
Appendix one – Responses from audited agencies, and Audit Office clarification of matters raised in the TAHE formal response

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4. Response from the Transport Asset Holding Entity

1. Response from NSW Treasury



Treasury

Contact: Tom Gaudiosi
Telephone: [REDACTED]
Our Reference: TA22/1450

Ms Margaret Crawford
Auditor General of NSW
Level 15, 1 Margaret Street
SYDNEY NSW 2000

Dear Auditor General

Performance Audit – Design and Implementation of the Transport Asset Holding Entity of NSW (TAHE)

Thank you for your letter dated 29 November 2022 and the opportunity to respond to your Performance Audit, *Design and Implementation of TAHE* (the report).

The report provides an opportunity for Treasury to reflect further on the experience of developing and implementing the TAHE reform initiative over the best part of a decade.

As a performance audit, the report is necessarily backward looking. However, the completion of this audit also provides an opportunity to look ahead to the next stage of TAHE's development. In this context, Treasury looks forward to working closely with TAHE and Transport for New South Wales to support the considerable program of work underway to more effectively manage \$23.8 billion of rail assets, and the investment of over \$12 billion in rail assets in the next 10 years, through commercially focused asset management practices that enable safe and reliable services, and commercial projects aimed at addressing housing affordability.

In relation to the specific recommendations in the report, Treasury wishes to record the following responses:

Recommendation 1: improved accountability and transparency for major new fiscal transformation initiatives

Accepted in principle: Treasury accepts the recommendation in principle, noting that Treasury must operate within established statutory reporting frameworks, including the *Government Sector Finance Act 2018* and the *Fiscal Responsibility Act 2012*, and established Parliamentary conventions.

Recommendation 2: reporting of budget measures subject to risk and uncertainty

Noted: Treasury considers that the intent of this recommendation would be more effectively addressed through greater transparency in the presentation of budget measures, as broadly proposed in recommendation 1, and through promoting a culture of robust and impartial advice to Ministers in the implementation of budget measures. (The imperative to

promote and embed this culture is supported by the independent review undertaken by Stephen Sedgwick AO of Treasury's processes regarding the recording of TAHE in the 2021 State Financial Statements. The assessment identified areas for improvement which Treasury is in the process of implementing.)

In making this suggestion, Treasury is concerned about the feasibility of implementing the recommendation as expressed: few budget initiatives are ever free of risk or uncertainty, and omitting announced Government policies on the basis that there may be unmitigated implementation risks would run counter to established budget reporting frameworks.

Recommendation 3: review of record keeping practices

Accepted: Treasury supports this recommendation and is committed to improving its recordkeeping and information management maturity. In this context, Treasury commenced an Information Management Program (IMP) earlier this year (2022) that is aimed at uplifting maturity against the *State Records Act 1998* and associated instruments, including the Information Classification, Labelling and Handling Guidelines.

The IMP is reviewing:

- recordkeeping and document management practices and systems;
- workflow systems;
- management of high risk, high value and sensitive information; and
- the relevant policies, procedures and training materials.

Treasury proposes to formally incorporate actions in response to this recommendation as part of the IMP, which is being progressively implemented.

Recommendation 4: review of internal procurement policies for the engagement of consultants

Accepted: Treasury supports reviewing internal processes to ensure that its use of consultants fully complies with NSW Government policy.

Treasury has created an internal procurement toolbox to provide better instruction on *How to Buy on behalf of NSW Treasury*. The toolbox includes guidelines and checklist to support buyers through all steps of the 'Plan', 'Source' and 'Manage' process. A more thorough process to manage contract variations and extensions within the Treasury Contracts register is in development. This process, together with improved guidelines are expected to deliver better compliance in the management of contract variations and extensions.

Treasury is also developing a checklist for buyers, to ensure assessment and active management of perceived conflicts of interest when engaging consultants. These checklists will form part of the suite of guidelines in the Treasury Procurement Toolbox. There will also be ongoing education for buyers within Treasury to ensure accountability and compliance of internal procurement policies when engaging consultants.

Record keeping and release of documents by Treasury for the Performance Audit

The report makes comments on the approach taken by Treasury staff in the provision of Cabinet in Confidence material to Audit Office in response to this performance audit. At the time, Treasury staff were mindful of their obligations under established Government protocols and the relevant provisions of the *Government Sector Audit Act 1983* (which have since been amended by the Parliament). Having personally engaged with the relevant staff at that time, I am satisfied that the staff were seeking to discharge their obligations impartially and professionally. Equally, I recognise the difficulties faced by the Audit team and reiterate Treasury's commitment to ensuring more effective document management, including avoiding over-classification of documents.

I would like to thank you for the opportunity to respond to your report.

Yours sincerely



Paul Grimes PSM
Secretary

18 January 2023

2. Response from Transport for NSW

Transport

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Ms Margaret Crawford
Auditor-General
Audit Office of NSW
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By email

our ref: BNCIT0015078

Dear Ms Crawford

Thank you for the opportunity to respond to the Performance Audit Report ("the Report") on Design and Implementation of TAHE. Transport for NSW (TfNSW) welcomes the Report, its findings, and recommendations. TfNSW is committed to improving accountability and performance across the Transport and Infrastructure cluster in these areas. The Report provides TfNSW with valuable feedback for further improving the implementation of complex cross-government reforms.

TfNSW accepts the recommendation on the incorrect labelling of Cabinet-in-Confidence documents, noting that these were based on historical TAHE documentation. Since that time, TfNSW has refreshed the Transport Information Labelling and Handling Guideline to complement existing document classification guidelines from the Department of Premier and Cabinet.

TfNSW also accepts the recommendation to review internal procurement policies to ensure that the use of consultants fully complies with NSW Government policy requirements, including specifically with contract variations and extensions and ensuring there is effective identification and mitigation of conflicts of interest across consultant engagements.

Thank you to you and your team for the insights that the audit has provided.

Yours sincerely

A handwritten signature in black ink, appearing to read "Rob Sharp".

Rob Sharp
Secretary
16 December 2022

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By 1 July 2023, NSW Treasury and Transport for NSW should:

3. Review their record keeping practices, systems and policies to ensure compliance with the State Records Act, and the NSW Government Information Classification, Labelling and Handling Guidelines document with a particular focus on the correct labelling of Cabinet-in-Confidence documents.

Response:

TfNSW accepts this recommendation based on historical documentation and undertakes to comply with document labelling policies such as:

- Transport Information Labelling and Handling Guidelines 2021
- M2006-08 Maintaining Confidentiality of Cabinet Documents and Other Cabinet Conventions
- NSW Cabinet Practice Manual

By 1 July 2023, NSW Treasury, TAHE and Transport for NSW should:

4. Review their respective internal procurement policies to ensure that the use of consultants fully complies with NSW Government policy requirements, including:

- the use of contract variations and extensions is consistent with the NSW Procurement Policy Framework
- instances where consultants are simultaneously working for other agencies are identified, assessed and actively managed to ensure there are not real or perceived conflicts of interest.

Response:

TfNSW accepts the recommendation to review internal procurement policies to ensure that the use of consultants fully complies with NSW Government policy requirements and undertakes to comply with the NSW Procurement Policy Framework for future engagements.

3. Audit Office clarification on matters in the Transport Asset Holding Entity response

In accordance with section 38 EB of the *Government Sector Audit Act 1983*, the audited agencies' formal responses to the Final Report are published in this Appendix.

TAHE's formal response to the audit has misrepresented some of the findings and analysis provided in this Final Report, as well as some aspects of the audit process.

The Final Report remains accurate and complete as relevant to the audit scope. Clarification on matters raised in TAHE's formal response is provided below.

1. TAHE's formal response argues that the conclusion of this report is incorrect because TAHE's operating model is not 'unnecessarily complex (especially when compared with other contractual arrangements in the infrastructure sector which involve multiple parties for construction operations and maintenance services, such as PPP arrangements).' The response also states that TAHE's arrangements do not 'impose on the current or future Governments any additional obligations to fund capital investment in the State's rail network to those that already existed prior to the establishment of TAHE.' The response also states that the audit 'did not undertake a review of the property projects that TAHE is undertaking' to support the audit conclusion that TAHE's ability to generate returns on government investment is 'uncertain'.

Audit Office clarification:

In response to the above commentary, we draw attention to the following points made in the report:

- more than 80% of TAHE's current revenue comes from access and licence fees paid by the state owned rail operators, Sydney Trains and NSW Trains (see pages 3, 6 and 25 of the report)
- farebox recovery accounts for around 20% to 30% of the cost of services (see pages 20 and 24 of the report)
- TAHE's own modelling shows that it remains primarily reliant on access and licence fees paid by the state owned rail operators up to 2046 (see pages 3, 6, 7, 25 and 31 of the report)
- the state owned rail operators remain reliant on grants from the General Government Sector Budget in order to be able to afford the annually increasing fees (see pages 3, 6, and 26 of the report).

This report does not contend that there is now a new obligation for additional capital investment in the rail network – as TAHE's response suggests. However, the report does note – based on TAHE's 35-year long range model provided to NSW Treasury – that the NSW Government may need to provide a total of \$66.5 billion to the rail operators, up to 2046, to ensure the government continues to demonstrate its expected return on investment of 2.5% (see pages 7 and 31 of the report). TAHE requires continued government funding to preserve the short-term improvement to the Budget position that is derived from an accounting treatment whereby contributions to TAHE are treated as an equity investment, rather than a Budget expense (see pages 3, 7 and 31 of the report). Maintaining this accounting treatment creates the unnecessary complexity referred to in the conclusion of this report.

In relation to TAHE's commentary on the sufficiency of analysis of its property projects, we draw attention to page 25 of this report, which notes that 'at the current time, TAHE's sources of revenue include the government and third-party rail operators, and land and property leasing, asset management and recycling. Other commercialisation opportunities may become available in the future. At the time of writing this report, it is too early to confirm the likely financial impact of the opportunities the TAHE Board is considering.'

Our 'Transport and Infrastructure 2022' report similarly notes that 'at this point in time, nothing beyond the access and licence fees has been approved or finalised as the main source of revenue' (see page 35).

This scenario was anticipated at the commencement of this audit, and was the reason that TAHE's current activities and performance are out of scope for this audit. TAHE's formal response to this report itself acknowledges that 'the primary focus of the Final Report is the genesis of TAHE rather than its current and future performance.'

Had these property projects been within the scope of this audit, it would still not have been possible for the audit team to review them because, at the time of writing, these projects have not been developed sufficiently for TAHE to demonstrate how the financial implications of these projects might affect the conclusions outlined in detail above. TAHE's own long-term financial model, appropriately, does not incorporate the property projects because they are not at a sufficient stage of maturity to include.

2. TAHE's formal response states that any 'suggestion that the payment of access and licence fees by Sydney Trains and NSW Trains to TAHE....is anything other than a proper and transparent contribution to the value of a service provided is inaccurate and is rejected'.

Audit Office clarification:

The report does not make any suggestion that the payment of access and licence fees is in any way improper.

However, the report does note that access and licence fees were increased in 2021 so that TAHE could generate a sufficient return to justify the government's accounting treatment whereby funds contributed to TAHE are an equity investment and not an expense in the Budget (see pages 3, 6, 25 and 26).

3. TAHE's formal response challenges the conclusions of in the report because the Audit Office did not 'conduct any face to face meetings with key stakeholders within TAHE'.

Audit Office clarification:

During the conduct of this audit, the Audit Office analysed in excess of 48,000 documents and conducted multiple interviews with all auditees. This included seven formal meetings with TAHE staff, as well as ongoing communication between our offices throughout the conduct of the audit. For clarity, the dates and subject matter of formal meetings held with TAHE staff are set out in the table below.

That these meetings occurred in a virtual environment does not detract from their importance in the audit process. It is unclear from TAHE's formal response what additional evidence would have been conveyed through additional face to face discussions that could not have been conveyed via the multiple other communication channels available to TAHE throughout the conduct of this audit.

At no time during the conduct of the audit did TAHE request face to face meetings with the audit team. The TAHE CEO requested a face to face meeting with the Auditor-General at the conclusion of the audit, and this meeting occurred and included the TAHE Board Chair with the TAHE CEO.

Meetings between TAHE and members of the audit team took place as follows:

Date	Purpose of meeting	TAHE attendees
27 September 2021	Pre-scoping discussion	<ul style="list-style-type: none"> Executive General Manager Finance & Business Performance General Counsel Chief Audit Executive
5 October 2021	Financial and performance audit team meeting with TAHE	<ul style="list-style-type: none"> Executive General Manager Finance & Business Performance Executive General Manager Asset, Safety and Environment
22 March 2022	Document request	<ul style="list-style-type: none"> CEO Executive General Manager Finance & Business Performance General Counsel Chief Audit Executive
23 August 2022	Meeting about 2014 governance groups	<ul style="list-style-type: none"> Executive General Manager Finance & Business Performance General Counsel
15 September 2022	Preliminary Findings discussion	<ul style="list-style-type: none"> CEO Executive General Manager Finance & Business Performance General Counsel Chief Audit Executive
31 October 2022	Draft Report discussion	<ul style="list-style-type: none"> CEO Executive General Manager Finance & Business Performance General Counsel Chief Audit Executive Executive General Manager, Strategy & Innovation
13 December 2022	Final Report discussion with Auditor-General (face to face)	<ul style="list-style-type: none"> CEO Chair of the Board of Directors

4. Response from the Transport Asset Holding Entity



**Transport Asset
Holding Entity**

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17 January 2023

Ms Margaret Crawford
Auditor-General for NSW
Audit Office of New South Wales
GPO Box 12
Sydney NSW 2000

Dear Ms Crawford

Audit Office Final Report Performance Audit - Design and Implementation of TAHE (Final Report)

I refer to your letter dated 29 November 2022 inviting Transport Asset Holding Entity of New South Wales (TAHE) to provide a formal response to the Final Report.

The primary focus of the Final Report is the genesis of TAHE rather than its current and future performance which is the focus and responsibility of TAHE's Board and Management. For that reason, TAHE's response to the Final Report is focused on those aspects of the Final Report which relate to the ongoing operation of TAHE.

TAHE has now been operating for two and a half years and is clearly focused upon the ownership and strategic management of a safe and reliable rail network that serves the needs of the people of NSW, as well as creating and unlocking value and driving economic growth through the proactive management of its asset portfolio which includes significant property holdings.

The TAHE operating model, including TAHE's operating licence and long term access agreements with Sydney Trains and NSW Trains provide a sound governance and commercial framework for its ongoing operation. Those arrangements reflect its core function as the owner and strategic manager of significant transport infrastructure and property assets. They are not "unnecessarily complex" (especially when compared with other contractual arrangements in the infrastructure sector which involve multiple parties for construction operations and maintenance services, such as PPP arrangements) and they do not impose on the current or future Governments any additional obligations to fund capital investment in the State's rail network to those that already existed prior to the establishment of TAHE.

Any suggestion that the payment of access and licence fees by Sydney Trains and NSW Trains to TAHE for the provision of below rail services is anything other than a proper and transparent contribution to the value of a service provided is inaccurate and is rejected.

TAHE's current projects to drive economic growth through better use of its property assets include the Central Precinct Renewal Program, the redevelopment of the Redfern-North Eveleigh Precinct and our Affordable

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Housing Pilot Program. The financial and social benefits of TAHE undertaking these projects, together with its core function of providing rail access, have been carefully considered. The Board and Management of TAHE are confident that TAHE will be able to deliver on the strategic financial and non-financial objectives set for it in the Statement of Corporate Intent 2022-24, and do not consider that the ongoing financial benefits of TAHE “entail significant uncertainty”. TAHE has implemented an enterprise risk management framework which is sufficiently robust to deal with the uncertainty inherent in the current macroeconomic context.

The ongoing safety of the rail network TAHE owns is paramount. I note that as is appropriate, there is no finding in the Final Report that the ongoing operation of TAHE has any negative impact on the safety of the network nor is there any recommendation in the Final Report related to safety.

The Final Report only makes one recommendation with respect to TAHE, that it review its internal procurement policies with respect to the use of consultants to ensure that it fully complies with NSW Government policy requirements. TAHE has adopted this recommendation and actually completed an internal audit review in June 2022.

Finally, it should be noted that in accordance with the ‘Standard on Assurance Engagements (ASAE) 3500 – Performance Engagements’, “*obtaining an understanding of the activity and other performance engagement circumstances is an essential part of planning and conducting a performance engagement*”. The Audit Office did not undertake a review of the property projects that TAHE is undertaking nor did they conduct any face to face meetings with key stakeholders within TAHE. In the absence of such investigations, it is difficult to understand how any conclusions could be made by the Audit Office as to TAHE’s ability to generate returns on Government investment and whether those initiatives “may not be achievable or sustainable” and how they could be categorised as “uncertain”.

Yours sincerely

Benedicte Colin
Chief Executive Officer
Transport Asset Holding Entity of New South Wales

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