at relatively short notice. It is of great assistance to the Committee to have both of you here today as well. Do you have a copy of the submission that KPMG put in to the inquiry with you right now?

**Ms WATSON:** That is correct, Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** I understand that in this submission you set out a chronology of KPMG's involvement. I am referring specifically to page 2 in which KPMG says that in April 2020 you entered into an agreement with Transport for NSW to provide TAHE with operational and accounting advice. Do I read that correctly?

**Ms WATSON:** That is correct.

**The Hon. DANIEL MOOKHEY:** Then equally you say, in June 2020 KPMG was engaged by Transport for NSW to assist in developing a future long-term operating and financial model. That is the second request that was made to KPMG?

**Ms WATSON:** That is what our submission states. It was not the second request; there were a number of requests and there is a chronology in the back of the submission.

**The Hon. DANIEL MOOKHEY:** Thank you. I guess the third key point is that in October 2020 KPMG CFO Advisory services was engaged by Treasury to assist in the development of a financial impact statement as well. I read that correctly, did I?

**Ms WATSON:** That is correct.

**The CHAIR:** Mr Mookhey, you were reading off the—

**The Hon. DANIEL MOOKHEY:** KPMG's submission to the inquiry.

**The CHAIR:** Submission No. 8?

**The Hon. DANIEL MOOKHEY:** Yes.

**The CHAIR:** Ms Watson, that submission came to us without a signature and without an authorisation. Were you the author of that document?

**Ms WATSON:** This is a KPMG collective document. I was not the author.

**The CHAIR:** Can you identify who were the authors?

**Ms WATSON:** I am not aware of exactly who the authors were. It was a collective of individuals who were involved. But I am happy to take that question on notice.

**The Hon. TREVOR KHAN:** Did you approve it before it was sent?

**The CHAIR:** Exactly.

**Ms WATSON:** It is not my role to approve.

**The CHAIR:** Do you believe it provides an accurate submission on behalf of KPMG? Is that your evidence?

**Ms WATSON:** Yes.

**The Hon. DANIEL MOOKHEY:** I just want to turn to the June report. In June 2020 KPMG was engaged by Transport for NSW to assist in developing a future long-term operating and financial model. Perhaps to Mr Low: That encompassed being able to provide advice as to potential future financial impacts if the Government was to adopt the Transport Asset Holding Entity structure. Is that correct?

**Mr LOW:** Thank you for the question, Mr Mookhey. The scope of that particular report was to provide advice to Transport for NSW on what the long-term operating model needed to be: so how the entity should be structured, and then the financial impacts relating to that. Also a piece of scope of work around fiscal strategy, that was not included in this report, nor was this report dealing with accounting treatments or safety issues.

**The Hon. DANIEL MOOKHEY:** Thank you, Mr Low, that is helpful. This report was commissioned after the Cabinet in June of that year had resolved to commence the Transport Asset Holding Entity. Is that your understanding, Mr Low?

**Mr LOW:** That is my understanding. The intention was that this was to now look at the operating model and supporting arrangements to put that into effect and, as our report to Transport for NSW indicates, there is also a transition plan for standing that up over a period of time, as well as identifying additional further advice we would like to provide Cabinet in its final decisions.

**The Hon. DANIEL MOOKHEY:** In June 2020, the Cabinet agrees to the establishment of the Transport Asset Holding Entity and then it formally commences operation on 1 July 2020 as a State-owned corporation. Is that your understanding, Mr Low?

**Mr LOW:** My understanding is that was the intention, yes.

**The Hon. DANIEL MOOKHEY:** And, Ms Watson, that is your understanding as well, that the Transport Asset Holding Entity commenced operation as a State-owned corporation on 1 July 2020?

**Ms WATSON:** The legislation commenced on that date, yes.

**The Hon. DANIEL MOOKHEY:** Thank you, and that is when it took ownership of the rail assets. Correct?

**Ms WATSON:** It was the first time that it existed. The asset holding entity was legally transitioned from RailCorp and so its legal owner was the same owner.

**The Hon. DANIEL MOOKHEY:** Thank you very much, Ms Watson. Mr Low, in the course of producing the financial advice as part of the long-term operating model, did KPMG, and specifically Mr Lyon, seek access to Treasury's modelling as to the fiscal impacts of establishing the Transport Asset Holding Entity?

**Mr LOW:** Thank you, Mr Mookhey, for the question. The scope of Mr Lyon's work was to look at the long-term financial scenarios that could relate to standing up TAHE. I am not clear whether he accessed models provided by Treasury.

**The Hon. DANIEL MOOKHEY:** I understand that you might not be clear whether he accessed it, but the question was whether he requested it. Do you recall him requesting of the Treasury access to the financial model that informed their advice to Cabinet in June 2020?

**Mr LOW:** Perhaps he did, Mr Mookhey. I am not sure whether he did or did not.

**The Hon. DANIEL MOOKHEY:** That is okay. Ms Watson, do you recall such a request?

**Ms WATSON:** I recall that Mr Lyon put such a request or a similar request to myself, but I was not the holder of NSW Treasury's information and I referred him to NSW Treasury.

**The Hon. DANIEL MOOKHEY:** Indeed. I might now take the opportunity to formally table the folder that has been provided to the witness, Ms Watson. Ms Watson, are you able to turn to the first tab of that please?

**Ms WATSON:** Do you mean Tab 1, Mr Mookhey?

**The Hon. DANIEL MOOKHEY:** Yes, thank you. At the top it should be labelled "KPMG emails 9 Cabinet submissions." Do you see that?

**Ms WATSON:** It has got "111" at the top?

**The Hon. DANIEL MOOKHEY:** Yes.

**Ms WATSON:** Yes.

**The Hon. DANIEL MOOKHEY:** I think what you just described is reflected in that email exchange. If you start at the bottom of page 1 you can see that Mr Lyon puts a request to you which is cc'd to Mr Low, asking specifically at point one, "Could you please provide the Treasury financial model that was used to determine the financial impacts in the paper?" and at the top you say, "Hi Brendan. You will need to put that request to Treasury." So that reflects what you just said. Correct?

**Ms WATSON:** Yes.

**The Hon. DANIEL MOOKHEY:** Thank you very much. Mr Lyon did put that to Treasury. If you turn to page 3 of the documents—Mr Low, I think we sent an email to you; sorry, I was not aware that you were in Queensland, so they have been emailed through. If you are following along that would be helpful because some of these questions will come to you.

**Mr LOW:** Mr Mookhey, could I just clarify, because I have got the documents on the screen here, that is the email of 7 September. Is that the one you are referring to?

**The Hon. DANIEL MOOKHEY:** Yes. You can see Mr Lyon then emails Ms Wilkinson, who I think is the relevant Treasury official at the time, asking for the model. You can see that at the top, "I may have misunderstood but I am asking for a copy of the Treasury financial model which was used to generate the numbers that went to Cabinet in June." Mr Low, do you see that?

**Mr LOW:** I can see that, Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** Then down the bottom of this email Ms Wilkinson—I think actually there is a prior email—says, "To get the clarity we need Treasury has engaged your colleague Heather Watson to

review your model for consistency with various preceding advices from KPMG." A small point, Ms Watson: do you know what she was referring to?

**Ms WATSON:** I have not seen these emails until this morning, Mr Mookhey, so I am not familiar with the context around these emails, no.

**The Hon. DANIEL MOOKHEY:** But did Ms Wilkinson ever ask you on or about 7 September 2020 to review Mr Lyon's model for consistency with various preceding advices from KPMG?

**Ms WATSON:** I have a number of interactions with NSW Treasury on a weekly basis and I would need to get further context to be able to answer your question in an appropriate way.

**The Hon. DANIEL MOOKHEY:** Do you mind taking it on notice then?

**Ms WATSON:** I will take it on notice certainly.

**The Hon. DANIEL MOOKHEY:** Thank you very much. Fair enough, but you can go back to the top, Mr Low, and you can see that Mr Lyon says to Ms Wilkinson, "Could you please confirm regarding a final copy of the financial model so we can understand why the numbers that went to the Cabinet are different?" Do you see that?

**Mr LOW:** "This is obviously important to explain the variation that we have returned to Cabinet"—that particular email?

**The Hon. DANIEL MOOKHEY:** It is on page 3 of the emails. It has the number 113 handwritten on the top of it.

**Mr LOW:** Yes, okay.

**The Hon. DANIEL MOOKHEY:** Part of the reason why Mr Lyon is pursuing a copy of the Treasury model is that it seems like his model has produced a different result and he is trying to get to the bottom of why. Is that a fair reflection of what you think this email says?

**Mr LOW:** Is that question directed to me, Mr Mookhey?

**The Hon. DANIEL MOOKHEY:** Yes, Mr Low, sorry.

**Mr LOW:** Just to clarify, he is trying to understand, remembering at a point in time he was to do more detailed financial modelling around what the operating arrangement will look like to further inform Cabinet. So, as you would imagine, as you get deeper into the analysis—what does the structure of TAHE look like so we have a clearer view about what some of the potential scenarios could be, what are the financial impacts—that was what eventually ended up in our report to Transport for NSW. It does not include advice around the budget treatments or anything of that nature; it is looking at long-term potential financial scenarios around TAHE.

**The Hon. DANIEL MOOKHEY:** I agree, Mr Low: I do not believe at this point Mr Lyon was seeking this information in order to provide fiscal advice. It is quite clear in the email he is seeking the financial model so he can understand why the numbers that he has produced are different to the numbers that went to Cabinet. So I am not at cross-purposes with you on that particular point. Do you mind just turning to page 4—Ms Watson as well? On page 4 Mr Lyon has put this request in to Ms Wilkinson some time that afternoon; I think it was generally at five o'clock. At 5.13 Ms Wilkinson replies, and it is quite extraordinary. It says here, "Hi Brendan. There is no model for the June Cabinet submission. The submission simply noted the impact of any change on our equity treatments and depreciation liabilities. The only TAHE financial model was done I think 2017 by KPMG and belongs to Transport for NSW." So we are in a scenario where the Treasurer and the Treasury have provided advice to the Cabinet about the impact of establishing the Transport Asset Holding Entity. The Transport Asset Holding Entity is then commenced—

**The Hon. TREVOR KHAN:** Is this a question or are you making a statement?

**The Hon. DANIEL MOOKHEY:** Yes, it is. But then it turns out that there is no financial model whatsoever at the time that they decide to create this corporation and, instead, they are relying on advice that KPMG provided, they think in 2017. First, I find that extraordinary and, second, do you know what the 2017 financial advice was that KPMG provided that somehow was then used in June 2020 by the Government to commence the Transport Asset Holding Entity?

**Ms WATSON:** Is this a question to Mr Low or to myself, Mr Mookhey?

**The Hon. DANIEL MOOKHEY:** To Mr Low at first instance, sorry.

**Mr LOW:** Thank you, Mr Mookhey. My involvement, as I mentioned in my opening statement, in these matters was from mid-June 2020. I was not involved in 2017. Whether my colleague Ms Watson may be able to provide an answer that might assist the Committee?

**The Hon. DANIEL MOOKHEY:** Ms Watson, do you know what the 2017 financial advice that Treasury effectively recycled to put to Cabinet was that led them to decide to establish the Transport Asset Holding Entity?

**Ms WATSON:** In 2017 KPMG was appointed through a public tender process as an accounting, tax and financial adviser as part of a joint project to establish TAHE. We worked for about 18 months in that space. We developed a funds flow, we developed a detailed financial model that has a very similar architecture to the one that was used by Mr Lyon more recently. That model went through a number of scenarios and assumptions and did inform Treasury's adjustments to the forward estimates at the time. There had not been any further changes in the thinking or decisions made by government that were going to affect those forward estimates and so there was no need in June to do updated modelling.

**The Hon. DANIEL MOOKHEY:** But, Ms Watson, is that your opinion or is that Treasury's opinion?

**Ms WATSON:** This is my opinion.

**The Hon. DANIEL MOOKHEY:** I accept that.

**The Hon. SCOTT FARLOW:** It is fair to ask Treasury for their opinion, not Ms Watson.

**The Hon. DANIEL MOOKHEY:** But Treasury did not have access to that model; they had not seen that model. That is what they say here, that in fact the Treasurer and the Treasury took a position to Cabinet to get them to move billions of dollars of assets without any model—

**The Hon. TREVOR KHAN:** Again, you are editorialising it. Ask the witness a question.

**The Hon. DANIEL MOOKHEY:** Was that model ever provided to the Treasury prior to the June Cabinet process?

**Ms WATSON:** On many occasions, yes. It was a joint working group—

**The Hon. DANIEL MOOKHEY:** But that was a model—

**The Hon. TREVOR KHAN:** Let her answer.

**Ms WATSON:** There was a joint working group established and that was the project that I was working on. We had regular engagement with Transport for NSW personnel as well as NSW Treasury personnel, and NSW Treasury personnel had seen that model on various occasions and had provided input into it, had asked for various assumptions to be modelled throughout the process. They did not own the model because the engagement was with Transport for NSW and so the model belonged to Transport for NSW. But that does not mean that they had not seen the model.

**The Hon. DANIEL MOOKHEY:** Ms Wilkinson tells Mr Lyon that there was no model; your evidence is there was and that Treasury got it wrong.

**Ms WATSON:** No, my evidence is that there was no specific model generated in June of 2020.

**The Hon. DANIEL MOOKHEY:** Thank you.

**The Hon. JOHN GRAHAM:** You are confirming there was no Treasury modelling. You agree that is accurate. It was this KPMG model you say shared with Treasury that was the basis of any of the modelling that the Cabinet saw?

**Ms WATSON:** The model does not belong to KPMG; the model belonged to Transport for NSW and it was a Transport for NSW model.

**The Hon. JOHN GRAHAM:** I will repeat the question. You agree there was no Treasury modelling that went to that Cabinet decision to set up TAHE?

**Ms WATSON:** There was no separate Treasury modelling. At that point Treasury relied upon the past modelling that had been performed by Transport for NSW.

**The Hon. JOHN GRAHAM:** You say "at that point", but at no point was there Treasury modelling that informed the Cabinet when they set up TAHE.

**Ms WATSON:** That would have to be confirmed with NSW Treasury personnel.

**The Hon. JOHN GRAHAM:** I am asking your view. Are you aware of any Treasury modelling when Cabinet set up TAHE about the financial impacts?

**Ms WATSON:** I am not aware of modelling. I was not engaged to do modelling with them.

**The Hon. JOHN GRAHAM:** Thank you.

**The CHAIR:** Ms Watson, to be entirely clear, the only modelling you are aware of about the financial impacts of TAHE is the modelling that was done for the purposes of Transport through KPMG?

**Ms WATSON:** It was done for the purposes of a joint working group, a joint project group, between Transport and Treasury—DPC was also involved. It was simply that the model was legally owned by Transport for NSW because that is who the contract was with.

**The CHAIR:** That is the model that was being used for the purposes of creating the December 2019 TfNSW Structure Considerations – 'TAHE' Business Model Assessment, which on the front page of that says it is for Transport for NSW. Is that the model?

**Ms WATSON:** I am not sure which model you are referring to, Chair.

**The Hon. DANIEL MOOKHEY:** I think Ms Watson was referring to a 2017 model that was undertaken by KPMG for Treasury, which we have just discovered.

**Ms WATSON:** The model was undertaken by KPMG under a contract with Transport for NSW, Mr Mookhey.

**The CHAIR:** Ms Watson, where do we find reference to that 2017 model in your Cabinet submission of November 2020?

**Ms WATSON:** I am sure you do not mean to suggest that I had a Cabinet submission, Chair.

**The CHAIR:** The "KPMG Transport Asset Holding Entity" dated 3 November 2020, have you seen that document? I think it is at Tab 2.

**The Hon. DANIEL MOOKHEY:** It is provided to Ms Watson—I will tell you exactly how that is provided.

**The Hon. SCOTT FARLOW:** Is it Tab 2?

**The Hon. DANIEL MOOKHEY:** Yes.

**The CHAIR:** It is at Tab 2.

**The Hon. SCOTT FARLOW:** The second page of Tab 2.

**Ms ABIGAIL BOYD:** Just while we are finding that, can I also just clarify, Ms Watson, when you said that it is your understanding that Treasury was relying on that 2017 model that had been prepared by KPMG for Transport for NSW, is it also your evidence that the numbers used in the Cabinet submission by Treasury in June 2020 could be explained by that model from 2017? Do the two connect, in your mind?

**Ms WATSON:** I was not involved in helping Treasury with any specific modelling for their June 2020 Cabinet submission, so I could not comment.

**Ms ABIGAIL BOYD:** So is it your evidence that although they had access to that 2017 model, they did not necessarily rely on that 2017 model when coming up with the figures for their Cabinet submission?

**Ms WATSON:** Your question is going to what did Treasury officials rely upon? I could not answer on behalf of Treasury officials.

**Ms ABIGAIL BOYD:** Do you have any direct knowledge of where the numbers that they put in that Cabinet submission came from?

**Ms WATSON:** The numbers came from the forward estimates, so they are Prime data. The forward estimates and budget is prepared using a system called Prime and they relied upon the numbers that were in Prime on the basis that they did not need to make any changes was their understanding. The numbers that were in Prime had been developed some time previously using the model that was provided for Transport for NSW under contract, but also used by other government stakeholders at the time. That was a 2017 model when it was developed; it was then updated in 2018 and I understand that it was probably updated again in 2019 by various stakeholders. As I said earlier, the model belonged to Transport for NSW and it could have been used in a number of different ways, but none of those is anything that I have got line of sight over and I apologise that I cannot be more definitive in my response.

**Ms ABIGAIL BOYD:** But did anybody at KPMG verify that those numbers used in the submission had been based on those numbers you say were in Prime, was it?

**Ms WATSON:** There was no engagement to verify any numbers.

**Ms ABIGAIL BOYD:** So you are not aware of that. That is not something within your—

**The Hon. SCOTT FARLOW:** Ms Watson, it might be helpful, in a sense, to go back to what you were engaged for. You were engaged, as I understand it, in February 2020. Is that correct?

**Ms WATSON:** Yes.

**The Hon. SCOTT FARLOW:** And what was the scope of the work that you were engaged for?

**Ms WATSON:** At that juncture, Mr Farlow, I was engaged to consider the impact of new accounting standards.

**The Hon. SCOTT FARLOW:** Okay, thank you, Ms Watson. And when was Mr Lyon engaged from Transport for NSW?

**Ms WATSON:** He first started having conversations, from my understanding, in April and entered into a contract shortly thereafter, in the month of May, to look at the operating model.

**The Hon. SCOTT FARLOW:** What was the scope of that engagement compared to your engagement? You were engaged first and then what was the scope of that engagement? Or Mr Low may be able to assist.

**Mr LOW:** If it would assist, perhaps it might be appropriate for me to answer that question, Mr Farlow. The scope of that engagement was to look at the long-term operating model for TAHE and, in doing so, look at some of the long-term financial impacts. So the scope of that work was to look at the varying structures and look at the process—the Committee well knows the complexity of setting up a rail operating environment of the below-and above-rail assets—and then look at the potential scenarios, the sort of long-term financial impacts that could be associated with that. It was not only engagement; it was looking at budget impacts; it was engagement looking at long-term financial impacts.

**The CHAIR:** Have you got Tab 2 there, Ms Watson?

**Ms WATSON:** Yes. That is a November 2020 document.

**The CHAIR:** Yes. Is that the first time you have seen this?

**Ms WATSON:** No.

**The CHAIR:** Were you, in part, the author of this?

**Ms WATSON:** Yes.

**The CHAIR:** Could I ask you to turn to page 5 of that? It is headed "Executive Summary". Do you see that?

**Ms WATSON:** Yes.

**The CHAIR:** Do you see at the beginning you say, "On 1 June the NSW Government endorsed the establishment of TAHE as a statutory State-owned corporation. NSW Treasury's GGS FIS in respect of TAHE's establishment indicated proceeding with the establishment will result in zero fiscal impacts." Do you see that?

**Ms WATSON:** Yes.

**The CHAIR:** And your report says, "19-20 no impact, 20-21 no impact, 21-22 no impact, 22-23 no impact, 23-24 no impact." Do you see that?

**Ms WATSON:** Yes.

**The CHAIR:** Did you separately endorse those figures? On what basis did you include those figures in the report?

**Ms WATSON:** My work was to consider the reasonableness of the assumptions that had been applied by NSW Treasury in developing their FIS statement. I have included the FIS statement as a matter of background—it is not my FIS statement.

**The CHAIR:** Did you do any modelling to work out whether or not the zero fiscal impact was credible?

**Ms WATSON:** It was not my role to do the modelling, Chair. My role was to consider the assumptions that had been applied by NSW Treasury in their own modelling.

**The CHAIR:** Did you see Treasury's modelling?

**Ms WATSON:** Did I seek or see?

**The CHAIR:** Did you see?

**Ms WATSON:** I did see the output of Treasury's modelling, yes.

**The CHAIR:** No, I am not asking if you saw the output, I am asking if you saw the modelling?

**Ms WATSON:** I saw the modelling in the sense that I saw the spreadsheets that they were using, yes.

**The CHAIR:** So you saw the basis upon which they were asserting this impact?

**Ms WATSON:** Yes.

**The CHAIR:** And was that the 2017 transport modelling that you referred to earlier?

**Ms WATSON:** No.

**The Hon. DANIEL MOOKHEY:** They were the numbers in Prime, were they not?

**Ms WATSON:** Prime is a different system to a financial model. The model creates numbers and then once the numbers are accepted by NSW Treasury or reflect a decision of government, NSW Treasury updates Prime.

**The Hon. DANIEL MOOKHEY:** And then what you saw was the output of Prime or the input into Prime?

**Ms WATSON:** I saw the input into Prime, but I was also comfortable, based on my general knowledge, that it was consistent with what was in Prime.

**The CHAIR:** And you accepted the Treasury's assumptions and therefore you accepted the conclusions. Is that a fair summary of your report?

**Ms WATSON:** I reviewed their assumptions in detail against the requirements of the applicable financial reporting and budgetary reporting frameworks to assess whether or not they were reasonable and I concluded that they were reasonable and therefore prepared in accordance with the relevant requirements.

**The CHAIR:** Could I ask you then to turn to page 12 of the report? You will see on pages 11 and 12 you are talking about NSW Treasury key assumptions. Do you see that?

**Ms WATSON:** Yes.

**The CHAIR:** And one of the key assumptions in a fair return and the fiscal impact would be the value of TAHE's assets, I assume—that would be critical.

**Ms WATSON:** No, not necessarily, Chair.

**The CHAIR:** You know that they were valued of the order of \$38 billion to \$40 billion at the time TAHE was being established. Are you aware of that?

**Ms WATSON:** I am aware of the carrying value of the assets at the time that TAHE was established, yes.

**The CHAIR:** And I assume you are aware of the basis upon which they were valued.

**Ms WATSON:** I am, yes.

**The CHAIR:** Do you want to explain briefly your understanding of that at the time?

**Ms WATSON:** Yes. I provided some advice to NSW Treasury about that as part of my work around accounting standards. The way that the State often values its infrastructure is with regard to what is called a replacement cost methodology. That replacement cost methodology looks at what would it cost to replace the service potential. When an entity is holding assets primarily for the purposes of service potential, there is no economic obsolescence factor applied to that. Once an agency then changes its economic use of those assets it does need to include a level of economic obsolescence in that valuation. What you then end up with is a scenario where an entity that holds assets for the purposes of income generation or cash generation applies economic obsolescence under the cost approach, but equally it ends up with a valuation under cost that is pretty much the same as what would be the case if an entity moved to a discounted cashflow basis. Both of these are acceptable under the accounting standards, both of these require the use of judgement and both of those are appropriate in the circumstances.

So the previous entity, RailCorp, was the holder of the assets and held them at a CRC basis or a cost approach that did not take into account economic obsolescence. In this year, information has become available as a result of entering into commercial agreements with all customers, such that an economic obsolescence overlay can be applied as well as a discounted cashflow analysis can be facilitated and, as a result, there has been a change in the asset values that have been recorded by the Transport Asset Holding Entity.

**The CHAIR:** You have gone well beyond answering my question. My question was, at the commencement of TAHE you are aware it was valued at about \$38 billion to \$40 billion based upon basically the cost of the assets as a service entity about being able to help move people around the transport network. Is that right?

**Ms WATSON:** Yes, that is correct, Chair.

**The CHAIR:** And then when it moved into TAHE it was revalued upon what actual profit or income TAHE could squeeze out of the assets. That is effectively what it changed to.

**Ms WATSON:** Those would be your words. I would say that the accounting standards apply differently depending on the use of the assets.

**The CHAIR:** If you disagree with my characterisation please let me know.

**Ms WATSON:** I do.

**The CHAIR:** All right. On what basis?

**Ms WATSON:** I only have a view as to the valuation based on the requirements of the accounting standards.

**The CHAIR:** At the time it was established though, one of the key assumptions that you had from Treasury—and I will just read it from page 12, at about point three on the page: "NSW Treasury assumes that the existing measurement basis applied to TAHE's rail infrastructure assets will continue for the foreseeable future, that is, the replacement cost approach in relation to asset valuation is assumed to continue to apply to TAHE's whole asset base indefinitely from 1 July 2020 and consequential depreciation charges are assumed to reflect the impact of applying the cost approach to the measurement of assets." Do you accept that that was correct at the time you wrote it?

**Ms WATSON:** Yes, I do, Chair.

**The CHAIR:** Far from being applied indefinitely, within the first 12 months, indeed the first six months of TAHE's operation, they radically changed the valuation basis and stripped \$20 billion off their assets.

**Ms WATSON:** Yes, that is correct.

**The CHAIR:** Do you now reflect upon that key assumption?

**Ms WATSON:** No.

**The CHAIR:** Do you think it was an accurate assumption from Treasury that that would continue indefinitely?

**Ms WATSON:** If I had my time again and I was back then, that would be the exact same conclusion that I would draw, Chair. This is, I suppose, a nuance of the budgetary reporting frameworks. One of the reasons why—

**The CHAIR:** Did you say "nuance", Ms Watson?

**Ms WATSON:** Yes.

**The CHAIR:** A \$20 billion writedown is a nuance. Is that really your evidence: a \$20 billion writedown is a nuance?

**Ms WATSON:** No, that is not my evidence, and that is not what I said. My evidence is that the requirements of the accounting framework are nuanced.

**The Hon. DANIEL MOOKHEY:** Ms Watson, just on that though—

**The Hon. SCOTT FARLOW:** Point of order: Let Ms Watson finish please.

**The CHAIR:** Ms Watson needs to finish. Ms Watson, you are explaining how the \$20 billion writedown should be viewed as a nuance.

**Ms WATSON:** I am explaining how the accounting standards are filled with nuances. The budgetary reporting framework requires that we apply information that is available to hand. There was no information available to hand to accurately predict where any asset writedown might land. If there had been that information it would have had to have been used by RailCorp in the measurement of its own assets. It is not appropriate for NSW Treasury to speculate and use information about what might happen in the future. The financial reporting framework does not allow them to do that; it needs to take into account the information that is available at the time. That information was not available; it was not possible to say that the valuation should have been 20, that the valuation should have been 30, that the valuation should have been 50. None of that information was available and they have to use the information that is best available at the time. That was the existing carrying value which had been accounted for in accordance with the accounting standards and signed off by the Auditor-General at that date.

**The CHAIR:** So a pending \$20 billion writedown in the assets just slipped through the cracks because you did not have any information. Are you saying at the time you authored this report you had no idea that there would be such a radical writedown in the value of the State's rail assets as a result of this moving? Are you saying it caught you entirely by surprise?

**Ms WATSON:** No, not at all.

**The CHAIR:** Where do I find it in the report—any reference to it?

**Ms WATSON:** That was not part of my scope. My scope did not ask: Do I think that in the future there may need to be a writedown? My scope was to consider whether or not the numbers at that point in time reflected the requirements of the financial and budgetary reporting frameworks, and I am comfortable that they did. Come the State budget of 2021-22, more information was available and the numbers were updated. It is only as a function of the information available. If that information had been available it would have been booked in the accounts as well. The financial statements and the budgetary reporting framework were consistent, and the financial statements need to be consistent with the budgetary reporting framework, and the financial statements had been endorsed by those charged with governance and accepted by the Auditor-General.

**The CHAIR:** You see, Ms Watson, as I understand your evidence, you were aware of this issue, you were aware, as I understand it, at the time you wrote this report that if there was a change in the asset valuation there would be a radical writedown in the value of the State's transport assets, but you failed to include it in a document that goes as a Cabinet submission. Do you think in hindsight that the New South Wales Cabinet should have been aware that there was going to be a \$20 billion writedown, or something of the order of a \$20 billion writedown, as a result of accepting the submission that KPMG put forward?

**Ms WATSON:** I provide my advice to NSW Treasury and Treasury makes a decision about what information goes up to New South Wales Cabinet. In terms of my—

**The CHAIR:** You never put that information in. It is not a question of Treasury not putting it forward, is it? On your evidence you never even put it in.

**Ms WATSON:** In terms of my evidence, my evidence is that I was engaged to consider whether or not the numbers that were being put forward were in accordance with the financial and budgetary reporting frameworks and followed all the conventions that are applied when preparing FIS tables, and that is what I did. If there is an issue around the process or conventions that are applied in the preparation of the State's numbers and the information that goes up to Cabinet, that is not something for me to comment on.

**Mr LOW:** If it would assist you, Chair, I might also draw the Committee's attention to pages 81 and 82 of the Transport for NSW report where we outline the transition plan, and, as you can imagine, as we were trying to bring together the complexity of the operating rail environment, looking forward to therefore understanding more fully what some of the financial implications are to advise Transport, and of course Treasury, to then think about the fiscal treatment of those. You will see under the statement of corporate intent and also under the confirmed key corporate structures there is a range of references to further work being required in this space: the finalised balance sheet review confirmed asset valuation basis, depreciation, substance of fees including accounting treatment, confirming accounting practice and rules be applied beyond July 2020.

So we have foreshadowed there in our advice to Transport for NSW, which is one of the advisers into the Cabinet, noting in my colleague Ms Watson's evidence that we provide advice to our agencies who then advise Cabinet. You can see that we very clearly outlined that there are obviously further considerations to be considered by Cabinet as a part of finalising its transition to TAHE.

**The Hon. DANIEL MOOKHEY:** Mr Low, just on that though, I appreciate you drawing reference to that particular report, but that report also says that it is inappropriate to prepare a financial model if the assets are

valued on an income approach. In fact, this goes to the heart of why perhaps Cabinet is being misled or prone to being misled here as a result of KPMG's two reports. You have one report Mr Lyon produces that explicitly rules out the use of an income approach, as described by Ms Watson just then, for the purposes of producing a financial model and you have another piece of advice not even flagging that such a model would be used. Do you understand why perhaps Cabinet—you might not have had the time to read it to the level of nuance you suggest—might have expected KPMG to put this in headlights and say, "Hey, you know what? This could lead to a \$20 billion writedown."

**Mr LOW:** Thank you very much for the question, Mr Mookhey. As the Transport for NSW report indicates, there are a range of scenarios that could lead to varying outcomes in that regard from a financial perspective. What our submission also explicitly says on page 87 is "This is not accounting advice. These other longer-term considerations are to inform NSW Treasury who will then seek fresh accounting advice on TAHE." So I think it is very important to understand the function of our activity in the two streams. What is in the Transport for NSW element is to further advance the operating model, as I mentioned before, not commenting on and providing advice around the actual accounting treatments nor safety, which you might recall Mr Lyon spoke to last week, and then the possible scenarios for the long term, so that Transport can engage with government around understanding what that could mean as they look forward to the future operating environment. The fiscal side, the FIS that was undertaken through the Treasury in an agreement they engaged with by KPMG, that is for the Treasury and other agencies to advise Cabinet.

**The Hon. DANIEL MOOKHEY:** Thank you.

**The CHAIR:** But, Mr Low, we just heard from Ms Watson, who is providing the advice to Treasury, that they never included that detail. So one part of KPMG knows you have got this monster revaluation coming down the road apparently and says it should be looked at; the other part of KPMG is providing the fiscal advice to Treasury and neither of you mention a \$20 billion writedown. You both knew it was happening; neither of you mention it. How does that happen? Mr Low?

**Mr LOW:** How did what happen, Mr Shoebridge?

**The CHAIR:** How was it both parts of KPMG are aware there is some monster writedown happening of \$20 billion, you flag it in your Transport report, it is not even mentioned in the Treasury report, Cabinet makes a decision on it, and neither part of KPMG provide any sort of clear, credible advice on it. How did that happen?

**Mr LOW:** I would contest that did not happen. I would contest that KPMG delivered the scope to the two agencies to feed into the ultimate customer, which is the New South Wales Government. We were asked specific questions under Ms Watson's engagement, which she has responded to and is best placed to respond further. I am responding to the Transport for NSW, our engagement led by Mr Lyon, and they identified a range of issues that would need to be further considered. It is up to government's advisers, Treasury on fiscal and financial matters, to determine what the appropriate treatment and considerations could be here, and in terms of Transport to advise on can we make this work from an operating perspective. So I feel that both of our reports—and we have included a reference in our submission and there is multiple correspondence between our senior leadership and the two secretaries at the time to confirm the differences in the two pieces of advice.

**The CHAIR:** You see, Mr Low, what it seems to me is, it is a hear no evil, see no evil, say no evil about this \$20 billion writedown and that is what happened. You are not asked the question, so you just close your eyes, shut your ears, close your mouth and nothing is said about it. Is that what happened? You say it is Treasury's failures? Is that it, Mr Low?

**Ms WATSON:** I do not think that—

**The CHAIR:** Is that it, Mr Low?

**Mr LOW:** No, I do not believe that is an appropriate representation of what we were asked to do and what we discharged in terms of the scope of our engagement. We are not the advisers to Cabinet. We are the advisers to the two agencies, as I explained before, and there are many people. This issue has been before multiple agencies for a number of years and all parties are aware of the complexity that we are dealing with here. Multiple decisions then have to be made about how do you deal with these things in the accounting and budgetary context, and I might defer to my colleague Ms Watson if she wants to make any further observations in that regard.

**Ms WATSON:** Thank you Mr Low. I think it is important to note that no-one could predict with any certainty what level of writedown, if any, was going to be required. There were a number of uncertainties at the time—those were flagged in the report to Transport. Those uncertainties included what the accounting treatments would be in respect of the arrangements that TAHE was going to enter into with rail operators. There was a potential for the assets to be accounted for as leases, as service concession assets or potentially property, plant and

equipment. Each of those have got slightly different measurement bases so we did not even know how the accounts were going to present the assets, let alone what they were going to be measured as at that point in time. My work was to consider how Treasury had addressed those uncertainties that existed at the time. And they had addressed them in a way that was consistent with the Australian accounting standards which is what is required for the budgetary and financial reporting framework.

**The Hon. SCOTT FARLOW:** Mr Low, I want to go back to this question: You were the second partner on the work for Transport for NSW. Is that correct?

**Mr LOW:** Yes, that is correct.

**The Hon. SCOTT FARLOW:** In the section you raised with the Committee, the transition plan and the warnings in that section, you said to the Chair that it was not accounting advice and that that was made clear in the report. Where did that advice come from? How did you model them? In the report and those issues with the transition plan, if it is not accounting advice how was that modelled or how did it find itself in the report?

**Mr LOW:** There is a requirement obviously to think through a range of different scenarios. There is some bookend scenarios from a financial impact perspective and so Brendan and the team had to put together some assumptions around how things could hypothetically be dealt with, some scenarios, which is all referred to in our report and they were used really to model some potential futures. So that would be my response to the question, Mr Farlow.

**The Hon. SCOTT FARLOW:** I take it from the evidence you gave before in your opening statement that you do not have an accounting background? Mr Lyon did not have an accounting background but Ms Watson, of course, has an eminent accounting background that she has outlined to the Committee. Was it the perspective that accounting advice should be sought from Ms Watson from a New South Wales Government perspective and, of course, preferred by Treasury?

**Mr LOW:** Very much the case. In fact, during the engagements it was agreed between the relevant secretaries that such advice should be provided by Treasury and that Transport for NSW engage with the stakeholders and focus on the operating and long-term financial impacts and all fiscally-related matters should be deferred to Treasury to advise government on. Ms Watson was running that engagement to look at the reasonableness of Treasury's assumptions in that regard.

**The Hon. DANIEL MOOKHEY:** Ms Watson, I appreciate that you are making the point that as of November when you provided that submission to Cabinet there was significant uncertainty. Is that fair?

**Ms WATSON:** About what? About which matter?

**The Hon. DANIEL MOOKHEY:** About the accounting treatment of the Transport Asset Holding Entity?

**Ms WATSON:** There was uncertainty about certain accounting treatments that would be applied to the assets, is what I said earlier.

**The Hon. DANIEL MOOKHEY:** Yes. There was uncertainty about that treatment. Correct?

**Ms WATSON:** Yes, it was flagged in Mr Lyon's report to Transport for NSW.

**The Hon. DANIEL MOOKHEY:** Yes, and at that point you were in no position to assess whether or not the actual operating arrangements that TAHE entered into would lead to a change in accounting assumptions? Is that correct?

**Ms WATSON:** In November last year we did not know what the arrangements would be and so it was impossible to speculate on what the accounting treatments would be.

**The Hon. DANIEL MOOKHEY:** Indeed. Ms Watson, what I find extraordinary about this is that is six months after the Transport Asset Holding Entity came into existence. The inference in your evidence is that the Government commenced the Transport Asset Holding Entity, let it operate for six months without having any clue as to how it would be reflected in the State's accounts.

**Ms WATSON:** I would not agree with that statement, Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** Can you please tell me how we should not reach that conclusion if you are saying to us that at the time you provided that advice to Cabinet, and you were in no position to forewarn them about a \$20 billion writedown, what other inference can we draw other than the Government commenced the Transport Asset Holding Entity without having any idea what its impact would be on the State's accounts?

**Ms WATSON:** I cannot speak for what the Government did or did not know, Mr Mookhey. What I can say is that the TAHE reform has been long and complex; that it did commence with a transitional period in which all arrangements carried over for a 12-month period to enable the board to put in place other arrangements.

**The Hon. DANIEL MOOKHEY:** Thank you.

**Ms WATSON:** What I can also say is that in the modelling that was done using the model developed in 2017, and then further updated over 2018 and 2019, from what I understand, was that various valuation work was also undertaken in the context of that engagement and that valuation work showed that a writedown was likely but—

**The Hon. DANIEL MOOKHEY:** So the Government knew that there was a likely writedown if it commenced the Transport Asset Holding Entity to the tune of \$20 billion?

**Ms WATSON:** I am not across what advice was provided to government as a result of the work that KPMG undertook in 2017 and 2018, Mr Mookhey. All I can talk to is the work that was done and so that most stakeholders involved—Transport and Treasury—were well aware that a writedown was a potentiality, but the information was not yet available to determine that with any degree of reliability that could be reflected in the State's budget.

**The Hon. DANIEL MOOKHEY:** Okay, I appreciate that Ms Watson.

**The CHAIR:** Ms Watson, I am just bemused that at no point in your November submission—if you said everyone was aware of a writedown—do you say anywhere that there is a writedown coming. Was it just they did not ask you the question? Is that what you are telling us?

**Ms WATSON:** It is our role to deliver on the scope that is agreed with the client and in this instance it was NSW Treasury. NSW Treasury said, "Would you please look at our assumptions and identify whether or not they are consistent and prepared in accordance with the financial and budgetary reporting frameworks?" The financial and budgetary reporting frameworks do not require the disclosure in the State budget of risks and sensitivities around asset values.

**The CHAIR:** Of course, we are not talking about the budget; we are talking about a decision made by Cabinet and we are back to this hear no evil, see no evil, speak no evil, are we not, on this point? The massive writedown is just not anywhere.

**Ms WATSON:** These would be your words Chair—

**The CHAIR:** Indeed they are.

**Ms WATSON:** I think it is fair to say that KPMG provides advice to its clients. It is not our role to provide advice directly to government. Ultimately the advice that goes to government can take into account our own advice but it is not our advice.

**The Hon. DANIEL MOOKHEY:** Mr Low, I just want to return to the emails—

**The Hon. SCOTT FARLOW:** Just on that point before we get to that, Mr Low seemed to want to contribute.

**Mr LOW:** Yes, I just wanted to clarify with the Chair. You made a comment about hear no evil, see no evil. I think when you look—and you will have done this extensively, no doubt—at our Transport for NSW report we outlined various assumptions that indicated there could be, over a longer period of time, some challenges, depending on methodology adopted around the consideration of asset values. So it was flagged in our advice but it was not for Transport or ourselves to advise what the treatment of that should be going forward. To say that KPMG had not identified some various scenarios, I just wanted to make sure that I was clearly on the record around that aspect.

**The CHAIR:** And that is that inscrutable reference at page 81 you referred to before, Mr Low? Is that right?

**Mr LOW:** There is that and there is various other modelling. There is some stuff up the front end of the document as well so, yes, but clearly further work would be required in that regard.

**The Hon. DANIEL MOOKHEY:** Mr Low, can we just return to the emails we were discussing before—the KPMG emails Cabinet submission? I drew your attention to the email in which Ms Wilkinson says, "Treasury never modelled it" as of June 2020. Do you mind turning to page 6?

**Mr LOW:** Page 6 of the emails, Mr Mookhey?

**The Hon. DANIEL MOOKHEY:** Yes, page 6 of the KPMG emails. Starting at the bottom of page 6 you can see Mr Lyon's response to Ms Wilkinson, after Mr Lyon is told that Treasury never modelled this. He goes, "Okay, thanks, I note it was not modelled. Could you provide the workings or arithmetic of the basis for the numbers in June?" Do you see that? It is highlighted for you. It should be there.

**Mr LOW:** On a limited circulation basis. I am sorry to ask but is this from 5:18 and before that time?

**The Hon. DANIEL MOOKHEY:** The email is at 5:15. Have you got that?

**Mr LOW:** Yes, that is correct. I have got it. Sorry, Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** That is okay, thank you. Do not worry, I understand this is a bit awkward. But it says, "Okay, thanks, I note it was not modelled. Could you provide the workings or arithmetic of the basis for the numbers in June?" And then you can see up above Mr Lyon forwarded this to Mr Linke, Mr Heathcote and you. He says, "This is good. Treasury have admitted it was not modelled, which is handy." Do you recall what your reaction was when you were told Treasury did not model this?

**Mr LOW:** No, I do not recall my reaction, Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** That is okay. If we could now move forward to page 9 which is an email from Mr Lyon to the deputy secretary of Transport as at Tuesday 8 September 2020.

**Mr LOW:** Can you give me a time, I am sorry? I am having a bit of trouble on this? Page 9?

**The Hon. DANIEL MOOKHEY:** On 8 September 2020 at 7.22 a.m. which is highlighted on page 9. I will read you the relevant section. It goes, "Mr Lyon emailed Ms Trussell" who was the deputy secretary at Transport, and I believe your client?

**Mr LOW:** Yes, Transport.

**The Hon. DANIEL MOOKHEY:** The actual client who is responsible for the report that you and Mr Lyon were working on. He goes, "On the Cab sub the Treasury due numbers appear to have no basis which is interesting, hence the discussion yesterday about where they came from. We suspect it was inspired by the model but we are finding it very hard to replicate the numbers they had." Did Mr Lyon tell you that they were struggling to replicate the numbers that Treasury had produced?

**Mr LOW:** I do not know if he used those words, Mr Mookhey, but we were trying to construct some alternate scenarios to support Transport for NSW's understanding. And so we were trying to put together a model which responded to that stakeholder's needs, put their assumptions into the long-term financial model that Mr Lyon and his team had developed. So it is quite possible he was asking the question but definitely we were trying to work with Transport. There was lots of toing and froing at this time about what the appropriate assumptions would be in the model to make sure that that stakeholder's views were reflected as best as we could in the advice to Transport.

**The Hon. DANIEL MOOKHEY:** Yes. He concludes the email by saying, "We will need to update our strategy a bit and it might be time for Rodd to get ready for a chat with the Treasury secretary, and you with San, but let's chat." Did Mr Lyon inform you that he thought it was necessary for Mr Staples, who I think that is a reference to, to have a chat with the Treasury secretary about the absence of numbers in the Cabinet submission?

**Mr LOW:** I cannot make a response on that issue because I cannot recall. I do not know. But obviously there was a lot of dialogue that was required between these two agencies as they wrestled with how to bring this consideration forward to Cabinet. So it is quite possible and probable that we would be encouraging conversation between the two agencies at the highest level to ensure that appropriate conversations were being had about direction advice in terms of completing our work and/or other considerations by Treasury.

**The Hon. DANIEL MOOKHEY:** Will you move forward to page 10 which commences with an email from a Mr Dave Russell to Brendan Lyon, cc Jessie Hu as well? Do you see that?

**Mr LOW:** I do have that.

**The Hon. DANIEL MOOKHEY:** Mr Lyon obtains the arithmetic that Treasury based its numbers on. I think he forwards it to these individuals who I think are members of his team, from his opening statement that he provided last week. This is what Mr Russell, not Mr Lyon, said, "This is not what is reflected in the June Cabinet submission, right Jessie? Seems that they only reflect the equity injection benefit in that." And then he goes on to say, "This is a gross misguidance to the overall impact of the Transport Asset Holding Entity." Do you see that?

**Mr LOW:** I see that.

**The Hon. DANIEL MOOKHEY:** On page 11 is an email from Ms Hu to Mr Russell and to Mr Lyon. At the bottom of page 11, Ms Hu replies to Mr Russell and Mr Lyon, "I think the June Cabinet submission was presented in a very convoluted way as they only put the equity injection numbers on the table and said, 'This is the impact'". There is a dot point further down in the Word doc which explains the depreciation impact as SARG has put in the table in the email. Going up, Mr Russell replies, "Yep and if we are reconciling, it ignores the large subsidies required for access licence fees that have a negative impact on the budget." If you go up you see Ms Hu replies, "Correct, they have only done a TAHE as a general government sector versus TAHE pre-30 June scenario. We have done Transport Asset Holding Entity as general government sector versus TAHE as a commercial SOC" which, bear in mind, as at 9 September 2020 it was a commercial SOC. Why was that not put in headlights to Transport or Treasury with KPMG saying, "We think that the June Cabinet submission was convoluted. We think it ignores large subsidies and we think there is a gross misguidance to the overall impact of TAHE"?

**Mr LOW:** The question to me is: Why did we not raise this?

**The Hon. DANIEL MOOKHEY:** The question is that these emails seems to reveal that your own staff very quickly came to understand that the June Cabinet submission that was brought by the Treasurer and led to the establishment of the Transport Asset Holding Entity, according to your own staff, was a gross misguidance, equally very convoluted, ignored large subsidies and modelled the wrong scenario. Why was KPMG not screaming blue murder about the fact that the New South Wales Government was misled?

**Mr LOW:** We were engaged, as Mr Mookhey would know, to look at the long-term financial scenarios. To do that we were constructing a range of alternate views. Obviously on receiving that advice I am assuming we then looked at how we would construct what scenarios would be relevant to advise the Government on and that was what was contained in our 8 November report. I might go to Ms Watson who has a deeper technical appreciation of this area.

**The Hon. DANIEL MOOKHEY:** No, before we do, I am happy to hear from Ms Watson in a minute, but I have not finished with you, Mr Low. Have you completed your answer?

**Ms WATSON:** Okay. Yes, I have.

**The Hon. DANIEL MOOKHEY:** Mr Low, is the reason why you were not telling the transport department about the errors in Treasury's modelling that throughout this process you were deferring heavily to Treasury and the Treasury secretary in the production of your advice to Transport?

**Mr LOW:** I would absolutely categorically refute that claim. I had no contact with Mr Pratt or anyone else in Treasury around specifics of our advice. We were delivering the scope within Transport for NSW's engagement which was to look at the operating model, as you know, and the long-term financial impacts. We did that through a scenario approach. I have no view about the comment that you made there. I was focused solely on supporting Brendan and our team delivering to the scope of the Transport for NSW engagement, and that is what we did.

**The Hon. SCOTT FARLOW:** Just quickly on this point, Ms Watson you were engaged by Treasury. We have heard already that there were 10 to 20 specific document changes that were requested by Treasury. Did you or KPMG make any changes to your reports at the request of Treasury?

**Ms WATSON:** That report remained under the purview of Mr Lyon, Mr Farlow. It is my understanding that there were no such changes made to the report.

**Mr LOW:** It might be appropriate Mr Farlow—

**The Hon. SCOTT FARLOW:** Mr Low, do you have anything to add to that?

**Mr LOW:** It might be appropriate for me to add. I can confirm that there were no changes to the 8 November report bar a minor change—the report was reissued on 9 November to a table labelling matter. But there were no direct changes to that report as a consequence of further engagements with Treasury.

**Ms ABIGAIL BOYD:** I am going to put a proposition to you, Ms Watson, and I would like you to let me know if you agree with it. It looks to all the world like Treasury decided that it wanted this structure to have nil impact, which is what we have in this executive summary from your report. Is it the case that Treasury expected KPMG to act as a rubber stamp?

**Ms WATSON:** No, that is not the case, Ms Boyd.

**The Hon. DANIEL MOOKHEY:** Mr Low, I will move onto another issue. Will you turn to emails that have been sent to you referred to as "KPMG email 006 maintenance".

**Mr LOW:** I am just pulling that up now—so exhibit 162 is the first one of those?

**The Hon. DANIEL MOOKHEY:** Yes, it is. Thank you. As part of your engagement by Transport to develop an operating model, you were required to provide advice around the allocation of certain functions. Correct?

**Mr LOW:** That is correct.

**The Hon. DANIEL MOOKHEY:** It was your job to provide advice as to which of the entities, albeit Transport for NSW, the Transport Asset Holding Entity, Sydney Trains or NSW Trains, bore which responsibilities under rail law. Correct?

**Mr LOW:** That is correct.

**The Hon. DANIEL MOOKHEY:** One of those responsibilities that was your job to advise on was around the allocation of who was responsible for undertaking and funding maintenance of the State's rail assets. Correct?

**Mr LOW:** That is correct.

**The Hon. DANIEL MOOKHEY:** And that led to a dispute or a difference of opinion between Treasury and the Transport Asset Holding Entity. Is that correct?

**Mr LOW:** There were various discussions around, from recollection, what the most appropriate model was to fulfil safety obligations whilst going forward, as well as the investment needs.

**The Hon. DANIEL MOOKHEY:** It was your job to reconcile these differences of view as part of your work or at least to come to a common understanding. Correct?

**Mr LOW:** Yes, Brendan and his team's role was to try to identify or to work through and identify what the appropriate RACI arrangements would be for discharging those activities.

**The Hon. DANIEL MOOKHEY:** Will you let us know what RACI is for Hansard?

**Mr LOW:** I will describe it as a framework used for looking at accountabilities, responsibility, consultation and implementation.

**The Hon. DANIEL MOOKHEY:** Thank you. And this dispute between Treasury and TAHE about who was responsible for maintenance was occurring in September last year. Is that correct?

**Mr LOW:** That is what the emails would indicate, that is correct.

**The Hon. DANIEL MOOKHEY:** Let me go to the emails. You are starting on page 162 which is the end of an email chain that commences on page 6. You might want to turn page 6, or 157 at the top.

**Mr LOW:** Yes, I have got that.

**The Hon. DANIEL MOOKHEY:** Do you see at the bottom Mr Nick Hudson from KPMG emails Ms Wilkinson a file note that I think allocates at that point a preliminary view as to who is responsible for what when it comes to, amongst other things, maintenance. Mr Hudson asks for people from TAHE, Transport and Treasury to provide them with their views. If you go forward one page to page 158, you can see there is the first Treasury response which comes from the associate director of infrastructure, strategy and TAHE from the policy and budget group. It goes, "Mr Midha has provided our initial views in this document and will provide a more detailed response by close of business Monday, given our other priorities." If you go up you can see that amongst other things that he has asked for is some clarification as to the maintenance issues. The key point goes on to page 4 on 159. If you scroll up to the top of page 4 you will see a highlighted section. Are you with me, Mr Low?

**Mr LOW:** Yes, at point two.

**The Hon. DANIEL MOOKHEY:** Yes. You can see that this is a reply from the Treasury official who is identified as the infrastructure strategy director. He says at dot point 2, "A few dot points from us on how we believe the maintenance funding is to work which has always been consistent with our understanding of the second reading speech. Treasury provides it to you on the maintenance." Mr Hudson—or actually as it turns out, it was My Lyon emailing to Mr Hudson's email address—replies, "I don't quite understand the point you are making on maintenance. Do you mean TAHE is accountable for maintaining its asset including funding maintenance or ST [or Sydney Trains] is accountable for maintaining the assets in line with TAHE's requirements but that this funded directly by the budget ERC and not by TAHE or Transport for NSW?" Do you see that?

**Mr LOW:** Yes.

**The Hon. DANIEL MOOKHEY:** So Treasury clearly has a view that it is TAHE's job. You can see that on page 2 where the relevant Treasury official replies, clear as day, on Tuesday 15 September 2020, "Hi

Brendan. TAHE is accountable as the asset owner and manager and will need to discharge this responsibility to the operators for its chosen agreements." Do you see that?

**Mr LOW:** Yes.

**The Hon. DANIEL MOOKHEY:** And then Mr Lyon replied, "Excellent, thanks SARG, thank you. We would adjust the RAQI to have capital and operating maintenance funding from TAHE to the operators." Do you see that?

**Mr LOW:** Yes.

**The Hon. DANIEL MOOKHEY:** Then go forward to the very first page. Mr Crimp from the Transport Asset Holding Entity states, "Brendan, this is not TAHE's position. The discussion yesterday was that funding for maintenance both Apex and Cypex would go direct to the operators from Transport for NSW or Treasury. Therefore, maintenance funding is still an open matter, from TAHE's perspective." Do you see that?

**Mr LOW:** Yes.

**The Hon. DANIEL MOOKHEY:** Then Mr Lyon forwards you this email chain that you receive at 11.27 a.m. together with a variety of senior partners at KPMG. He says, "This is good. It has finally been revealed that there is a fight between TAHE and Treasury over the operating model. This is a big issue and now out in the open." Mr Low, to be very clear, what did you do in response to receiving this email?

**Mr LOW:** I would not have responded in any way directly around it. I would have continued in my support to Brendan. We talked about many issues many times around the operating model arrangements. I am unaware what my response would have been, whether a formal response or not, Mr Mookhey, but I am sure we would have talked about it because it became a focus of discussion when workshoping between the three entities as they tried to iron out what is the appropriate arrangements to put in place to make sure the safety and other requirements can be met. Although we are not required, and were not in a space to provide safety advice, you need to understand some of the safety considerations for further consideration by the rail safety group within Transport for NSW and then ultimately the National Safety Rail Regulator around the operating arrangements.

**The Hon. DANIEL MOOKHEY:** I appreciate that Mr Low. What I find utterly extraordinary about this entire interchange is that we are two months into the operation of this entity, tens of thousands of people are using these assets every single day and it is clear that KPMG knew, at least, that the Government had absolutely no idea it was responsible for maintenance of rail safety. Again, at any point did anybody from KPMG or otherwise suggest that it is a real safety risk when you do not know who is responsible for maintenance months into the operation of this organisation?

**Ms WATSON:** Mr Mookhey, maybe you are not aware of the implementation deed that existed, and the way that the operating licence was structured for the first 12 months of TAHE's operations. Under those arrangements the existing responsibilities remained, and so there was clarity about who was doing what.

**The Hon. DANIEL MOOKHEY:** To be fair, Ms Watson, I might not be aware of that but it is equally clear that neither was Treasury, neither was TAHE and neither was Transport.

**Ms WATSON:** Both parties were aware—

**The Hon. DANIEL MOOKHEY:** Because what these emails are saying is that at this point Treasury was telling TAHE it was responsible for something but, as you rightly point out Ms Watson, the operating licence said they were not.

**Ms WATSON:** What these emails are talking about is what the future arrangements might be, not what the current arrangements were, Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** To be fair, at one point, if you turn to page—

**Mr LOW:** I might clarify for the Committee's understanding, going to Ms Watson's point. If you turn to page 80 of KPMG's report to Transport for NSW it says, "For clarity, the long-term operating model assumes the current operating licence arrangements remain in force until July 2021. A review of the operating licence will be commissioned by the Minister for Transport in and around January 2021. The new operating licence from July 2021 is soon to be in place and phasing of the limitation of functions will occur on the regulated and non-regulated assets to mitigate operational and safety risks." So this process was about transitioning from a current arrangement to what should exist in the new arrangement and the new model. It was very appropriate for the agencies involved to work through what is the appropriate treatment beyond the July 2021 time frame and being able to provide timely advice on 8 November 2020.

**The CHAIR:** One final question and then Ms Boyd.

**The Hon. DANIEL MOOKHEY:** I accept your view, Mr Low. Going forward to page 8—

**Mr LOW:** Of the emails, Mr Mookhey?

**The Hon. DANIEL MOOKHEY:** Yes, on page 8, which again is an email from Mr Lyon to Mr Linke, to Mr Heathcote and to you. It then goes on to say, "The safety people are having a meltdown post their comments with the current view that Treasury's current position completely repeats pink batts. I am not good at that as I always revert to rail parameters but it shows the complexity. It also shows the highly shiftable positions of Treasury. The latest plan is that Cabinet's ERC approves the level of maintenance." Why was Treasury having any input whatsoever into this if it was as clear as possible? Why were you entertaining Treasury's submissions about who is responsible for rail maintenance, given that they were not your client?

**Mr LOW:** In Mr Lyon preparing the November report, Mr Mookhey, our task was to work to a working group across the government stakeholders. That included TAHE, the Transport agency and Treasury officers. As the many emails you have cited today indicate, we were working across parts of government to bring them together to best understand and recommend how best to go forward. So from our perspective we were coordinating those inputs and working through what the appropriate arrangements would be post July 2021 when the current operating arrangements had ceased.

**The Hon. DANIEL MOOKHEY:** Just finally because it is directly to Mr Low. On page 13 you do reply to this controversy. You actually do take a position here. On Wednesday 30 September you say, "Thanks, agree. This maintenance position has been oscillating for the past four weeks particularly. It will be an important matter for ONRSR"—which I think is a safety authority—"given the maintenance of safety balance." Mr Lyon replied, "Yep, same one. Maintenance is unresolved because anyone from Transport land knows this is madness." Mr Low, you did have knowledge of this entire dispute and you are the ones who drew attention to the issue as it affects rail safety. Did that not occur to you that maybe you should have been raising this with the transport department?

**Mr LOW:** Can I clarify what the question from is from Mr Mookhey?

**The Hon. DANIEL MOOKHEY:** Yes, given you knew about the oscillating nature of this contest for four weeks which goes to October, which is three months after this organisation came into being, surely at some point did it not occur to you directly that maybe someone should be telling Transport that this is a serious issue that requires urgent resolution?

**Mr LOW:** That was very much what was happening, Mr Mookhey. There was dialogue and debate happening right throughout this process. Mr Lyon's role was to enable that conversation and to make a recommendation. In our report, two things I would say to you: firstly, there is no definitive safety advice but very clear in multiple reference points in our report that we were not providing a safety opinion. Our role was to draw together safety considerations. And in providing our final report we sought advice from the Independent Rail Safety Division within TfNSW on the arrangements for TAHE which are contained in our report in terms of the letter transmitted from that division to ourselves. We also note that these matters require further consideration by the appropriate regulator. So I dismiss any sense or any suggestion that we were not open to this issue. This goes to the centre of getting the right arrangements in place. Brendan's job and our team's job was to push through and help government get a landing to then support the consideration by government about the appropriate arrangements to take forward after July 2021.

**The CHAIR:** I will now hand over to Ms Boyd for questioning.

**Ms ABIGAIL BOYD:** Ms Watson, were you brought in to fix TAHE?

**Ms WATSON:** I do not understand your question, Ms Boyd. Could you elaborate?

**Ms ABIGAIL BOYD:** If I can take you to Tab 5, KPMG emails 010 Treasury. This is an email from Brendan Lyon dated 5 August at 3.59—

**Ms WATSON:** Excuse me Ms Boyd, which number?

**Ms ABIGAIL BOYD:** We are on page 2, number 71. Down the bottom he talks about the key points. He says, "(d) KPMG has been unremittingly confident that the accounting positions will 'work' and could 'fix' TAHE." Was KPMG's reputation on the line if the report from Mr Lyon basically stood as it was?

**Ms WATSON:** Are you asking me a question about the email or are you asking a question about his report?

**Ms ABIGAIL BOYD:** I will ask you again. He is talking there about KPMG being confident that it can fix TAHE which I assume is a reference to the accounting not working. Were you brought in to fix the situation after Mr Lyon's work on this matter?

**The Hon. SCOTT FARLOW:** Ms Watson was brought in before Mr Lyon.

**Ms WATSON:** I was engaged by NSW Treasury in February 2020 to consider TAHE implementation arrangements.

**Ms ABIGAIL BOYD:** In (c) just above it says, "It appears James Hunter and Heather Watson jointly pitched the initial conflicting CFOA work via the Treasury secretary." So that is the work beforehand.

**Ms WATSON:** James Hunter and Heather Watson jointly pitched nothing to Mike Pratt.

**The Hon. SCOTT FARLOW:** So you are saying that is incorrect?

**Ms WATSON:** I am saying that that is incorrect, yes.

**Ms ABIGAIL BOYD:** What would have been the result for KPMG had the accounting not worked as you had said it would in 2017?

**Ms WATSON:** I did not saying accounting would work in 2017. In 2017 we had a large-scale engagement that included the development of a financial model. We articulated in many different reports over that period about the various accounting issues that needed to be resolved. But we did not have any definitive conclusions because we did not have a crystal ball and an ability to predict what the arrangements would look like.

**Ms ABIGAIL BOYD:** I take you to page 18 of that tab. This is an email again from Brendan Lyon to David Heathcote and others, including Mr Low. He says on the top line there, "The reason Treasury went mental appears to be that Mike Pratt was indeed told it was a high priority for him to fix TAHE in the meeting with the Premier." What do you think he was referring to when he talks about fixing TAHE?

**Ms WATSON:** I could not comment, Ms Boyd. This is the first time I have seen this email and I would like to consider the broader context in which it was written before I formed any conclusion.

**Ms ABIGAIL BOYD:** Mr Low, you were a recipient of that email. What do you think Mr Lyon was referring to when he said Mike Pratt was told it was a high priority for him to fix TAHE?

**Mr LOW:** As members of the Committee would know, there was deep and heated discussion between the various agencies during the course of 2020, as they came together to implement decisions of government to stand up the entity. Mr Lyon, as you well know and will have experienced, has a very colourful language. He could have meant anything by that but in terms of what the focus was, it was really to make sure that we were supporting the two agencies through the two engagements to provide advice to government where to go to next with TAHE.

**Ms ABIGAIL BOYD:** And when he says below that, "I am told Premier was not negative on Transport, or me. We were not even raised, but rather I understand she raised questions about Treasury's professionalism." Did you discuss that separately with Mr Lyon?

**Mr LOW:** Is that directed towards me, Ms Boyd?

**Ms ABIGAIL BOYD:** Yes, sorry, it is.

**Mr LOW:** Brendan and I had many conversations during the course of the engagement. So he may have mentioned that to me but, you know, he was not in the meeting. I just make that point.

**Ms ABIGAIL BOYD:** In your response to the email I mentioned earlier in which Mike Pratt was indeed told it was a high priority, you respond and say, "Thanks for the update." At the end you say, "I assume they will also need to discuss the extent of financial model outputs reflect in the final Cab sub. I suggest this as it may be circuit breaker as I can imagine we will get another round of challenges with Mike Pratt once San briefs him." What do you mean by "challenges" with Mike Pratt?

**Mr LOW:** At the time of this engagement there was much discussion happening between the agencies around how to respond to and how to fulfil the original Cabinet submission. We were ourselves finalising—with Brendan obviously and with me as a second partner—the Transport for NSW report. As you well know from the correspondence, Treasury was not fully happy with that report. Our client, Transport for NSW, ultimately was happy with the report and we delivered within the scope. So it is reflective, I think, of the wider debate that was happening within government at the time to land this, and get the operating model right and bring it in. We had to bring the advice in to government to allow them to make a decision.

**Ms ABIGAIL BOYD:** My final question. Mr Low, in your view—and I assume you have at least glanced through the emails that were given to us by Mr Lyon last week—was Mr Pratt acting professionally and ethically in relation to the work you were doing for Transport for NSW?

**Mr LOW:** Mr Pratt was, I guess, making some representations to KPMG following earlier discussions between his staff members and others. It was a very direct conversation. I do not have a view about whether it was ethical or unprofessional; I just make the comment that it was a direct conversation on direct engagement matters.

**The CHAIR:** Mr Low, you referenced page 81 of the KPMG report for Transport earlier. Will you look at page XIII. You will see about halfway down it says, "Detailed modelling results." Have you got that in front of you, Mr Low?

**Mr LOW:** Yes, I do, Mr Shoebridge.

**The CHAIR:** What the detailed modelling results show is a vast discrepancy between the modelling done by KPMG in the impact on the forward estimates and Treasury. Would you agree with that?

**Mr LOW:** It shows some possible scenarios that might occur before any accounting treatments are considered that would be applied to the forward estimates. It does include a range of scenarios of potential outcomes, yes, Mr Shoebridge.

**The CHAIR:** What it says is, "Importantly, the detailed model shows a significant erosion in the net fiscal benefits offered by TAHE over the forward estimates and the 10-year evaluation period." Do you see that?

**Mr LOW:** I do see that, yes.

**The CHAIR:** Do you recall me asking Ms Watson about the Treasury summary which was adopted and endorsed by KPMG which showed no impact on the forward estimates. Do you recall that line of questioning?

**Mr LOW:** I do.

**The CHAIR:** So Treasury says no fiscal impacts. Do you accept that?

**Mr LOW:** That is what the document says, that is correct.

**The CHAIR:** And this report says multiple billion dollar negative impacts, does it not?

**Mr LOW:** Yes, it does foreshadow that under a potential scenario.

**The CHAIR:** And indeed, it shows a negative discrepancy of something of the order of \$7.2 billion, does it not, between the KPMG forward estimates over four years and Treasury's?

**Mr LOW:** What it shows is a possible range which has a large gap which you just described. But to compare the two would not be appropriate as per our submission and also the sets of correspondence issued to the Committee in that the Treasury outcomes are after consideration of appropriate government accounting standards and budgetary frameworks. This piece of work did not contemplate that. I was very clear, it did not apply and it was mentioned at various stages, so it would be erroneous to compare them as the same outcome that goes to potential scenarios before consideration of treatments are undertaken.

**The CHAIR:** So one says no net fiscal impact—that is Treasury. The other one says something of the order of a \$7 billion negative over the same four-year estimates. Your assertion—and to be clear the assertion your firm gave to the New South Wales Government—is that there is no inconsistency. There is no conflict there. Do you stand by that position, Mr Low?

**Mr LOW:** I do not see a conflict in the numbers so I do stand by that position, yes, and the firm does in terms of our report being signed off as being acceptable within the scope by both our agencies including the New South Wales Government.

**The CHAIR:** I have seen some extraordinary propositions in my time, watching the New South Wales Government and the various consultants it hires, but I have never seen a consulting firm say to one part of government there will be a negative \$7 billion impact and say to another part of government there will be no net fiscal impact and then assert, as your firm does, those two things are consistent and there is no conflict. I have seen some extraordinary things in my time but never as extraordinary as that, Mr Low. How do you explain it?

**Mr LOW:** Mr Shoebridge, as I mentioned before we were engaged by two agencies and ultimately the client is the New South Wales Government. We were asked a very specific set of questions within the Transport environment—well some possible scenarios. We identified there are significant considerations at an operational level and some implications at a financial level going forward. That advice was then considered by Treasury

obviously in terms of providing some further advice to government. And they, as the Government's advisers around financial and commercial matters would apply, as would any government, appropriate government accounting standards to the assumptions that underpin the budget and the FIS.

I do not see that they are inconsistent. They were two separate pieces of work. We are not the ultimate advisers to government. We give advice to government agencies for them to consider that advice and make appropriate recommendations to their political masters in Cabinet. I am very comfortable, as is the firm, that we fulfilled these two scopes and there is no conflict. The issues are challenging, yes, I acknowledge that, and they are very complex. This Committee's hearings have identified that this is the case, but I do refute any assertion that we were behaving unprofessionally or improperly.

**The CHAIR:** Ms Watson, what your firm had done was take two clients who had quite distinct interests—Treasury wanting the financial outcome that you were backing them in on, and Transport having a separate analysis showing the safety and the financial concerns. Your firm had an irremediable conflict between those two clients and then it was your job, and Mr Heathcote's job, was it not, to just paper over the conflict and pretend there was nothing to see? That is ultimately what happened.

**Ms WATSON:** I would reject that characterisation of events.

**The CHAIR:** Do you have any regrets as a firm for having taken two clients with such an irremediable set of conflicts between them? Do you have any regrets at all?

**Ms WATSON:** As my colleague Mr Low said, we provided advice to two parts of government, two different sectors across the New South Wales Government. Those two sectors have a role to play in the establishment of TAHE. Often when you have a tricky problem to solve you can get different perspectives along the way. We believe that when you have got different perspectives to solve a problem you are going to get better outcomes. So we would not step away from the advice at all. We would probably step in similarly in the future but I think it is fair to say that the perception of conflict has clearly been raised for us and, as our submission talks to, we have done a number of reviews and implemented some changes.

**Ms ABIGAIL BOYD:** But the consequences of getting this wrong are so huge. I hear what you are saying about different accounts and a different scope of work but whether or not we have a \$7 billion hit to the budget really matters to the people of the State. Were you not at all interested in making sure that as a firm you were providing the most prudent advice to the Government?

**Ms WATSON:** Our advice is good advice to the New South Wales Government.

**The CHAIR:** Which bit? The one that says no financial impact or the one that says a \$7 billion hit? Which bit is the good advice? Which should we take next time? The one that backs in Treasury and says no financial impact or the one that backs in Transport and says multibillion dollar negative impact? Which is the good advice, Mr Low?

**Ms WATSON:** They are both—

**The CHAIR:** Mr Low, which is the good advice.

**Mr LOW:** The advice, Mr Shoebridge, is consistent with the scope asked for. If we were asked other questions then we would respond to other questions but these are questions you need to put to the government agencies around how they are framing the advice to government. We had a very deliberate scope here and we delivered against both scopes. Going to Ms Watson's points before, when there was a perceived issue of conflict we created a conflict oversight committee to help us work through these issues to make sure we were meeting our obligations. Going to Ms Boyd's point of view, we made sure that we got our best team. Ms Watson is an expert in her area. Mr Lyon was an expert in his area around public policy and infrastructure. Ms Watson in the area of government accounting and application of budgetary frameworks. We put the best team on both of these to make sure that we provide the right and accurate advice to the New South Wales government agencies who then can consider what this means in advising government about decisions on this important issue.

**The CHAIR:** Ms Watson, you need to be one hell of an expert do you not, to say one report that says no net impact and another report that says a \$7 billion negative hit has no conflict? You need to be one hell of an expert to explain that, would you not, Ms Watson?

**The Hon. SCOTT FARLOW:** Is there a question?

**The CHAIR:** Do you stand by your position that there is no conflict between one report saying no impact and the other report saying a \$7 billion hit to the budget? Do you stand by your position that there is no conflict? Is that your evidence?

**Ms WATSON:** I do, Chair. One was a set of scenarios based on hypothetical future decisions that are yet to be made within the Government's control. The other was based on the financial and budgetary reporting frameworks.

**The CHAIR:** Ms Watson, how much has NSW Treasury provided in fees to your firm over the last five financial years?

**Ms WATSON:** I would have to take that question on notice.

**The CHAIR:** It was one hell of a client, was it not?

**Ms WATSON:** No. In actual fact, I think that we probably get less fee revenue from NSW Treasury than we do from a range of other government agency clients.

**The Hon. DANIEL MOOKHEY:** Ms Watson, you said you were retained by Treasury in February 2020. Did I hear you correctly on that?

**Ms WATSON:** That is correct.

**The Hon. DANIEL MOOKHEY:** At the same time you were assisting Mr Lyon for Transport in production of the operational accounting advice report, as you say in your submission. Correct?

**Ms WATSON:** I worked with Mr Lyon during the months of April and May.

**The Hon. DANIEL MOOKHEY:** Did you ever tell—

**The Hon. SCOTT FARLOW:** They were engaged by Treasury before Mr Lyon was engaged.

**Ms WATSON:** That is correct.

**The Hon. DANIEL MOOKHEY:** Yes, but did KPMG ever tell Mr Staples that when they had retained you and Mr Lyon you were already working for Treasury?

**Ms WATSON:** I cannot vouch for what was said to Mr Staples by various other parties. What I can say is that at the kick-off meeting for the work in April I was there, Treasury was there, Transport was there. Transport was aware that I was undertaking work for NSW Treasury; I had met with the director of statutory reporting in February; I had met with their deputy secretary, Corporate Services and CFO, at the beginning of April. All stakeholders from February onwards across Transport and Treasury have been aware of my role with NSW Treasury.

**The Hon. DANIEL MOOKHEY:** No doubt, but you had an obligation to proactively declare your conflict of interest with Transport, which neither you nor KPMG did. That is correct?

**Ms WATSON:** What was this conflict, Mr Mookhey?

**The Hon. DANIEL MOOKHEY:** The fact that you were simultaneously providing advice to Treasury on TAHE at the same time as Transport had retained you to assist them with the operating model.

**Ms WATSON:** Transport had retained Mr Lyon. Mr Lyon requested that I assist him on an accounting workstream. That accounting workstream included questions such as what would be the impact of new accounting standards at 1 July? That was work that I was already doing for NSW Treasury and it made sense for all parties that we would then, rather than charge two different agencies for the same advice twice, that we would provide the same single set of advice to the two parties.

**The Hon. DANIEL MOOKHEY:** But you never—

**The CHAIR:** Mr Mookhey, this will have to be your last question.

**The Hon. DANIEL MOOKHEY:** I accept that, but my question was: You never declared that conflict to Mr Staples or Transport at the time that he had engaged your firm to assist him and you should have, should you not?

**Ms WATSON:** I do not believe that there was a conflict. I can say that I went through all our risk management processes, which include consideration of conflicts of interest, and there were none to report.

**The Hon. DANIEL MOOKHEY:** Did Mr Lyon know—

**The CHAIR:** Sorry, Mr Mookhey, we will have to finish up.

**The Hon. DANIEL MOOKHEY:** The last one. Did Mr Lyon know at the time that he had asked you to assist him that you were also at this point retained by Treasury?

**Ms WATSON:** Of course Mr Lyon knew. I spoke to Mr Lyon about my work with NSW Treasury in February.

**The CHAIR:** Ms Watson and Mr Low, thank you both for your assistance today. I think you did take a number of questions on notice. The secretariat will assist you with identifying with clarity what those questions are and I will just remind you that you have 21 days in which to provide those answers. Thank you both for your assistance today. We will have a short break and resume the hearing at 11.30.

**(The witnesses withdrew.)**

**(Short adjournment)**

**The CHAIR:** Welcome back to the Public Accountability Committee's ongoing hearing into the Transport Asset Holding Entity. I welcome our next witness, Mr Rodd Staples. Mr Staples, as you are appearing under summons, I draw your attention to paragraph 12 (b) of the procedural fairness resolution of the House that states that witnesses appearing under summons may be required to answer questions if the Committee so decides and that failure to do so may constitute a contempt of Parliament under section 11 of the Parliamentary Evidence Act 1901, but I am not expecting we will rush to that point at any point, Mr Staples. We are grateful for your cooperation and your attendance today; we appreciate the time you take out. Can I say at the outset, we appreciate the work you have done for the people of New South Wales in your roles.

**RODD ANDREW STAPLES**, Former Secretary, Transport for NSW, sworn and examined

**The CHAIR:** If you would like to make a brief opening statement now is the opportunity, Mr Staples.

**Mr STAPLES:** Good morning, and thank you, Chair. I want to begin by acknowledging the Committee terms of reference and its powers, including the power it has exercised to summon me here today as a witness to this hearing. I understand that I sit here on the basis that I was the custodian of the secretary of Transport role here in New South Wales between 2017 and February of this year and the director of the Transport Asset Holding Entity, or TAHE as I will refer to it from here, from 1 July 2020 until February of this year. While I have recently started working again in a role outside the government, I appear here today as a private citizen. What I say cannot be interpreted as a view of the firm that I have joined; however, I thank them for affording me the time to attend today and for their support in the principle of parliamentary scrutiny.

My assistance is limited by the fact that the original government policy decision to establish TAHE and the legislation that enabled it all occurred before I became secretary. At that time, I headed the Sydney Metro program of work. More recently, further work will have been progressed on the implementation of TAHE since my departure from Transport in February. I am not familiar at all with those recent activities. I am also conscious that I have ongoing confidentiality obligations regarding the Cabinet processes, which I will honour, and that may limit my ability to answer some questions.

As the secretary of Transport, my job, with others, was to implement the Government's decision to establish TAHE. I was always open-minded on how best to make that work, committed to well-informed decision-making and clear that we all needed to understand and manage the risks that it entailed. My priority throughout was the future safety of our customers and our staff and the long-term integrity of the rail network. I saw this priority not just through the lens of today but, perhaps more importantly, as the TAHE arrangements became fully established in the years ahead.

Finally, I would like to acknowledge the effort and commitment of many people in Transport and TAHE who have worked hard and diligently to implement this policy as best as possible within the parameters imposed on them. Any views that I share about TAHE should not be interpreted as a criticism of their work—quite the opposite. I cannot say enough to pay tribute to their integrity, their commitment and their efforts over several years. If you are watching today, please know how grateful I am to all of you; you can be very proud. Thank you.

**The CHAIR:** Thanks very much, Mr Staples. We do acknowledge you are here in your position of implementing government policy, not creating policy, and we appreciate you making that abundantly clear at the outset of your evidence. I might now hand over to Mr Mookhey to commence the questioning.

**The Hon. DANIEL MOOKHEY:** Thank you, Mr Staples, it is good to see you again. You were the secretary of Transport for NSW from the end of 2017 to February this year. Correct?

**Mr STAPLES:** Yes, that is correct.

**The Hon. DANIEL MOOKHEY:** Prior to that you were the head of the Sydney Metro. Correct?

**Mr STAPLES:** Yes, that is correct.

**The Hon. DANIEL MOOKHEY:** And you built the North West Rail Link. Fair?

**Mr STAPLES:** With help from a few others, yes.

**The Hon. DANIEL MOOKHEY:** Fair enough. Prior to that you worked in the transport department?

**Mr STAPLES:** Yes, I did.

**The Hon. DANIEL MOOKHEY:** When did you join the transport department?

**Mr STAPLES:** I joined the transport department in 2007. Before that, I actually joined the New South Wales Government in 2005 inside the organisation which at that time was RailCorp.

**The Hon. DANIEL MOOKHEY:** And 2005 RailCorp, forgive my memory on this, but that is approximate to or thereafter in the wake of the royal commission that took place, or a special commission of inquiry that took place into the Waterfall and Glenbrook disasters.

**Mr STAPLES:** Yes, there were some changes in the arrangements around rail between the 1990s into the 2000s and I certainly joined in the midst of that. I had actually worked on contracts for the Rail Infrastructure Corporation post Glenbrook inquiry and implementing that and I was on contract to the Rail Infrastructure

Corporation when the Waterfall incident and tragedy happened. Then I joined RailCorp at a time when really we were dealing with the ramifications of the Waterfall inquiry and implementing those recommendations.

**The CHAIR:** In fact, RailCorp was, in part, a response to that, bringing it all into one entity.

**Mr STAPLES:** Yes, that is correct.

**The Hon. DANIEL MOOKHEY:** And that was effectively going from the concept of an infrastructure holding company and a separate operator to a merger of the two, in laymen's terms. Is that correct?

**Mr STAPLES:** Yes, there were a few evolutions of the governance of the Rail Access Corporation and Rail Services Authority. Rail Access Corporation owned the assets, Rail Services Authority maintained them and then State Rail operated on those assets. So they were separated entities and then they were progressively brought together over a number of years to form RailCorp.

**The Hon. DANIEL MOOKHEY:** Okay, thank you. So presumably, therefore, you have quite a lot of familiarity well before TAHE in the concept of TAHE. Is that fair?

**Mr STAPLES:** I certainly worked in middle-management roles. I will just be clear, I was not a senior executive at that time, but I worked in middle-management roles in those entities in a few different forms, yes.

**The Hon. DANIEL MOOKHEY:** But, presumably, as the builder of the Sydney Metro, the operator of the transport department, you have some familiarity with rail laws I presume?

**Mr STAPLES:** Yes. I am obviously familiar with the Rail Safety National Law—the regulator, the concepts of rail accreditation, the assurance that that provides the community in terms of the approach overall, yes, I am aware of that.

**The Hon. DANIEL MOOKHEY:** And presumably as a person who, amongst other things, built the metro and built many other things and supervised many other projects, you have some understanding of the finances of rail operations. That is fair?

**Mr STAPLES:** Yes. I guess metro, as an example, is a public-private partnership [PPP]. I led the development and contracting and delivery of that and all of the associated financial elements of that, if that is what you are asking.

**The Hon. DANIEL MOOKHEY:** I am, that is what I am asking. Equally, you have some familiarity as the head of the transport department as to how rail assets and otherwise are reported in the State budget, for an example.

**Mr STAPLES:** Yes, as the secretary, I oversaw the capital and operating budgets for Transport as a whole and subsets of that were the allocations of funding to the rail entities, being Sydney Trains and NSW TrainLink.

**The Hon. DANIEL MOOKHEY:** So if I accuse you of being an expert in rail finances and rail safety you would plead guilty?

**Mr STAPLES:** Yes, look, I certainly have experience. I have invested my career over the last 20 years in public infrastructure, primarily around rail and transport, both from an engineering perspective, because I have an engineering background, and from a finance perspective, because I have also got a finance degree as well. So yes, I am in and around that and have been doing that for some time.

**The Hon. DANIEL MOOKHEY:** I think, Mr Staples, in the many years I have had the opportunity to question you, that is the first accusation you have pleaded guilty to. Finally, I got there.

**The Hon. SCOTT FARLOW:** It is amazing what happens when they let him be grilled.

**The Hon. DANIEL MOOKHEY:** Mr Staples, just moving forward now to the actual Transport Asset Holding Entity, by the time you become secretary the Government has resolved to establish the Transport Asset Holding Entity. That is correct?

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** Is it your understanding that the Government made that decision on or around the 2015-16 budget?

**Mr STAPLES:** That is my understanding, yes.

**The Hon. DANIEL MOOKHEY:** And at that point in time, that decision was made when your predecessor, Mr Reardon, was the secretary of the transport department. That is correct?

**Mr STAPLES:** Yes. There may have been some earlier policy decisions leading up to that about the considerations of it, but I am not really familiar. I am certainly aware that when the significant decision was made Mr Reardon was the secretary, yes.

**The Hon. DANIEL MOOKHEY:** To the best of your knowledge, with the budget treatment that you inherited in 2017, that budget treatment had assumed the operation of the Transport Asset Holding Entity. Is that correct?

**Mr STAPLES:** Yes. My understanding is that as soon as government decided they were going to establish the entity and set on a pathway to implement, which would take a number of years, that they did start to essentially assume that that entity would be coming into effect in the accounting treatment.

**The Hon. DANIEL MOOKHEY:** So when you become secretary, it is in the budget, the Government is committed to it. What did you understand the objectives of the Transport Asset Holding Entity to be, the prime objectives and the secondary objectives?

**Mr STAPLES:** I guess I approached it with an open mind at the time. I think there was a little bit of anxiety within Transport. I had been very focused on metro—when I focus on something I really get focused on something—so I had really poured most of my efforts into that. But, as a member of the Transport executive, there had been some conversation around the Transport Asset Holding Entity, or TAHE, and I was very curious about what the issues were and what its objectives were, so I spent time with my own team within Transport. I was chairing a steering committee that included the Department of Premier and Cabinet and Treasury, so I was obviously involved in those discussions. I went back and looked over the legislation and things like the second reading speech to get a bit more familiar with it as well. So out of all that—that is obviously all on the record—I cannot speak for the people that were in the room or making the decision at the time about what those objectives were. I think all I can offer to you, as I experienced the development and implementation, is my own perspective on what those objectives were.

**The Hon. DANIEL MOOKHEY:** I appreciate that, Mr Staples, and you were not there in 2015, but, as you rightly said, you did a due diligence process for which you developed your own perspective. At the time you became secretary, I just repeat again, what did you consider or what was your understanding that the objective of TAHE was?

**Mr STAPLES:** At the outset my interpretation was that it was to generate more commercial return from the rail assets. That seems to be what the stated objective is in the legislation, and in the second reading speech it unpacks it fairly clearly. I think what I have to say on it is that this is a little bit like peeling an onion: you get into it and you learn more about it as you go. It is, as you found, I am sure the Committee can appreciate, and one of the difficulties with explaining this to people, is it is very complex. So it took me quite some time to really get my head around.

**The CHAIR:** Mr Staples, you said that one of the rationales was to generate more commercial return.

**Mr STAPLES:** That is pretty clearly stated in—

**The CHAIR:** Yes, I think that is clear, including from the property and land assets—

**Mr STAPLES:** Yes.

**The CHAIR:** That is primarily from the land assets, would you say?

**Mr STAPLES:** Yes, that is right.

**The CHAIR:** What were the other objectives that you saw?

**Mr STAPLES:** I think the only other thing that I can really offer beyond that was one observation around what the underlying objective was, which was to do with the accounting treatment and the balance sheet and approach; so basically presenting the fiscal position for the State budget in a certain way.

**The CHAIR:** Can you unpack what that means?

**Mr STAPLES:** What that means, in my experience of leading the implementation from the transport side, was that as you approach a big task like this you look for the risks and the challenges to implement and you look for mitigations. I think that is a really standard sort of process for any senior person to do. As we sought to address some of the concerns around control and decision-making and accountability and who would be doing what within that space to get confidence and clarity that we could maintain safety, good customer service and good clarity about who was doing what, it became apparent that the top criteria in all of that was that we needed to make sure we met the fiscal objective of the treatment on the budget.

**The CHAIR:** And that is converting the same pool of money that was previously being seen as a capital expense into an investment on the State books.

**Mr STAPLES:** Yes, moving from a RailCorp not-for-profit entity into a State-owned corporation commercial entity. While I have got a finance background, I will not profess to fully appreciate the accounting—that is a very specialist area. I have learnt a lot more about it, but I would not wish to profess to be an expert around that, but clearly the accounting treatment was a critical objective of TAHE.

**The CHAIR:** And that is the \$10 billion turnaround, if you like, in the State's forward estimates without actually having to spend any additional money—just treating the same expenditure differently.

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** Let me just step that through though. As you understand the fiscal or financial and all the accounting objectives of the Government, was the objective at first instance to ensure the Transport Asset Holding Entity would be reported in the total State accounts and not the general government sector?

**Mr STAPLES:** That is my understanding, that the entity needed to be established as an independent entity that would make its own decisions and, in doing so, would allow the budget to be presented in a certain way.

**The Hon. DANIEL MOOKHEY:** And in order to achieve that first objective of—for want of a better term—shifting it from the general government sector to the off books or into the total State accounts, the Government decided to establish a State-owned corporation. That is correct?

**Mr STAPLES:** That is my observation of the few years that I was involved that that was a key criteria and objective, yes.

**The Hon. DANIEL MOOKHEY:** And a State-owned corporation under the State Owned Corporations Act, to the best of your knowledge, is required to earn a profit. That is correct?

**Mr STAPLES:** Yes, they are established for a commercial return.

**The Hon. DANIEL MOOKHEY:** And in order to obtain appropriate accounting treatment that would allow the Government to report it off book; they had to be genuinely independent of government. Correct?

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** And, equally, in order to maintain that, they had to provide a rate of return at least above inflation. Was that your expectation at the time?

**Mr STAPLES:** I did not really enter into the debate about what the appropriate rate of return would be probably until more recently as we came into the precursor to the establishment of the entity and some of the engagements that we have with KPMG. But certainly my background in finance would suggest that you are looking to earn something more than inflation in terms of a rate of return, and I think there is some good benchmarking from KPMG in their advice around like entities within governments that actually have different rates of return.

**The CHAIR:** Just stopping you there, Mr Staples. In the sort of benchmarking you were looking at from the advice you were getting from KPMG about a return for a State-owned corporation, what were you—

**Mr STAPLES:** We saw numbers in the KPMG report of benchmarking between 3, 6, 8 per cent rates of return. I think, for example, Sydney Water is of the order of about 6 per cent. So they were benchmark-type numbers that were being floated around at the time.

**The Hon. DANIEL MOOKHEY:** But those are the two key criteria. If the Government could satisfy those two criteria, as the Chair made reference, they would be able to shift at the time between 2015 and 2019 \$6.8 billion over those four years' forward estimates off the general government sector and onto the total State accounts. Is that your understanding?

**Mr STAPLES:** Yes, Mr Mookhey. I think the only caveat I would place on my response to that is that certainly I studied the numbers, but ultimately, in terms of the way it is to be presented in the budget, that is a matter for Treasury. What I really put the focus and energy on for myself and the department was to manage the establishment of the entity and how it would operate within Transport and, to a large extent, particularly in the early phase, was to sort of accept what the accounting treatment would be.

**The CHAIR:** Mr Staples, just stopping you there, we have spoken about the creation of TAHE, the principles underpinning TAHE from the Government's perspective. Where did the idea for TAHE generate? Did

it come from within Transport—that is a great idea for the Transport assets? Did it come from within Treasury from a Treasury perspective? Where did it come from?

**Mr STAPLES:** Like a lot of things, it is not a simple answer to that, but, once again, all I can do is give you my observations of what I saw at the time. When I was a member of the Transport executive under what was the director-general but previous secretary Les Wielinga, there were discussions about the idea of an asset holding entity within Transport. From a Transport point of view, the thought there was to consolidate all of the assets into one entity, manage them, but very much within the Transport portfolio and under the direction of the secretary; there were some logical sorts of controls for that. What then emerged, I think, was the suggestion or a proposal from Treasury around a different type of entity that would be a commercial entity, and that is where the big decision sort of emerged around that. So for a commercial, independent entity with the accounting treatments that we are now talking about, that was a policy that came from Treasury, as I understand it.

**The CHAIR:** And it is that commercial element of it—and we will probably explore this in some detail—that ended up becoming very complex, if I could put it that way, for Transport to digest.

**Mr STAPLES:** Yes, although, just to be clear for the Committee, I do not want to give an impression that I am not comfortable with the idea of commercial entities and the concepts of them. Firstly, I led metro; we introduced a private operator in metro and I think that has delivered really good benefits in the way we have gone about doing that. If you can look at both a Commonwealth and a State level, there are some very effective commercial entities that operate. You can debate NBN, but it is something that is done very effectively as a commercial entity providing services to retail or being providers. Sydney Water is a very good commercial entity. What I would say about an entity like that is its purpose is incredibly clear and its accountability is really clear. If the water is not clean and safe it is very clear where the accountability lies around that.

So there are some really good models where State-owned corporations. I am actually a fan of them in the right purpose, in the right place. In the commercial world, the private sector, I think we have seen recent trends of organisations splitting themselves and creating asset holding entities. Both of the major telecommunications companies here in Australia, Telstra and Optus, have done that recently. What that has done is free up balance sheets for them, but there is an incredibly strong commercial connection between Optus and the new asset holding entity that basically controls their towers, and some incredibly strong drivers to performance within those contracts and some positives around accessing technology and other things globally for those asset companies. So I guess my point—I know it is a long-winded answer—is that I just do not want to leave the Committee feeling like I am anti-commercial entities.

**The CHAIR:** My understanding, Mr Staples is, you are not ideologically opposed to it, but when you put your Transport hat on you realised how many difficulties there were in implementing it.

**Mr STAPLES:** Certainly this particular commercial entity, yes, was very challenging.

**The Hon. SCOTT FARLOW:** Just briefly on this, in a transport asset holding entity like this, it is a similar model in Victoria, is it not, to TAHE, and Queensland as well?

**Mr STAPLES:** Yes, there are models in those States. They are historically much older and I think established for different purposes at the time and I think they are on their own journeys about what has to happen in terms of their treatments going forward. I think it is an oversimplification to say because Victoria and Queensland have done this that we should be doing it in New South Wales in this way.

**The Hon. DANIEL MOOKHEY:** Just on that, Mr Staples, the \$6.8 billion, which I think we have established, do you agree was a key consideration of the Government to obtain that outcome?

**Mr STAPLES:** My observation was the key driver for TAHE was to make sure that they could present the budget in a fiscally different way to if it was not there.

**The Hon. DANIEL MOOKHEY:** And you made reference earlier in one of your answers that that limits the ability to, for want of a better term, mitigate some of the risks that would arise. Does a conflict emerge between the ability for Transport, as you saw at the time, to operate the rail network through TAHE and then the structure that was created, and the ability of the Government to obtain the accounting treatment?

**Mr STAPLES:** I think context does matter a lot in just trying to explain my observations on that. If you went back 10 years ago it probably would not have looked as out of kilter, but from 2011, actually for the last decade, the Government's overarching policy around transport has been one of integration, one of connection, one of customer journey. The terminology used in those early years was breaking down the silos and there were quite a few entities, some of which were commercial in nature, in 2011 and 2012 that were disbanded with a view of much more integrated decision-making and joined-up decision-making and removing some of those barriers. To a large extent, that policy has continued throughout and, most recently under my tenure as the secretary, we

brought in Roads and Maritime Services [RMS] as almost like the next step in that natural evolution, and I think that has brought enormous benefit to the people of New South Wales across the State. When you look back on what has been achieved over the last decade, I think people can be very proud of what has been done. TAHE does sit at odds, to a large extent, with that broader policy direction in terms of injecting into that arrangement a commercial entity with a very modal-specific commercial driver, without a doubt.

**The Hon. DANIEL MOOKHEY:** Well then, what are the implications of introducing that commercial entity with that commercial driver as it comes to the ability to operate throughout network safety?

**Mr STAPLES:** I can only share my own concerns based on, obviously, working within a team, the experience that I had, as you outlined before, and the fact that ambiguity remained in terms of where accountabilities lie. I did not get a chance to watch all of the previous witnesses' statements but I did hear some around it, and I think some of the issues around who was really going to control maintenance would be a very good example of the ambiguity and uncertainty on that heightens your concern as a leader about who knows what is going on.

So first and foremost for me the concerns that sat around TAHE—when I say concerns, the things that I thought we needed to address to implement this model. The job was to get on and implement but, first and foremost, who was in control of decision-making around maintenance? Who was in control of decision-making around future investment? That has potential safety ramifications and it has potential quality-to-customer outcome ramifications. Now none of what I say should be interpreted as a doubt or a concern for the frontline workforce who are out there maintaining the network at the moment. Having overseen transport, they do an extraordinary job but their job is to work with the resource pool that they are given and to get on there and work within the limits of that, and do what they can. So whoever is in control of the quantum of the maintenance has a significant influence on the quality of what they can do. And whoever is involved in the decision-making around the forward capital program where money will be invested and in what it is invested on, actually has a profound impact on the safety and the customer service as well.

**The CHAIR:** Does that reflect your understanding of the outcomes of the special commission of inquiry as well where they said, effectively, who is doing the maintenance? Who has the long-term interest in maintaining the assets should lie with whoever owns the assets.

**Mr STAPLES:** Yes, and my approach to how can we find a workable solution where everyone is clear and accountable in this model? This model is happening. There are some fiscal benefits for the State. Let us back that in and help the State to achieve that and let us work through how we provide the assurance that TAHE as the asset owner understands its accountability but also Sydney Trains, as the day-to-day maintainer, has also got their accountability, and Transport. It did become very complex. You will see the KPMG report that was prepared by Transport, there is a lot of detail in the RACIs around working through who is accountable for what, not just in safety but more generally across the operation.

**The CHAIR:** Just to go back on that timeline, when TAHE is effectively established and up and running on 1 July last year, at that point nobody knew who was going to be doing the maintenance going forward. Is that right?

**Mr STAPLES:** The decision to stand up TAHE and bring it into effect last year, there was concern within Transport, including myself, around TAHE's readiness to take on the role of the asset custodian at that point in time. The way we mitigated that in the first instance—and Ms Watson referred to this as well—was the operating licence—

**The CHAIR:** The deed.

**Mr STAPLES:** —that was implemented was to basically really contain it to an absolute do minimum and retain a sort of business-as-usual approach with Transport and Sydney Trains basically taking the heavy lifting on who would make decisions around what amount of money and where that money would go. So that was put in place for a year with the view that we needed to resolve those accountabilities over the course of the year that has gone.

**The CHAIR:** I cannot think of anything more critical in a generational change for the rail assets for the whole of New South Wales than knowing who is going to maintain them going forward. It seems to me quite incredible that the decision was made to transfer the assets and stack up TAHE before something as essential as maintenance was resolved, Mr Staples. Maybe you can shed some light on that?

**Mr STAPLES:** Yes, I think it highlights the uncertainty around—a discussion like that is a really good illustration of the difficulty we had navigating through the preparedness to stand the organisation up and get clarity bearing in mind that there are a number of moving things. The change in accounting standards that occurred in

2019 and getting our understanding of that raised the bar in terms of what was required from a commercial independence point of view which maybe could not have been foreseen in 2015 and that would have put more emphasis on the need for independence.

**The Hon. DANIEL MOOKHEY:** Mr Staples, you made the point that that was all stood up as transitional arrangements.

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** Was the reason why the Government made the decision to commence the TAHE as of 1 July 2020, despite the concerns that perhaps you and Transport had was in order to survive the audit that year?

**Mr STAPLES:** There is no question that a critical time driver for establishing on 1 July was that we needed to basically be able to continue to bank the fiscal benefits of TAHE. It had originally been planned to stand up on 1 July 2019 and that had been deferred because we were not ready, and we had not done enough work. So as we moved into 2020 everyone knew that it needed to show a progressive step forward to the Auditor-General and to ABS that substantive progress was being made to stand up for the entity.

**The Hon. DANIEL MOOKHEY:** Just in laymen's terms, the Government commenced the Transport Asset Holding Entity, despite Transport's objections, because they were worried that the Audit Office would find that they were a year late in meeting the commitments that had been made to them?

**Mr STAPLES:** I am not sure I would use the word "objection". I think we accepted that it was a policy decision to implement TAHE and there was not an objection to that occurring. There was concern and a lot of work ongoing to identify and manage the risks and get clear around the accountability. I would say the second half of 2019 caused some disruption in the process because we got advice from PwC that the accounting treatment may be in question.

**The Hon. DANIEL MOOKHEY:** Yes, that is in your Tab 12.

**Mr STAPLES:** Now I do not want to be definitive on that but it did come in as advice to Transport that there were some questions around that and maybe some changes needed to be made to the TAHE model. We looked at a range of options in that which I will not go into, unless you want to explore further, but that set a scene for concern about not just the safety and the clarity of accountability but also some of the financial treatment and resulted in a pretty strong engagement between ourselves and Treasury in the first half of 2020.

**The Hon. DANIEL MOOKHEY:** I do want to ask you about the PwC report which I provided to you in Tab 12 and the Committee in the supplementary documents. But before we get off this topic, you made a point earlier that you felt that there was long-term conflict. Certainly what I heard and inferred—that is probably a better way of saying it—was that there was a conflict around forward investment, maintenance versus commercial outcome. What does that mean?

**Mr STAPLES:** I will try to keep it simple. Two scenarios to consider in terms of safety implications. One is the quantum of available maintenance each year, particularly on capital investment, just renewing assets, replacing the assets that are out there. My view was always that TAHE would need to have a role in determining that quantum because it actually impacts their financial performance.

**The Hon. DANIEL MOOKHEY:** Yes.

**Mr STAPLES:** Therefore they would have an influence and they would be driven by what is the commercial position and profitability side of things. So we worked really hard and I think we made a fair bit of progress to illustrate that Sydney Trains would continue to do the day-to-day maintenance. One of the questions that remained is just how influential TAHE would become in the long run in determining what the annual quantum would be overall. So that would be the first one. The second would be that over time as TAHE receives access fees and retains earnings. Now they can do a number of different things in terms of what they do with those earnings. They can be paid back to the State as dividends but the equity that sits within the organisation is available for the State to deploy, but it has to be deployed by an independent entity to retain its accounting treatment.

So the debate that would emerge, and I sit there then as a director of TAHE saying, "What have I got to do here?" I have an objective to provide rail assets to the State but I also have this quite open-ended objective within the legislation around just other activities that I may choose to do and an imperative around commercial return. And you will be faced with the conflict of, "Well, how much do I invest in the rail asset, and maybe a new signalling system, versus invest in a property development that would generate a higher return?" So these are not issues that are happening today. Just to be really clear they are not debates that are emerging right now. I said in my opening statement that my concerns were more about the medium to long term.

If you reflect back on some of the issues that emerged through Glenbrook and Waterfall, it was not the initial governance necessarily but it was the passage of time; new people come in, the understanding of what the intent was shifts a little bit and you are working within a legal framework. There was just a foreshadowing that that could go in a direction where the drivers sitting within that organisation become disconnected with the drivers in Transport.

**The Hon. DANIEL MOOKHEY:** So basically extra maintenance for a train has to compete with the commercial return that could be earned by property developing a station? Is that what you are talking about?

**Mr STAPLES:** Yes.

**The CHAIR:** And then those concerns about the culture over time become more real if the entity that owns the asset is not involved in running the rail network. You lose that cultural connection with what is needed for a safe rail network.

**Mr STAPLES:** Therein lies, I think, the parallel that I was trying to draw with an entity like Sydney Water where there is a really good clarity of accountability and they do great job. The risk for us within Transport and TAHE—and I sat on the board and there was very good intent, to be clear. I have a lot of respect for the board that has been established and good intent within that organisation to try to do the right thing. It is not a criticism or observation of those people; it is more the passage of time and how things could change.

**The Hon. SCOTT FARLOW:** But is that not somewhat governed by the statement of expectations issued by the portfolio Minister?

**Mr STAPLES:** Which can be changed. They are not in legislation. They can be changed over time.

**The Hon. SCOTT FARLOW:** But in regard to ministerial responsibility it is similar to what would be responsible with a department when there is a statement of expectations from that Minister.

**Mr STAPLES:** Yes, but there is also an obligation as a director of a company to produce a commercial return. So it is definitely a guard rail; no question at all. It is definitely a guard rail but the passage of time is the risk.

**Ms ABIGAIL BOYD:** Just to clarify, it sounds like there was tension then between this overriding accounting objective in getting the accounting right and, on the other hand, the safety objectives and the objective of having clarity over that accountability. Looking at that tension, did you believe it could be solved?

**Mr STAPLES:** So I would characterise it slightly differently. We needed to meet the accounting treatment. That was the policy decision of government and we were working to find solutions to do that. It was very difficult to get to a point where with meeting the independence threshold that there was a natural clear range of accountability.

**The CHAIR:** They were working in tension, were they not? There was a tension between the accounting outcome and the safety outcome. They were pulling in different directions and it was your job to try to, if you like, square the circle—

**Mr STAPLES:** Yes, and this is not black and white in terms of risk and mitigation, levels of risk, risk tolerance, working through the logic on that. Some people may feel more comfortable than others around what that level of risk is, but certainly I was very uncomfortable.

**Ms ABIGAIL BOYD:** That is not uncommon. In my previous career I worked as a structurer for some time and we would refer to certain problems as being, once you fixed that, it would be the Holy Grail. But until people understood how to marry up various objectives you could not propose that as a structure. Do you think that the TAHE structure got proposed and embedded in policy before a viable structure had been developed?

**Mr STAPLES:** I have had a lot of time to think about this over the last few months. When you do not have to run the Transport network every day it gives you a bit more mental capacity to think and reflect.

**The Hon. DANIEL MOOKHEY:** Sure.

**Mr STAPLES:** One reflection that I would have, without understanding where the decision-makers were at the time, two things happened when TAHE was established that in hindsight maybe made things very difficult. The first one was that the concept was agreed, the accounting benefit was booked immediately. In doing so that created an immediate necessity to basically work within that constraint. The second thing I would say, and I am sure we will end up talking about differences of view as we work our way through this session, that over the passage of time there was not an assurance process sitting around this independent of the key people involved in its implementation, including myself, to give the Government some assurance around how that was tracking and how the risks were being managed.

My contrast on both of those points would be that the Government has done a very good job in establishing a gateway process for major projects, of which I have gone through more times than I care to describe, but the need to do a rigorous business case, to put that through an independent panel that sits outside of the agencies and then to go through various gates after that to test on how we are tracking against that delivery—I would say deciding to bank the benefit and not having an ability for some of these issues to be resolved with some independent oversight are two things that probably have made the journey of implementation incredibly difficult.

**The CHAIR:** If your advice is to unwind a policy decision and it is going to have a \$10 billion impact on the State's budget, that is advice that no government wants to hear, is it not, Mr Staples?

**Mr STAPLES:** I think that is fairly obvious. I guess what I am trying to actually be a little bit proactive and constructive here is to say that upon reflection there are probably some better ways to work to manage these things.

**The Hon. DANIEL MOOKHEY:** The point which you just made reference to there, to be fair I picked up because I questioned you about the infrastructure investor insurance framework which I think you were just describing. The implication that I heard from your answer to Ms Boyd's question just then was Sydney Metro went through an independent assurance process but TAHE does not seem to have ever gone through a similar process. In fact, it seems to have got less scrutiny than, for example, decisions to give grants to sporting organisations. Was there ever an independent assurance framework that was put on top of TAHE that you could describe for us?

**Mr STAPLES:** Government makes big decisions all the time. All I am doing is offering a reflection, having come out of the infrastructure sector and seen the benefit of assurance and reflecting that we did not have that on this journey with TAHE. If things had not been an issue, and there had not been difficulties to resolve, maybe that would not have been such a big problem.

**The CHAIR:** Mr Staples, we are grateful for that because part of our remit is to try to make sure we do not repeat mistakes, so I think that is critical. But I also think we need to work out what exactly happened in TAHE.

**Ms ABIGAIL BOYD:** I want to clarify your answer. I asked you about whether you thought there would be a viable structure for TAHE. I understand what you were responding with was not necessarily commenting on that but saying that Treasury, or the Government as a whole, banked the benefit of this structure in that it recognised it in the budget prior to knowing that a viable structure existed. Is that correct?

**Mr STAPLES:** As I said earlier, I cannot speak for where the decision-makers were at at the time and what their thinking was on what was viable and was not. I can only assume that they thought that this was a viable structure and it was just a matter of getting it put in place.

**The CHAIR:** But to be clear, by the time you first had a good look at it in 2017 there was not a viable business structure in place, at least from a Transport point of view?

**Mr STAPLES:** It took me a very long time to get my head around it. I would not say I was there in 2017. In fact, the whole three years I was secretary I was still on a learning curve, very curious about how to make this work.

**The CHAIR:** So it was not a viable structure that you saw in place that was going to address all of the safety and finance aspects during your time?

**Mr STAPLES:** When I started working on it, we were working through those issues. I did not have in my mind that we would not find solutions to them. I thought we would work our way through and find solutions but it got very hard.

**The Hon. DANIEL MOOKHEY:** Mr Staples, did the establishment of the Transport Asset Holding Entity increase long-term risk to rail safety?

**Mr STAPLES:** I think the way I described it the two issues that I saw before around maintenance and capital investment, if those issues are merged then I think it does. The question is whether or not you can get enough controls around that and contain the independence enough which was, at the time that I was secretary and until February this year, I still do not think that was resolved. Perhaps progress has been made since then to reconcile that but at the time that I was secretary we had not got to that point.

**The Hon. DANIEL MOOKHEY:** When you left the secretaryship in February this year, you were not satisfied that the mitigations were in place to prevent any future risk to rail safety?

**Mr STAPLES:** In the short term, yes, because the operating licence was contained.

**The Hon. DANIEL MOOKHEY:** But the long term?

**Mr STAPLES:** Up to the long term, no, that was still to be resolved.

**The Hon. JOHN GRAHAM:** It was not just that you were not satisfied? I heard you briefly say at one point "I was very uncomfortable." That is a very strong statement that you have made.

**Mr STAPLES:** Yes.

**The Hon. JOHN GRAHAM:** But that is really the strength of your feeling on this?

**Mr STAPLES:** Yes, I was very uncomfortable.

**The Hon. DANIEL MOOKHEY:** As of February this year you were very uncomfortable about the way that TAHE was tracking?

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** You made before a reference. You accepted that this was the objective of the Government and that you were trying to implement it but you were making attempts to mitigate the risks or you were putting in contingencies. What did you try to do to mitigate the risk?

**Mr STAPLES:** This occurred over time and, I guess, there are a number of different layers to that. It just depends how much time you want me to spend on it.

**The Hon. DANIEL MOOKHEY:** Maybe just enough to be able to communicate the key points in the order of how you feel they should be communicated, Mr Staples.

**Mr STAPLES:** In the first 12 to 18 months or so—

**The Hon. SCOTT FARLOW:** Very different to your questioning in budget estimates.

**The Hon. DANIEL MOOKHEY:** Fair point, Mr Farlow.

**Mr STAPLES:** Within the governance arrangements we had between ourselves in Transport, Treasury and the Department of Premier and Cabinet we worked a lot on things like who would be accountable for what, working that through in some detail. I think we had made a reasonable amount of progress on that by mid-2019—not enough to bring the entity into effect. As I foreshadowed before, there were some raised issues around the PwC advice on accounting which suggested that maybe the independence needed to be stronger than we had originally anticipated in separation. That basically caused us to take a step back and revisit those elements again.

**The Hon. DANIEL MOOKHEY:** Before you go beyond that point, this is the PwC report that is on Tab 12. On page 8 it states, "This PwC report" which presumably you commissioned as Transport secretary?

**Mr STAPLES:** Yes. I did not personally commission it but the team that we established within Transport looking after TAHE, yes, they commissioned this work.

**The Hon. DANIEL MOOKHEY:** Is that before the engagement of KPMG by either you or Treasury? Is that correct?

**Mr STAPLES:** Yes, that is right.

**The Hon. DANIEL MOOKHEY:** On page 8 of this report it says to you that once you factor in the new accounting standards that came in in 2018, TAHE would, in fact, have an impact over the forward estimates of negative \$10 billion. Correct?

**Mr STAPLES:** As I understand it, the advice from PwC was that there was a risk that the accounting treatment that was being adopted by the Government could not be sustained.

**The Hon. DANIEL MOOKHEY:** Indeed.

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** And PwC tells you that. You receive this advice. What did you do in reaction to it?

**Mr STAPLES:** I was very surprised to receive it. My focus had been much more on the implementation and on the safety, customer and some of the financial aspects more generally and what it meant for Transport. I had taken this largely as a given that this was happening and that there was not really any question. I was very concerned again that this issue had arisen and really very quickly engaged, firstly with PwC to understand the issue a little bit more and then back with Mike Pratt and Tim Reardon as my two counterparts that were really relevant to this, above that general committee that I was chairing, to alert them to the concerns that were coming

through. This stuff is never definitive, I think as you have heard from the evidence this morning. There are views around accounting and treatment without a doubt. But basically, in terms of this particular matter, I took it to Treasury.

**The Hon. SCOTT FARLOW:** Just on that point about it not being definitive, was this a final document or a draft document? What was its status when you received it?

**Mr STAPLES:** This particular document, I could not tell you the status of when I received it. I certainly received preliminary advice and then, I think, the team would have finalised that.

**The Hon. SCOTT FARLOW:** Did that happen during your time?

**Mr STAPLES:** Yes, that happened during my time.

**The Hon. DANIEL MOOKHEY:** You said you contacted Mike Pratt and Tim Reardon. I separately asked Mr Reardon and Mr Pratt and they separately confirmed that there was some type of a meeting that took place in March or thereabouts? Are we talking about the same thing?

**Mr STAPLES:** Yes, I had my first conversation with Mr Pratt in December 2019 around this.

**The Hon. DANIEL MOOKHEY:** What did you tell him?

**Mr STAPLES:** That we had some advice from PwC that was raising concerns around the accounting treatment and that I was concerned around that. He took that on board. He appreciated me reaching out directly to him and having that conversation. We agreed that we would talk about it again in the New Year. Admittedly, I think, it took until March, bearing in mind that we had a very intense period through December and January certainly for myself and Mr Reardon around the bushfires in that period. So it would be fair to say there was a time when we were not particularly focused on a longer-term policy decision like this.

**The Hon. DANIEL MOOKHEY:** Did you contact Mr Reardon to say the same?

**Mr STAPLES:** I did not see Mr Reardon about it until sometime in 2020. I certainly recall having a meeting with Mr Reardon and Mr Pratt somewhere around March, so that date coincides with my recollection, to basically talk to the two of them together about the fact that we have got this—

**The Hon. DANIEL MOOKHEY:** You met with them in March 2020. What did you tell them?

**Mr STAPLES:** That we had this advice from PwC that suggested there were some challenges with achieving the accounting treatments. It is complicated. I did not even fully understand some of the dimensions of what PwC was saying but it does require quite an accounting mindset around it. Tim and Mike both took that on board. From what I can interpret now it is probably the catalyst to bring KPMG back in on the accounting to actually get an update on the advice that Treasury got from KPMG previously.

**The CHAIR:** Mr Staples your take away from the PwC report, the one that you got at the end of 2019, was that TAHE, as then being proposed by the Government—and I think it is sometimes described in the PwC report as the TAHE light or ultralight—just was not going to stack up. It was not going to work.

**Mr STAPLES:** That was the advice from PwC. Certainly what I did say to PwC at the time when we got that advice is, "What are the options to achieve this?"

**The CHAIR:** One of the options they put forward was the full corporatisation of the rail network?

**The Hon. DANIEL MOOKHEY:** What for Transport for NSW?

**The CHAIR:** Well, all of Transport for NSW—handing over all of Transport for NSW to a corporate entity?

**Mr STAPLES:** Yes.

**The CHAIR:** Which was a far more radical solution than the TAHE model. Is that right?

**Mr STAPLES:** Yes, but with pluses and minuses to it. I can understand concern around, "Does that mean all of the decisions are going to be made from a financial perspective?" At the end of the day I do not think it actually stacked up because it had a series of accounting issues with it. The amount of non-profitable assets that would be in the entity meant that it would not actually deliver the same sorts of accounting outcomes, as you worked that through. If I had an intuitive initial response that was positive about it, it was that at the very least the decision-making accountability would be inside the one entity. So going back to some of my points around Transport and then TAHE and different drivers and objectives, at least they would all be in the one place like a Sydney Water model.

**The CHAIR:** Did you understand at the time you took this to Mr Pratt and you said, "Our advice is that TAHE is not going to stack up", that if that advice was accepted there would be a \$10 billion unravelling in the budget?

**Mr STAPLES:** Yes.

**The CHAIR:** What if any conversation you had with Mr Pratt at the time was about that?

**Mr STAPLES:** The feedback I got from Mr Pratt was that we needed to get on and implement this policy and we would find a way to make it work.

**The Hon. SCOTT FARLOW:** Prior to the preparation of the report, did Treasury have any input into the report or the parameters or raise any concerns with it?

**Mr STAPLES:** I do not know. I would have to take that on notice. I do not have that level of background.

**The Hon. DANIEL MOOKHEY:** Did it occur to you when you got this report, which to be fair was in December 2019, to ask anyone in Transport why the Government was going to persist with this model if it was not going to work?

**Mr STAPLES:** I was conscious that this was a view and that there would be other views. It is a little bit—going back to that reflective feedback around maybe some independence on this would have helped to resolve some of these issues. It was advice prepared by Transport but at the end of the day the accountability for budget treatment lies with Treasury. So I handed this to Mike Pratt as an issue that needed to basically be thought about and dealt with and left him to pursue that.

**The CHAIR:** Did you discuss with Mr Pratt in that March meeting the safety issues?

**Mr STAPLES:** Yes. I would always have. It was a pretty paramount conversation. I would always have been flagging him the concerns that I had just generally with the model. I would say the conversation in March was pretty dominated by this new information around accounting. But I had been pretty regular in indicating that we needed to continue to work hard to get comfortable on safety.

**The Hon. DANIEL MOOKHEY:** When did you start providing that advice to anyone, to the best of your recollection?

**Mr STAPLES:** I would say that would have been—I do not have detailed records on that but just picking up on when I started to get engaged would have been the second half of 2019 as we started to get more deeply into how this model would work. I could not see us finding easy solutions to the governance.

**The Hon. DANIEL MOOKHEY:** We will unpack this, rest assured. You were providing advice to people inside the Government that you did not feel it would be possible to sufficiently mitigate the long-term risks that TAHE posed?

**Mr STAPLES:** I do not think I was that definitive, to be honest with you. I was basically still trying to work through with the team, "We have got to find solutions to this."

**The Hon. DANIEL MOOKHEY:** But you expressed concern?

**Mr STAPLES:** I was expressing concerns that it was proving to be harder, and that the feedback we were getting around the accounting suggested that actually independence criteria was even stronger than I had originally appreciated. So there was a bit of a coincidence of events going on.

**The CHAIR:** Could you try to go back to the time frame—

**The Hon. DANIEL MOOKHEY:** Before you go to that, in laymen's terms when you make the independence point, having read more than I ever thought I ever would about accounting tests and independence, are you saying that as you tried to mitigate the safety risks, the measures that you could have taken would have caused the auditors to conclude that this was not independent and, therefore, had to be moved back onto books?

**Mr STAPLES:** What I really credit the team within Transport was that they continued to look at different ways and solutions that we could set TAHE up to have sufficient confidence around who was making the decisions and put those options forward. Generally the feedback was whenever we did anything that crossed the line of independence that that would not work and we needed to go and find another solution.

**The CHAIR:** If we can go back to the timetable. You got the PwC report at the end of 2019.

**Mr STAPLES:** Yes.

**The CHAIR:** You progress your review of it. You have the conversation with Mr Pratt about that in March and is it in that meeting that Mr Pratt tells you they are going to be engaging KPMG?

**Mr STAPLES:** I actually was not aware that they engaged KPMG at that time. There were a few different things running in parallel but I do not have an absolutely crystal clear recollection of the chain of events. But as I think is in the evidence that was put in by KPMG, we did engage KPMG for a more holistic look. I think where I got to from those conversations with Mr Reardon and Mr Pratt was that Transport had been quite focused on the operating model side and not very much on the fiscal. What we found was there was some concern around the fiscal and accounting so I wanted to step back to look the whole, and that was the catalyst for me—or us as Transport—to engage KPMG on those two pieces of work that they did.

**The CHAIR:** Did that follow the meeting with Mr Pratt? Is that your memory?

**Mr STAPLES:** Not specifically from that meeting but in the weeks after, as we worked through on what to do with where we were at.

**The Hon. SCOTT FARLOW:** Just as a point of clarification on that as well, when you engaged KPMG or Mr Lyon for that piece of work in April, were you aware that they were doing work for Treasury by that point?

**Mr STAPLES:** I was aware that they had done work for Treasury previously but I was not aware of a current engagement at that stage, no.

**The CHAIR:** Were you aware of a modelling being done in 2017 by KPMG for Transport about the impact?

**Mr STAPLES:** Yes, so in the first couple of years of the implementation of TAHE, it was largely driven from the teams established at Transport and we were essentially doing all of the engagements for the work that was reporting to a steering committee that involved Treasury and the Department of Premier and Cabinet as well. As far as the model itself, it may have been a contract with Transport, but noting that there was a number of, sort of, fiscal assumptions in that, there would have been a lot of input from Treasury as well.

**The CHAIR:** When you went back to KPMG in April or so of 2020, it was in light of they had previously engaged in this space; they had a model in place and you wanted to work out, with the information that had come to light since then, whether or not it would stack up? Would that be a fair summary?

**Mr STAPLES:** Yes, and there was a time imperative. We were in March. There was an objective of establishing the entity on 1 July of that year to achieve the accounting benefits. So one of the criteria around choosing KPMG was their knowledge and understanding, and the breadth of what they could cover in terms of operating model as well as fiscal or financial.

**The CHAIR:** I understand. Was it part of the terms of KPMG to say whether or not it could be in place and operating and also satisfy the fiscal imperative, that is, the budget imperative? Was that part of your brief?

**Mr STAPLES:** There was not a question about, "Should we or should we not proceed?" The brief was always TAHE is proceeding. We need to identify the risks and come up with the operating model to make that work and achieve the financial outcomes that the Government was seeking to achieve.

**The Hon. JOHN GRAHAM:** When you say that was the brief that was really the brief from the Government—from the Premier and the Treasurer?

**Mr STAPLES:** Well that was the brief from the original decision to implement: just get on and do that.

**The Hon. SCOTT FARLOW:** Yes, Cabinet had made a decision?

**Mr STAPLES:** Cabinet had made a decision to implement so we were proceeding with that. It was not for me to offer up and say—

**The Hon. JOHN GRAHAM:** Understood.

**Mr STAPLES:** —there is a change in policy. All we could do was communicate the risks.

**Ms ABIGAIL BOYD:** I come back to the conflict that KPMG had. When did you first become aware that they were also acting for Treasury?

**Mr STAPLES:** It would have been around the March to April period. I cannot quite recall the specific dates. I am happy to take that on notice and go back and look in my diary and see whether I can better ascertain that, if you would like.

**The Hon. SCOTT FARLOW:** But it was after you had engaged KPMG?

**Mr STAPLES:** I cannot recall the specifics on that, I am sorry.

**Ms ABIGAIL BOYD:** I am looking at an email from you—it should be in the folder under "KPMG emails 002 Staples".

**Mr STAPLES:** Do you know what number it is?

**The Hon. DANIEL MOOKHEY:** I will tell you the tab, given that I think I have the index.

**Ms ABIGAIL BOYD:** Some people have tabbed ones; I do not have tabbed ones. I had to print my own. Sorry, Mr Staples. This is an email from you sent on 3 July at 2020.

**The CHAIR:** It is probably Tab 8.

**The Hon. SCOTT FARLOW:** It is the first one in Tab 8.

**Ms ABIGAIL BOYD:** It has "26" written on the top of the email. Are you able to see that one?

**Mr STAPLES:** Yes.

**Ms ABIGAIL BOYD:** Have you got that one, Mr Staples?

**Mr STAPLES:** Yes.

**Ms ABIGAIL BOYD:** If you look towards the end of that, in the last full paragraph you have written, "Finally, we are yet to understand how this issue first arose. It seems to have been forgotten that the first issue here was a failure to notify us of a conflict under our evolving Transport organisation design contract when you chose to commence the work with NSW Treasury or when the progress of this work subsequently created one." Did you ever get an explanation as to how that conflict was not notified to you?

**Mr STAPLES:** No. The point that I had raised with the partners at that meeting which, obviously I now accept my own assertion of 16 March in that email, was that they were doing a substantial piece of work for Transport on implementing the operating model, changes arising from RMS being brought together with Transport. There was a series of changes being adopted in that and we were expending quite a bit of money with KPMG on that. So very different to anything else you have talked about so far. What became apparent from advice coming through from KPMG on the accounting was that maybe some of those things needed to be revisited in the way that the organisation would be set up to achieve the accounting treatment, and what would sit with who in terms of responsibility.

So my first call to KPMG was, "What is going on here? You have got two different parts of your firm giving advice." We were expending a considerable amount of money with KPMG on the operating model. But this is for Transport more generally, not just for TAHE. That reference is that more general concern. Obviously that would suggest to you that by that stage I was aware that Heather Watson, or KPMG, were doing some accounting work for Treasury.

**Ms ABIGAIL BOYD:** Was your concern that Treasury would somehow influence the work that was being done for Transport for NSW from KPMG?

**Mr STAPLES:** The concern was just transparency—that we were aware that another piece of work was going on that might change the scope of the first piece of work.

**The Hon. DANIEL MOOKHEY:** Were you ever satisfied that KPMG had managed the conflict that you alerted them to?

**Mr STAPLES:** I accepted their assertion that they had protocols internally. Conflicts fit into real conflicts and perceived conflicts. My perception was that there was an ongoing conflict that they had not fully resolved.

**The CHAIR:** To be quite clear, we will probably come to this in steps, but if ever there was evidence of that conflict it was when one of their clients, in this case Mr Pratt, is communicating with the people doing Transport's work, and trying to get them to rewrite their report. That is your immediate conflict, is it not, Mr Staples?

**Mr STAPLES:** Yes, and I think therein lies why I do not think we ever fully resolved the conflict.

**The Hon. DANIEL MOOKHEY:** On that though, were you aware at the time that Treasury had taken a great interest in the report that was being produced for you?

**Mr STAPLES:** Just from a timing point of view, can I clarify? I think you were jumping forward to later in the year now.

**The Hon. DANIEL MOOKHEY:** Yes, from the period of March until effectively November last year, were you aware that Treasury were heavily involving themselves in the production of your report?

**Mr STAPLES:** I actually encouraged it. So the approach that we took in engaging KPMG was not to go off into a corner and do it on our own but it was to actually try to do something that was quite integrated across the different agencies. We engaged. We ultimately set the terms and the financial arrangements for KPMG but the intention all along was that Treasury were alongside us on the journey around that because we knew the importance of actually being on the same page and giving advice to government.

**The CHAIR:** Fundamentally you needed to know the assumptions that Treasury had and the modelling that Treasury had, and to be stress-testing that against how it would impact from a Transport point of view?

**Mr STAPLES:** Yes.

**The CHAIR:** That was just good due diligence, was it not?

**Mr STAPLES:** Yes, and always the way we would attempt to do things within government.

**The CHAIR:** That is quite different from having Treasury direct the outcome of the report?

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** Were you aware as well that your staff, KPMG, Treasury were attending joint workshops and working to produce this report?

**Mr STAPLES:** Yes, that is absolutely what the expectation was. Certainly we were managing the contract with KPMG but Treasury was absolutely key to those conversations.

**The CHAIR:** Did you know at that time that KPMG were on a pathway to produce an entirely separate report to Treasury? Were you aware that there was this separate report being produced to Treasury in parallel with what was being done for Transport?

**Mr STAPLES:** I do not want to sound evasive on it but, you know, it is a year ago and I cannot fully recall but I do not have any recollection that I was aware that that work was happening at the time.

**The CHAIR:** Because I would have thought that would be a kind of important consideration if you knew the same firm was going to produce two different reports to two different parts of government which may have different interests in this?

**Mr STAPLES:** Yes.

**The Hon. SCOTT FARLOW:** Just to pick up on that question. The original report from PwC that first raised the accounting issues was commissioned by Transport for NSW and not by Treasury. Was that effectively, to put it colloquially, like a second opinion from Treasury—in a sense the report commissioned for Ms Watson?

**Mr STAPLES:** Yes, it could be characterised as that, yes.

**The Hon. DANIEL MOOKHEY:** In respect to those meetings that your staff, KPMG under the auspice of Mr Lyon, and Treasury officials were attending, Mr Lyon has told us that some of those meetings became very aggressive. In fact, his emails reveal that. Did you ever get reports from your staff? Did any of them ever raise concerns with you about the conduct of Treasury officials at those meetings?

**Mr STAPLES:** There was some feedback that the nature of the meetings were quite aggressive and not as constructive as we would have liked them to be.

**The Hon. DANIEL MOOKHEY:** And that came from your staff?

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** And that was in respect to treatment that they were subject to, or Mr Lyon was subject to, or both?

**Mr STAPLES:** My recollection is it was probably more towards KPMG people than it was to Transport staff themselves.

**The Hon. DANIEL MOOKHEY:** So your officials witnessed the behaviour and were concerned enough to raise it with you?

**Mr STAPLES:** Yes. I do not remember specific conversations but certainly talking with Fiona Trussell and Peter Perdikos there was some feedback there around concern on how the tone of those meetings were going and how that might affect the outcome of trying to get a collective view.

**The Hon. DANIEL MOOKHEY:** Did you become aware elsewhere at any time between those meetings and 10 September about other conduct of Treasury officials in that meeting or elsewhere that would raise concerns as to whether or not Mr Lyon and/or you were being appropriately treated?

**Mr STAPLES:** No, I would have to say having witnessed Mr Lyon's testimony last week I cannot say that at the time last year I fully appreciated what he was going through, if I am honest. I was certainly aware that there were issues and concerns on how he was being treated in some meetings but it was very eye-opening to get his account.

**The Hon. DANIEL MOOKHEY:** Did you call Mr Lyon last year on or about 10 September and warn him that TAHE, and particularly the most exposed Treasury official, are starting to play the man on him and on "me" which is you?

**Mr STAPLES:** Yes, I do not remember the very specific conversation or the date, but there is no doubt in my mind that I would have had a conversation like that with Brendan. The reason I say that is because as a general rule, in my working career—and I do not just mean in government—in government and private sector when you focus on trying to get an outcome and suddenly the discussion becomes more about people and their capability and their ideology, you know that the decision-making is starting to breakdown. I was concerned for the significance of the engagement because TAHE had been stood up as an entity. The stakes were very high in relation to resolving the operating model as well as getting confident on the fiscal. The stakes were incredibly high. So to know that the discussion was shifting more towards personality and people was of concern to me.

**The Hon. DANIEL MOOKHEY:** On what basis did you conclude that Treasury officials were starting to play the man which included him and you? Why did you have that suspicion?

**The Hon. TREVOR KHAN:** Well he has not actually entirely agreed with that proposition.

**The Hon. DANIEL MOOKHEY:** Let me take you through it one step at a time. If you turn to "KPMG email 002 Staples", which is Tab 8, Mr Lyon's record of the conversation that he then reports to his superiors at KPMG is contained in that email. Did you have a basis to conclude that Treasury officials were playing the man, which included you and him?

**Mr STAPLES:** The feedback that I was hearing was that there were questions more around Brendan and his credibility in this process rather than, "We have got concerns around the modelling. These are the key areas of substance that need to be addressed and resolved." We shifted away from a healthy—I have got no problem with conflict at all. In fact, it is healthy. It is a good thing to have. But you need to be focused on the substantive issues. So if there is disagreement about a model, focus on the model, not on the people that are working on the model. I would say at that point in time I had got to a conclusion, based on what I was hearing from my own team and what I was observing, that we were departing from a focus on the substantive issues. It was starting to basically shut Brendan down and that was not just an issue for Brendan; that was an issue for the entire engagement and the capacity to get a good outcome from that piece of work which we were spending a lot of money on.

**The Hon. DANIEL MOOKHEY:** Did you feel like you were being targeted?

**Mr STAPLES:** I do not actually have a particularly distinct recollection that I was being targeted so I cannot put that particular comment in context. I am not suggesting that Brendan has got that conversation wrong, but when you become secretary there is a degree of risk in that role. And you embrace that risk and you work with it because it is just the nature of the role. I was always open-minded to the prospect that things can go wrong for you as secretary. I do not remember particularly something in that moment.

**The CHAIR:** It turns out that was a sensible precaution, Mr Staples, given what happened in February, that precaution about being secretary and then ultimately carrying the can. Is that right?

**Mr STAPLES:** All the secretary's roles are big roles. The responsibilities are large. If you want to make difference you have got to do things and you have got to take risks. What comes with those is the possibilities of either getting things wrong or creating disagreements. That is the nature of it and if you embrace that you can do some great things as a secretary and then just be prepared to go when you go, which I did.

**The Hon. DANIEL MOOKHEY:** You said earlier that you raised concerns with Mr Pratt and Mr Reardon about it in March after the PwC report. After that did you raise your concerns about TAHE with anyone else?

**Mr STAPLES:** I certainly had an ongoing conversation with Mr Reardon because I had a regular check-in with him and on the list of topics would have been the ongoing concerns about where TAHE was at and its implementation. With Mr Pratt? I think once the Cabinet decision had been made to move forward on standing

up on 1 July, I certainly had engagement with Mr Pratt about the nature of the board that would be put in place and I certainly recall conversations with Mr Pratt and Mr Reardon probably after that September date you referred to, somewhere around October, to talk a bit more about the detailed fiscal work or financial modelling work that was coming out of the KPMG work.

**The Hon. DANIEL MOOKHEY:** Step by step, when you spoke to Mr Pratt about the board, what did you say?

**Mr STAPLES:** Having accepted that they were moving in with the constrained operating licence approach for 1 July, one of the mitigations that I was looking for as secretary, apart from the fact that I sat on the board, which is obviously a helpful thing in terms of influence, I was looking for some expertise that had ground transport regulatory safety expertise. I put forward some names in relation to that to Mr Pratt. It was actually Treasury that led the process for determining the board membership to Cabinet.

**The Hon. DANIEL MOOKHEY:** Were you satisfied with the position that Treasury took to government about the board?

**Mr STAPLES:** I do not know specifically what the position is that Treasury took to government. I basically just know who was appointed.

**The Hon. DANIEL MOOKHEY:** Did the people who were appointed satisfy your concerns about who should have been appointed?

**Mr STAPLES:** I think they were all very good choices to be put on the board. I think I have got a lot of respect for all three of the independent members that were appointed at the time. However, I was very disappointed that we did not have a broader cross-section of skills on that board, particularly someone other than myself, with rail expertise or safety expertise that would be on the board as well, given the nature and the role and the functions of the entity.

**Ms ABIGAIL BOYD:** Just coming back slightly, we have seen the emails from Mr Pratt which show him trying to change the report that was being produced for Transport for NSW by KPMG and we have heard that that did not have the impact that perhaps he wanted it to have. Was there pressure on you to instruct Mr Lyon or KPMG to change the report they were producing for you?

**Mr STAPLES:** Mr Pratt wrote to me and requested a change to the report as well. I was not aware he had written directly to KPMG until some time later, but Mr Pratt also wrote to me requesting the report be changed.

**Ms ABIGAIL BOYD:** And what was your response?

**Mr STAPLES:** We did not change.

**Ms ABIGAIL BOYD:** When was that?

**Mr STAPLES:** My main action from receiving that letter was to go to KPMG and ask them for advice because they had both pieces of information seen and that was the genesis of the letter that came from, I think it was, Mr Heathcote to me to try to explain the conflict and the fact that both reports could be reconciled, and that was KPMG's view.

**Ms ABIGAIL BOYD:** Do you recall when that was?

**Mr STAPLES:** That would have been in November.

**The Hon. DANIEL MOOKHEY:** Was it appropriate for Mr Pratt to write directly to the person who was writing the report and telling them to change their report?

**Mr STAPLES:** I was very surprised that he did that.

**The Hon. DANIEL MOOKHEY:** Was it appropriate for him to write to the person who was producing your report instructing him to change it without telling you?

**Mr STAPLES:** No, it was not.

**The CHAIR:** Were you aware that Mr Lyon at the time felt that basically his job was on the line and he was getting pressure internally if he did not change his report?

**Mr STAPLES:** I was aware he was having issues internally and I think that was hiding my concern in terms of the conflict issue and whether or not the firm was able to manage those things appropriately. I did not fully comprehend the significance until I heard his evidence last week.

**The CHAIR:** I was going to move on to the 15 November KPMG response.

**Ms ABIGAIL BOYD:** I just want to clarify. So Mr Pratt tried to get Mr Lyon to change the report? Mr Pratt tried to get you to get Mr Lyon to change the report? What did he do when you both said no?

**Mr STAPLES:** There was no action. We basically asked KPMG to complete the report as our independent adviser as they best felt was appropriate. If they felt that there was a case to change it on the basis of what Mr Pratt wrote, then we would have been open-minded to it. There may have been a breakdown in protocol of Mr Pratt writing directly, but if the issues of substance were genuine and should have been taken on board, then the expectation was that KPMG would. The feedback we got from KPMG was that they stood by their advice to us in their report.

**Ms ABIGAIL BOYD:** Was there any explicit or implicit threat that if you did not change the report there would be consequences?

**Mr STAPLES:** No, but at the time I received that letter I had already been notified that I was being terminated.

**The Hon. TREVOR KHAN:** Can I just ask a question?

**The Hon. DANIEL MOOKHEY:** Just one clarification question.

**The Hon. TREVOR KHAN:** No, I was asking the Chair—

**The CHAIR:** Just quickly, Mr Staples said at the time he got the letter he had already been notified he had been terminated. When did you get the letter?

**Mr STAPLES:** I think it was about 11 November. It was a few days after that Mr Pratt wrote to me about the report.

**The CHAIR:** Can I just clarify the timetable, Trevor? I will go to Mr Khan for clarification here.

**The Hon. TREVOR KHAN:** What concerns me is now that you know that Mr Pratt had written directly to Mr Lyon, if Mr Lyon had been a weaker person than he appears to have been, that report could have been changed essentially under pressure without you knowing it. Would that be the case, and the reason for it?

**Mr STAPLES:** Yes, that would be the case, but Mr Lyon made us aware that he had been written to, which is what you would expect a consultant working for you to do. I obviously had the visibility of Mr Pratt writing to me directly as well and there was an overlap of issues between those two communications.

**The CHAIR:** Can I just get the time line clear? Sometime before 3 November Mr Pratt is writing to you asking for the report to be changed. Can you remember when that came?

**Mr STAPLES:** I actually thought—I am happy to be corrected on this—that he wrote to me around the middle of November.

**The Hon. DANIEL MOOKHEY:** I have tabled the letter. I have provided the letter; it is a tendered document to the inquiry.

**The CHAIR:** What date was that?

**The Hon. DANIEL MOOKHEY:** It was circa 11 November.

**The CHAIR:** Sorry, 11 November. So on 3 November the Treasury KPMG report is produced. Were you aware that that had been completed on 3 November which said no budgetary impacts?

**Mr STAPLES:** I could not recall the exact date. I am certain on that day I was still on leave.

**The CHAIR:** The record that we have is that document is dated 3 November. Then on 8 November the KPMG report for Transport is produced, and that is dated 8 November, the document I see here. Would that accord with your memory?

**Mr STAPLES:** It sounds about right, yes.

**The Hon. DANIEL MOOKHEY:** It is on Tab 13, Mr Staples.

**The CHAIR:** Then on 11 November you get the letter from Mr Pratt seeking it to be rewritten. Is that right?

**Mr STAPLES:** Yes, that sounds right.

**The CHAIR:** When were you terminated?

**Mr STAPLES:** I was notified verbally by Mr Reardon on 6 November that my contract was being terminated for no reason. That was a verbal discussion. And then over the course of that week—I would have to check the exact dates but I think the letters are somewhere in the evidence. The exact dates of communication to formalise that were about a week later.

**The CHAIR:** So while we have got this really hot conflict between Treasury and Transport about how TAHE should be treated and you are backing in, if I could put it in simple terms, the Transport position identified by KPMG, that is when you are terminated.

**Mr STAPLES:** Yes, look, I am resistant to being characterised as the Transport position. We engaged KPMG to do a piece of work, which was supposed to be holistic, around TAHE and acknowledged that even though there were conflict issues, Treasury also had a specific question for KPMG around accounting. I do not think either should be characterised as the department's position; they were just two pieces of work.

**The CHAIR:** While you are backing in the position from the 8 November report, which pointed out the budgetary and the safety concerns, you are articulating that position in government and refusing to have the report changed. That is the context in which you got terminated for no reason.

**Mr STAPLES:** But I think on the basis that KPMG produced their independent advice and had taken account of a whole series of discussions over the months preceding that. It was not that it came out of nowhere; there had been a lot of debate around that—for example, taking on board that there were different scenarios in the financial position between KPMG and Treasury. Mr Pratt wrote to Mr Lyon and to myself separately, asserting that things needed to be deleted or changed in the report. My first step there was to engage with KPMG should that occur, "Is there something in this?" And KPMG's response to me was that they stood by their report.

**The CHAIR:** And, therefore, you stood by the report—

**Mr STAPLES:** Yes, I did.

**The CHAIR:** —and then within a matter of days you are terminated.

**Mr STAPLES:** I was terminated in the same period that this was going on, yes.

**Ms ABIGAIL BOYD:** Just one last clarification on that then. So Mr Reardon told you verbally that you were being terminated without reason—

**Mr STAPLES:** Yes.

**Ms ABIGAIL BOYD:** —on an official basis without reason. But were you given information unofficially by Mr Reardon at that time as to the reason for your termination?

**Mr STAPLES:** It was a very short conversation. I had just returned from a period of sick leave; it was a Monday morning and I had to do it by video because I actually still had a cold. Mr Reardon was very polite and thoughtful and caring in the conversation but he said that the Minister had decided that he wanted a new direction with a new secretary and he wanted to start a process on that before the end of the year. So we had a bit of a discussion about what that meant in terms of the nature of the exit and Mr Reardon explained to me that it would be a termination for no reason.

**Ms ABIGAIL BOYD:** So the Minister there being Minister Constance?

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** Going back, I understand the events of November, but to return to the point of origin, we understand that you have raised concerns with Mr Reardon, you have raised concerns with Mr Pratt about the board. After Mr Pratt, who else did you raise concerns with specifically? Have you raised concerns by this point in time with the Minister?

**Mr STAPLES:** Obviously I had very regular interaction with Minister Constance. In late 2019 we will have briefed him about the PwC advice and given him some indication that there were concerns without necessarily any action. I could not put a specific time on when I would have re-engaged with him again because we had the bushfire period between December and January and obviously for Minister Constance in particular that was very demanding. So there was definitely a period where this was not a priority for discussion, given the longer run, but once we re-engaged in the events of Cabinet there were discussions to make him aware of where we were at with our concerns in terms of the model. So Minister Constance was briefed in advance of that. That would have been around some of the concerns on accounting treatment, the uncertainty on the financials, as well as the safety issues. He was thoughtful around those things in terms of those being raised and recognised, particularly on the safety, and asked us to keep endeavouring to work through and mitigate those things as best as possible.

**The Hon. DANIEL MOOKHEY:** Okay. After March did you go and see Mr Reardon again or what happened? Was it just that the conversation went dead? I mean, if you have raised concerns with the secretary of DPC and you have raised concerns with the Minister, did you go and see Mr Reardon?

**Mr STAPLES:** Once again, context matters a lot here. The decision had been made by Cabinet somewhere around late May, early June to proceed with standing up TAHE on 1 July, which I expected to happen—that was not a surprise; that was part of the implementation process. But obviously there were a number of key questions still at large that needed resolution and we had some direction from Cabinet to work that through. The outcome on the board had been, from my point of view, not as good as what we would have liked—no discredit to the quality of the members that are there, but there was, from my point of view, some expertise that could have been there as well.

I was starting to reach at that point in time some concern about how effective I could be in continuing at this point and I did have some conversations with Mr Reardon around that. That would have been in July, after we had got through and we had stood up. He was the most senior public servant, I was the secretary, it is the sort of conversation you would expect to have. Tim and I had a very strong relationship going back a long period of time. I approached him and started to talk to him about, given the nature of what was happening, the way TAHE was going and my confidence in being in it to be effective as the secretary in the transport role and whether I could continue to be effective in that.

**The Hon. DANIEL MOOKHEY:** Did you say to him you felt you could not be effective in the job? Is that what you are saying?

**Mr STAPLES:** Yes, essentially. To lead a big cluster, a workforce of 20,000-odd people, for me personally—it can vary from person to person—there are some key things you need to be able to buy into. You need to be able to buy into believing the policy direction overall of the Government and to be able to stand up and say to the workforce that this is a good thing, and I was starting to wrestle with that. So it was not a definitive position; it was making him aware that I was getting increasingly concerned around that.

**The Hon. DANIEL MOOKHEY:** So you came to him and you say that you are concerned, you cannot continue as secretary. What did Mr Reardon say or do?

**Mr STAPLES:** He was sympathetic to the position, but also understood that the Government's policy was that we were implementing TAHE.

**The Hon. DANIEL MOOKHEY:** But he never registered it that the Transport secretary, who is also his successor, has come to him and said, "I am uncomfortable enough with this arrangement, I think I need to go", and Mr Reardon—

**The Hon. TREVOR KHAN:** That is perhaps overstating what—

**Mr STAPLES:** That I was starting to consider whether I could be effective enough. I just wanted to be careful; I was not threatening a resignation. I was certainly concerned about whether or not I could continue to be effective, and in my horizon—I am not one to walk away rapidly, I was really committed to the cause of trying to manage this issue as all the other things were going on; Transport were in the middle of a major reform at the time and I was never going to walk away from that—there was a time horizon starting to emerge for me where maybe I would need to move on from the role.

**The CHAIR:** Ms Boyd.

**Ms ABIGAIL BOYD:** This is quite extraordinary. You were in government positions for over 15 years.

**Mr STAPLES:** Yes.

**Ms ABIGAIL BOYD:** You were so concerned about what was happening with TAHE that you felt unable to continue as effectively in your role.

**Mr STAPLES:** Yes, but you have to interpret that as a personal position that I had gotten to in terms of my capacity to lead and what I could do as a leader and how I felt I could be effective. It is not to say that others cannot do it; that is just where I had got to as I had wrestled through the various elements of it.

**The CHAIR:** It was conflicting with your vision about where the transport agency should go.

**Mr STAPLES:** Yes, and these things are bigger than any single person or any secretary, and if I am going to lead Transport, which I had the privilege of doing for three years—every day was a privilege—I needed to be really confident in myself that I could lead that organisation effectively, and I was starting to get concerned that I could not do that.

**The CHAIR:** But underpinning that was also the advice you were getting from KPMG, which had had multiple inputs in it, which said that there were also substantial safety and financial risks associated with it. It was not just an opinion; you also had very credible advice that there were real risks associated with this.

**Mr STAPLES:** Yes, that is true.

**The Hon. DANIEL MOOKHEY:** But, just to be clear—and, again, I am not critical of Mr Reardon in this respect—as I understand it from what you said, that did not catalyse a response from Mr Reardon around the lines that, "We could change the policy", because Mr Reardon was also operating on the instruction that this is Cabinet policy; it was already decided. Is that fair?

**Mr STAPLES:** Yes, and I did not ask him to change policy; that was not the nature of the conversation. That was not the way I went about the conversation.

**The CHAIR:** You were not fighting a guerrilla war to unpick government decisions; you were trying to do the best you could with the policy—

**Mr STAPLES:** It was a government policy we were implementing.

**The Hon. DANIEL MOOKHEY:** And, to be fair, Mr Reardon was subject to the same considerations you were. Is that correct?

**The Hon. TREVOR KHAN:** Yes, precisely.

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** Then the person who could perhaps adjust this would be the Minister, the Treasurer or the Premier. Did you seek to see either the Treasurer or the Premier? We have already established you saw the Minister, but did you seek to see the Treasurer or the Premier?

**Mr STAPLES:** I had a meeting with the Premier in the middle of August.

**The Hon. DANIEL MOOKHEY:** Did you seek that meeting or did she seek that meeting?

**Mr STAPLES:** It was in the context that I had had a performance review with her in late July—I think it was late July—at which a number of people were present, and I had flagged as one of the issues for me as secretary in the year ahead was the establishment and embedding of the TAHE governance. I reflected after that discussion that I felt that there was probably more I should have said, so I made a decision to organise to go back and see her and talk to her in more depth about it.

**The Hon. DANIEL MOOKHEY:** Okay, so you had a performance review. I think the process that you are referring to is an annual process that every secretary goes through—

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** —for which the documents are available at Tab 11, I think, some of the documents to do with that process, from an earlier Standing Order 52. So in July you have said to Mr Reardon that you have concerns about whether you could be an effective leader in implementing this. In late July you have a performance review in which, as I understand it, you exceed expectations, or words to that effect. Is that your understanding as well?

**Mr STAPLES:** Yes, that is the way I understood the conversation.

**The Hon. DANIEL MOOKHEY:** And then that was a meeting where multiple people attended, the performance review?

**Mr STAPLES:** I think actually it was only the Premier and Mr Reardon on that particular occasion.

**The Hon. DANIEL MOOKHEY:** Right, and then you felt that you needed to go back to the Premier and speak to her directly about this.

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** And you sought a one-on-one meeting with the Premier, is that right?

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** And you had a one-on-one meeting with the Premier.

**Mr STAPLES:** Yes.

**The Hon. DANIEL MOOKHEY:** And what did you say to the Premier?

**Mr STAPLES:** It was very similar in nature to the conversation I had with Mr Reardon.

**The Hon. DANIEL MOOKHEY:** Sorry, just to be clear, what did you say to the Premier?

**Mr STAPLES:** The context is obviously I worked with the Premier for a number of years; we delivered the metro together. I have got an enormous amount of respect for her and I wanted to not surprise her at some point in the future by saying something to her about me leaving without having at least foreshadowed where my mind was at. So I went in and said that we were getting on with the implementation of TAHE, I fully accepted that as a government policy and understood the reasons why, but that I was wrestling with my capacity to lead with the constraints that TAHE was imposing and that I was starting to consider that; I was still really committed to continuing to work and mitigate on that in the short term; that I had a reform in transport that I wanted to close out and finish, which I foresee going into the next year. But it was really an advance notice that I was of the view that I could not continue to do the job as effectively as what I had wanted to.

**The CHAIR:** Did you raise the safety concerns and the fiscal concerns at that meeting?

**Mr STAPLES:** Yes. I talked about the range of matters that we have covered here today in that regard. She was very thoughtful in response.

**The Hon. DANIEL MOOKHEY:** Before we deal with her response, just on the safety and the fiscal, what did you tell her about the safety concerns you had?

**Mr STAPLES:** I cannot recall the absolute specifics on that, if I am honest. It would have been along the lines of a concern about accountability and the clarity of accountability and where that might lead in the long run.

**The Hon. DANIEL MOOKHEY:** And to the best of your recollection do you recall what you told her about the financial/fiscal impact?

**Mr STAPLES:** Just that it was at large, the question was at large about what the real financial impact would be.

**The Hon. JOHN GRAHAM:** Mr Staples, you would have put it at least as strongly as you have put it here today. You worked closely with the Premier; you would not have put it any less strongly than you put it today. Is that a fair statement?

**Mr STAPLES:** I was very clear what my concerns were, certainly, but very much from my capacity to be able to continue to lead that.

**The Hon. JOHN GRAHAM:** Yes, understood.

**The CHAIR:** And really there was one subject matter for that meeting in August, and that was TAHE.

**Mr STAPLES:** Yes, it was, that is true.

**The Hon. DANIEL MOOKHEY:** And just to be clear, in your mind you did not leave the Premier any doubt about your concerns about safety?

**Mr STAPLES:** No, but it was part of a more rounded conversation overall.

**The Hon. DANIEL MOOKHEY:** It covered other matters.

**Mr STAPLES:** Yes—well, all the matters around TAHE and my capacity as the lead, but also respecting that the Government was getting on with it. I was not saying, "You must stop it."

**The Hon. DANIEL MOOKHEY:** You said—

**The CHAIR:** Mr Khan has one question.

**The Hon. TREVOR KHAN:** It really goes to the end, and that is 6 November. In the light of the conversations you had had with Mr Reardon and now the conversation that you had with the then Premier, I take it, in a sense, you are expressing you were tired, almost physically tired. What happened on 6 November was no surprise at all in the circumstances of those conversations, was it?

**Mr STAPLES:** No, I was not tired, I was not tired at all, but I was wrestling with how do I lead this organisation authentically with what was at large, and I needed to make a decision personally around whether or not I could manage to do that. The wrestle I had was that I did not want to walk away because I wanted to continue to mitigate and manage these risks and I would continue to do that as long as I could. But I have otherwise been very transparent with people around these things. It gives me no comfort or satisfaction to be sitting here sharing

individual conversations with people about this. I never anticipated I would be in this position to be talking about this.

**The Hon. TREVOR KHAN:** I do not think anyone is being critical of you now.

**Mr STAPLES:** It is difficult. I have got a lot of respect for those two people that I was sitting with. I went to them because I had a lot of respect for them and I did not expect them to do something about it, I just expected them to understand where I was going.

**The CHAIR:** Mr Farlow.

**The Hon. SCOTT FARLOW:** Further to Mr Khan's question, given those conversations though, did the 6 November call from Mr Reardon come as any shock to you?

**Mr STAPLES:** I think anyone that gets that call gets a bit of a surprise. I was disappointed but, at the same time, as I foreshadowed earlier, you do these roles for a period of time. I had been, apparently, the longest serving transport secretary for quite some time and I have been able to achieve a lot in government, so I was actually very satisfied with where I had got to and what I had been able to achieve. It was just a little bit earlier than when I expected to be leaving probably, but I had a big organisation that I was leading and I just needed to get in and close out on a few things over the period of the few months I was there.

**The CHAIR:** Ms Boyd.

**Ms ABIGAIL BOYD:** Just to confirm, you say that when you went to that meeting with the Premier that you had a lot of respect for her, you wanted her to know where you were at in your ability to lead.

**Mr STAPLES:** Yes.

**Ms ABIGAIL BOYD:** Did you also have a hope that she would intervene and change the policy in some way?

**Mr STAPLES:** No, I did not.

**The Hon. DANIEL MOOKHEY:** You said, Mr Staples, that the Premier provided you with a thoughtful response. I feel now is an opportunity for you to say what was the thoughtful response that the Premier provided you with.

**Mr STAPLES:** Well, personally, she listened quite intently to the concerns and the reasons and my own sort of personal reflection on that. Her feedback to me was actually a bit surprising to me, which was that she thought that if I was raising concerns of that substance then she wanted to pursue it further and engage with her colleagues around it. I was caught a little bit by surprise on that because it is not the outcome I was expecting, but there was a level of commitment that she wanted to examine it further.

**The Hon. DANIEL MOOKHEY:** Did she flag a particular follow-up action that she would do or that she would have others do on behalf of—

**Mr STAPLES:** She indicated that she would look to bring together a discussion between herself, the then transport Minister, Minister Constance, and the Treasurer and the three relevant secretaries, being Mr Reardon, Mr Pratt and myself, to discuss it further.

**The Hon. DANIEL MOOKHEY:** She would convene a meeting of the Government's top leaders in this respect. Fair?

**Mr STAPLES:** Yes, which would be useful, given that a Cabinet process was going to come at some point. To have that conversation, I thought that was a positive.

**The Hon. DANIEL MOOKHEY:** Did that meeting ever take place, to your understanding?

**Mr STAPLES:** No, in the months after that I was not part of a meeting like that.

**The Hon. DANIEL MOOKHEY:** We have an email from Mr Lyon that reports on such a meeting—I am sorry I cannot find any back reference—that took place on 11 September that is attended by the Treasurer at the time, Mr Perrottet; Mr Reardon, the secretary of DPC at the time; and Mr Pratt, the secretary of Treasury at the time—he still is the secretary. It is not clear whether or not Minister Constance was there. Were you aware that that meeting was taking place?

**Mr STAPLES:** No I was not.

**The Hon. DANIEL MOOKHEY:** Were you at any point invited to attend that meeting?

**Mr STAPLES:** Not that I am aware of.

**The Hon. DANIEL MOOKHEY:** When was the first time you learnt about that meeting?

**Mr STAPLES:** I am not exactly sure.

**The Hon. DANIEL MOOKHEY:** Would you have expected to be at a meeting like that?

**Mr STAPLES:** I do not know what the context was. There are regular meetings that involve the Premier and the Treasurer. I do not know whether it was one of those regular meetings or whether it was a specifically convened meeting around TAHE.

**The Hon. DANIEL MOOKHEY:** I think it is clear it was a specifically convened meeting around TAHE that was attended by KPMG, and the outcome of the meeting was for Mr Lyon to no longer be the author of the report, or actually, to be fair, for Mr Low, I think it was, who was the second partner at KPMG, to take the lead of it in the production of your report. The meeting discussed your report that you had commissioned in which apparently the resolution was that there was to be a change in author of your report. But you were not aware that this meeting was taking place and presumably no-one had informed you that that was the outcome. Is that fair?

**Mr STAPLES:** That is correct.

**The Hon. DANIEL MOOKHEY:** Would you have expected to be at a meeting like that?

**Mr STAPLES:** Of course I would have expected to be at that meeting.

**The Hon. DANIEL MOOKHEY:** And the Premier apparently communicates at that meeting with the Treasurer that the Government is unequivocal that it was continuing with TAHE, which, to be fair, aligns with the position she put to you—or it is not aligned with the position she put to you.

**Mr STAPLES:** Yes, and, look, that is a second-hand communication of that conversation. I expect that someone has said that in good faith, but—

**The Hon. DANIEL MOOKHEY:** That is Mr Hunter's report on the meeting, to be very clear to you, because I cannot show you the specific email or provide it to you, but it is actually Mr Hunter. It is not Mr Lyon's account of the meeting; it is Mr Hunter's account.

**The Hon. SCOTT FARLOW:** Point of order: I think it is fair to put it in context. It is 146. I do not know if Mr Staples has a copy, but it does not say that Mr Hunter was present; it is a relaying of a meeting with the Premier and it also says that TAHE was discussed, not that TAHE was the subject of the meeting.

**The Hon. DANIEL MOOKHEY:** Sure, okay, that is fair.

**The CHAIR:** I think that is useful for the record.

**The Hon. DANIEL MOOKHEY:** What tender is it?

**The Hon. SCOTT FARLOW:** No. 146 in Mr Lyon's documents.

**The Hon. DANIEL MOOKHEY:** In which bundle?

**The Hon. SCOTT FARLOW:** In Mr Lyon's that he presented the other day.

**The Hon. DANIEL MOOKHEY:** Do you want to respond to that? It is a good point.

**The Hon. TREVOR KHAN:** No, you put propositions.

**The Hon. SCOTT FARLOW:** Yes, that is right. It is just clarifying the propositions and the nature of the propositions.

**The CHAIR:** I think the question is, noting Mr Farlow's quite accurate summary of the document, did you want to reflect upon any part of your evidence in that regard, Mr Staples?

**Mr STAPLES:** You can show me the document.

**The CHAIR:** I will take it out of my documents and give it to you, Mr Staples.

**The Hon. TREVOR KHAN:** I have got to say, this is part of the problem. Using documents that are not authored by a witness or in which they are involved and then getting them to comment on it is quite problematic.

**The CHAIR:** Which is why I think we should be quiet and let Mr Staples read the document.

**The Hon. TREVOR KHAN:** Just while the witness looks at this document, I note the time.

**The CHAIR:** We commenced 15 minutes late, so we are going through until 1.30.

**The Hon. TREVOR KHAN:** Right, that is fine. I was not turning into a complete clock-watcher but I was just wondering what our intention was.

**Mr STAPLES:** Okay. Sorry, I need a reminder on what I am being asked after reading that.

**The CHAIR:** I think we all do, so it is useful if we go back to that point.

**The Hon. DANIEL MOOKHEY:** The question that I think gave rise to showing you that, which, to be fair, I put to you prior to you being shown the email, was: Would you have expected to be at a meeting like that?

**Mr STAPLES:** Yes, I would have.

**The Hon. DANIEL MOOKHEY:** Given that the email reports that the decision was to adjust the authorship of the report that belonged to you, were you aware of that as an outcome?

**Mr STAPLES:** No, I was not.

**The Hon. DANIEL MOOKHEY:** Would you have expected to be told that a meeting was held about your report that resulted in that decision?

**Mr STAPLES:** Yes, I would have.

**The Hon. DANIEL MOOKHEY:** Fair enough. And thereafter, what we learn afterwards is that Mr Pratt writes to you and writes to Mr Lyon. Is it possible—or maybe Mr Pratt needs to answer this—that perhaps Mr Pratt thought he had the authority as a result of that meeting that you did not attend?

**The Hon. TREVOR KHAN:** Again, that is—

**The Hon. DANIEL MOOKHEY:** I will not press it.

**The Hon. TREVOR KHAN:** —pure speculation.

**The CHAIR:** I think it has been withdrawn, so we will move on.

**The Hon. DANIEL MOOKHEY:** Just in terms of who else, did you raise concerns about TAHE with anybody else in the Government last year, other than the Premier and the Treasurer or any other official?

**Mr STAPLES:** Obviously, we were having conversations internally within Transport around how we implement, but how to manage that. So that was an ongoing conversation. Beyond Mr Pratt, there were some meetings I was engaged with, with Mr Midha and I think, on occasion, with Ms Wilkinson, but they would have all been consistent with the sorts of issues that people in Transport were talking around. I was a member of the board at TAHE, so there were communications with them. I spent quite a bit of time in the early parts really just giving the board some understanding of the structural arrangements within Transport and the operating model more generally and the Rail Safety National Law and those sorts of things, just to help that board become more attuned with those.

Beyond that, I think the only significant meeting is that, given the discussions that had gone on from late 2019 to the middle of 2020 around TAHE, while initially my focus had been around safety and other elements, the accounting and financial things had become more uncertain and I did approach the Auditor-General and had a conversation with her just to basically share my concerns and just raise with her that there seemed to be a lot of uncertainty on this.

**The Hon. DANIEL MOOKHEY:** That is Ms Crawford, the Auditor-General at the time?

**Mr STAPLES:** Yes, that is right.

**The Hon. DANIEL MOOKHEY:** When did you raise it with her?

**Mr STAPLES:** If you want an exact date I would have to take that on notice, but my recollection is it would have been early July 2020.

**The Hon. DANIEL MOOKHEY:** Right. And what did you say to her?

**Mr STAPLES:** I basically gave her a bit of a summary of the issues that emerged around different advice on accounting, that it was not Transport's position to determine that, we were really respectful of that, but I wanted her to be aware that there was significant uncertainty going on in government around it and just to encourage her to look at it closely because, ultimately, where I had got to on a conclusion on that was—and it goes back to my earlier point, I hate to keep reiterating it, around sort of independence—that it really required the Auditor-General to ultimately form a view on this and, quite frankly, I said here today again, I think she will do it very thoughtfully and she will give it due consideration. I got a really strong sort of response from her. No

promises made at all but just an acknowledgement that this was a substantial issue that the Audit Office was looking at and that she would examine it thoroughly. That is all I could have asked for.

**The CHAIR:** And there is that degree of comfort in the independence of the Auditor-General sitting there, but do you remember the Auditor-General's concerns about the initial accountancy treatment of TAHE?

**Mr STAPLES:** No, I very deliberately approached that meeting as not my natural style but a relatively one-way conversation, which was to really just lay on the table some of the concerns I had and I had no expectation or commitment from her; she just was appreciative of me reaching out directly and gave me a strong assurance that her and the team were going to look closely at that. She may have some further recollection of that discussion, but I do not recall much more than that.

**The Hon. DANIEL MOOKHEY:** Mr Staples, after you had the one-on-one meeting with the Premier, which the Premier resolves to convene the meeting as you described, did you hear anything further from the Premier in any way, shape or form in respect to the Transport Asset Holding Entity?

**Mr STAPLES:** No. There were some conversations in the weeks before I left involving a number of parties, but they were tightly related to Cabinet by then, so there is not much I can say about those conversations.

**The CHAIR:** Were any of those conversations involving the then Treasurer? Did he play a role in this?

**Mr STAPLES:** These are Cabinet-related conversations.

**The Hon. DANIEL MOOKHEY:** Okay. So any conversations that you had or did not have with the Treasurer did not take place under the auspices of Cabinet.

**The Hon. TREVOR KHAN:** How do you expect him to answer that?

**The CHAIR:** I do not think that can be fairly put, a sort of cover-all question like that.

**The Hon. SCOTT FARLOW:** Just on that point though, did you inform Treasury about your discussions with the Auditor-General and any concerns?

**Mr STAPLES:** No, I did not. Well, Treasury were aware of my concerns.

**The Hon. SCOTT FARLOW:** Okay, fair enough, but not the discussions with the Auditor-General?

**Mr STAPLES:** The intention was really just to make sure that the Auditor-General had visibility of the significance of the matter that was going on inside government. It was a difficult decision to make; it was probably out of character for me to go and make that, but bear in mind what I said about my own personal position at that stage: I was wrestling with this and I felt talking to the Auditor-General would be of use.

**The Hon. DANIEL MOOKHEY:** Just on that point though—

**The CHAIR:** After this we will go to Mr Graham, who has waited very patiently.

**The Hon. DANIEL MOOKHEY:** As you just said, it is out of character for you to go to the Auditor-General, but you accept that for you to contact the Premier and seek a one-on-one meeting, and then to have also—was it a one-on-one meeting with the Auditor-General?

**Mr STAPLES:** No, Mr Goodwin was also present.

**The Hon. DANIEL MOOKHEY:** But to then contact the Auditor-General—

**Mr STAPLES:** I contacted the Auditor-General before I saw the Premier, just to be clear on the sequencing.

**The Hon. DANIEL MOOKHEY:** Sorry, forgive me, but either way, the question is, in contacting the Auditor-General and in contacting the Premier were you aware that perhaps you were taking an element of risk in seeking to speak to them directly?

**Mr STAPLES:** Every day in doing the secretarial role you take risks.

**The Hon. DANIEL MOOKHEY:** And was that one of them, to seek this direct conversation?

**Mr STAPLES:** I did not regard it as—obviously, I knew it was a significant thing to do but I did not give it a lot of deep thought, if that is what you are asking, from a risk point of view. It was just the thing that needed to be done.

**The Hon. DANIEL MOOKHEY:** But you accept that—

**The CHAIR:** But, Mr Staples, as I understand it, you did not feel like you could, in good conscience, continue to lead with enthusiasm the transport agency and deliver on TAHE, given your concerns about safety and finances, and that is ultimately what happened, was it not?

**Mr STAPLES:** Yes, that is right, that is what I communicated.

**The CHAIR:** And given that, you felt that you had a sort of due diligence to go and raise your concerns with the Premier and raise your concerns with the Auditor-General.

**Mr STAPLES:** Yes.

**The Hon. TREVOR KHAN:** Well, the other way around.

**The CHAIR:** I am not putting that temporally, but both of those.

**Mr STAPLES:** The first person that I ever communicated that to was Mr Reardon, as I indicated. I did not go that far with the Auditor-General. Just to be clear, I was not talking to her about my future; I was just talking to her about—

**The CHAIR:** You were raising the concerns.

**Mr STAPLES:** Yes, raising the concerns. And then the next step was the Premier.

**The CHAIR:** Reflecting back on all those tumultuous events towards the end of last year, would it be fair to say that your job ended because you would not give ground on those issues because you could not because in good conscience that was not something you were able to do?

**The Hon. TREVOR KHAN:** I think that is an unfair proposition to put because it asks him to—

**The CHAIR:** I will ask Mr Staples.

**The Hon. DANIEL MOOKHEY:** Maybe you should put the proposition again, Chair.

**The CHAIR:** I will put the proposition to you again. When you got the call from Mr Reardon, sitting there now, is it your belief that that is because you would not and you could not give ground on these safety and financial issues in relation to TAHE and continue to lead Transport?

**Mr STAPLES:** Look, I understand why people would draw the conclusion between those, particularly given the sequencing of events, which has become more visible to me as these inquiries have gone on, but I did not draw that linkage. I basically accepted that there are reasons why they did not want me in the role any longer. I know it might seem extraordinary, but I did not overthink that; I just thought, well, if that is the case, you basically are in these roles only when they have got the confidence in you to do those roles. When that confidence goes, you go.

**The CHAIR:** But the core issue here in terms of confidence in you being able to lead—and from what I can tell it was on both sides—was you did not believe in this TAHE project.

**Mr STAPLES:** I cannot confirm that; I was not the decision-maker. I was terminated for no reason. My contract was terminated for no reason.

**The CHAIR:** Mr Graham.

**The Hon. JOHN GRAHAM:** Thank you for your evidence today. As usual, it has been highly credible, so thank you for taking us through these matters, which obviously were very difficult to go through. I just want to ask about one moment around that 1 July 2020 date. You have made it clear the decision had already been made by government, the results had already been booked, so in a sense some of this was baked in, but you did talk about that time imperative around April leading up to that 1 July date when the structure was actually set up. Given the discussions you were in, what discussions were there about the consequences if that date was not met, if this deadline was not reached?

**Mr STAPLES:** It was not a black-and-white book on what would happen. The discussion was that we needed to show substantive progress to the Auditor-General and the ABS around the events and implementing TAHE and the governance model. The advice from Treasury was that that really needed to be the entity transitioning from RailCorp into TAHE. A board being established, the chief executive and a management team being put in place would be the sign of substantive progress. So that is the actions that we took, and obviously Cabinet agreed to that proposal. The thing we did do, as I have reiterated a couple of times, was to put some tight constraints around the operating licence of that entity, which helps bring that into a level of assurance that we still have things in appropriate levels of control.

**The Hon. DANIEL MOOKHEY:** Mr Staples, there is one document that just before you go I think we have to get your perspective on. It is in Treasury tender 001, which is in Tab 13, which is also about the fiscal benefit. It says here that TAHE provides benefit to the Minister and Treasurer and it reports what those benefits are. Is this a complete picture as to the forward costs, as you understood them at the time?

**Mr STAPLES:** I am sorry, I know this was on the Committee's website, but do you have—

**The Hon. SCOTT FARLOW:** It might have been in the *Australian Financial Review* [AFR] as well, potentially.

**Mr STAPLES:** The timing of this document again? Sorry, can you ask that question again?

**The Hon. DANIEL MOOKHEY:** Is that a complete picture? Because it says here, "saves \$8.5 billion of savings in the first five years", which is 2015 to 2020, and then post 1 July over that period, \$7.1 billion and then it says "TBA around the forward period." Firstly, were you aware of this document? Do you know whether this was presented to the Treasurer and the Minister for Transport and/or the Premier and is this an accurate advice as to what the forward impact is over time as to the likely fiscal costs and benefits of TAHE?

**Mr STAPLES:** Sorry, look I note that it has got "Cabinet in confidence" on it. The only page that I have some recollection of is the last page, which has got the numbers. Just visually I have a recollection of seeing a page like that. To be honest, I could not be sure whether I saw the whole document or not—it is possible that I did—but it is probably best for me not to comment on what forum that might have been in. I think the observation I would make, which goes back to my point about the need for some independence on this, is that if you go to the page—there are two observations: the transition from RailCorp to TAHE will result in no significant risk. That page is technically correct. If I sit in the role of TAHE as an entity and I think about it through the lens of what I was in RailCorp and what I am in TAHE and the protections and the assurances placed around TAHE, and I look down through those controls, it is a relatively true presentation. The issue that I take with it is that it is only looked at through that lens, so it is a half-truth.

**The CHAIR:** It is what is not said about the other risks.

**Mr STAPLES:** Yes, when you step back and say, "This sits inside of something bigger", that there are implications for Sydney Trains, for transport more generally. So there is nothing incorrect about this, but it is what is not there. From my point of view as secretary of Transport, it is what is missing that is the issue.

**The Hon. DANIEL MOOKHEY:** Was this shown to the Premier, the Treasurer and the Minister for Transport at a meeting you were present at?

**Mr STAPLES:** I cannot comment on that. Then on the last page I would say it is similarly consistent, the TBCs in the lines would seem, depending on the timing of this, at odds with the advice that came through in the KPMG work. There was obviously a range of numbers in there, but from my point of view there needed to be some transparency around the underlying assumptions on valuation and the impact that that would have on the final fiscal treatment on this. You can see in the bottom line a significant trend downwards in financial performance—2,800, 2,700, 1,332, 260—there is a trend. So the only observation I can give you is that I think, concerningly, the document does not provide the full picture. I do not know what its purpose was for but, in isolation, it is quite problematic.

**The CHAIR:** Mr Staples, I think you have been provided with another document, it is a CLF there, which will come as no surprise to you, that is the 15 November correspondence from KPMG to you. Do you remember receiving this?

**Mr STAPLES:** Yes, I do. I think this goes back to the interaction we had around the sequence of events: the KPMG accounting report, which I think you said came out on 3 November, the KPMG operating model report came out on 8 November, and then Mr Pratt wrote to me in relation to having sections of that changed and I sought advice from KPMG in terms of what is going on here and they have responded.

**The CHAIR:** Did you accept KPMG's assertion that there was no conflict between the two reports?

**Mr STAPLES:** I thought it highlighted, at the very least, that the perception had undermined the benefit of their work. So we were at an impasse where we had two different views. KPMG did not cause this issue in government. We went to KPMG to seek assistance to help navigate forward. I think by this conflict and the perception of it emerging it compounded the problem rather than helped to reduce it.

**The CHAIR:** But it is your understanding, sitting there now, that in those two reports there was fairly much irremediable conflict between the budget position and also the safety position. Is that right?

**Mr STAPLES:** Yes, and I think probably more. Having now listened to the evidence from different parts of KPMG in relation to this, I think it is even more evident that the conflict was significant.

**The CHAIR:** And so when KPMG—

**The Hon. SCOTT FARLOW:** Point of order: We have gone five minutes over already.

**The CHAIR:** This is my final question. When KPMG wrote to you on 15 November and said there is no conflict, which is what that letter said, what was your view?

**Mr STAPLES:** It was one of pragmatism, to be honest with you, which was that they have confirmed their position on the report that had been prepared for Transport, but also accepted the position in terms of the accounting and that we just needed to get on now within government and work out how to deal with those, and the important objective for me was to make sure that both pieces of advice were taken forward to government. I did not really have the time to invest back into what to do about where we got to on that conflict, but it left us in a weaker position than I would have liked.

**The CHAIR:** Particularly given where you were at in your employment at that stage. That really was not your problem to solve at that point, was it?

**Mr STAPLES:** Yes, and, look, it was obviously weighing on me, but not in the context of this. I had accepted that decision very quickly and set myself a goal of what I would do within the two to three months and one of those was to try and progress TAHE a little bit further as well as some of the reform work that I was doing.

**The CHAIR:** Mr Staples, on behalf of the Committee, I thank you for your time today and for your frank responses to the questions. Also, I will just reflect upon your work for the people of New South Wales and your insistence on a principled position that you took, which has, I think, been reflected in your evidence today.

**Mr STAPLES:** Thank you.

**The CHAIR:** That concludes this afternoon's hearing.

**(The witness withdrew.)**

**The Committee adjourned at 13:36.**