IPART Independent Pricing and Regulatory Tribunal | NSW

TAHE's compliance with the NSW Rail Access Undertaking – 2021-22

Final Report

April 2023

Transport »

Tribunal Members

The Tribunal members for this review are:

Carmel Donnelly PSM, Chair
Deborah Cope
Sandra Gamble

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The Independent Pricing and Regulatory Tribunal

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Acknowledgment of Country

IPART acknowledges the Traditional Custodians of the lands where we work and live. We pay respect to Elders both past and present.

We recognise the unique cultural and spiritual relationship and celebrate the contributions of First Nations peoples.

Contents

1 Overview of our assessment of TAHE's compliance

The NSW Rail Access Undertaking ('the Undertaking') provides for third-party access to certain parts of the NSW rail network. One of its functions is to limit the amount of revenue that rail owners can charge these third-party businesses to use the network. Rail owners cannot receive more revenue than the economic costs of providing the service. This requirement, known as 'the ceiling test', is intended to ensure that monopoly track owners provide prices and conditions of access to existing and future access seekers on reasonable terms.

IPART is required to assess the Transport Asset Holding Entity's (TAHE) annual compliance with the ceiling test. This compliance assessment relates to the 2021-22 financial year for TAHE's networks (shown in Figure 1 and Figure 2).

This is our first assessment of TAHE's passenger network. Previously, Sydney Trains, NSW Trains and RailCorp (the predecessor of TAHE) were all part of the Transport Cluster. On 1 July 2020, RailCorp became TAHE (a State-Owned Corporation), and new arrangements were negotiated. These arrangements have now taken effect, with the passenger train operators now paying access fees for using TAHE's passenger network.

We have also completed a detailed assessment of TAHE's Hunter Valley Coal Network against the ceiling test and a high-level assessment of TAHE's other freight networks.

In addition to the ceiling test, rail owners must meet the 'floor test', which requires them to charge every access seeker fees that recover their direct costs of using the network. Further, as an objective, for any Sector or group of Sectors, they should receive revenue that meets the Full Incremental Costs of those Sectors (this includes revenue from Line Sector subsidies ("community service obligations" or "CSOs") (if applicable), as well as fees from access seekers).

The floor test is intended to ensure efficient rail operators can recover the avoidable costs of providing access to a third-party access seeker. It protects against an access seeker's direct costs being funded by other access seekers and taxpayers. While IPART does not have a formal role assessing the floor test, we have considered whether this requirement has been met.

We considered TAHE's progress in implementing an unders and overs account policy, as required by the Undertaking. In response to TAHE's submission, we have amended the date in our recommendation for TAHE to submit its unders and overs policy. We are now recommending that it is due by 31 May 2023 instead of 31 March.

1.1 Summary of our decisions

1.1.1 Metropolitan Passenger Network

Our decision is that TAHE has complied with the ceiling test for the Metropolitan Passenger Network. It recovered less revenue than its full economic costs – revenue was around a third of its full economic costs using the depreciated optimised replacement cost (DORC) asset valuation methodology required by the Undertaking.[a] We also consider that the floor test has been met.

1.1.2 Hunter Valley Coal Network

Our decision is that TAHE has complied with the ceiling test in the Undertaking for its Hunter Valley Coal Network for the 2021-22 compliance year. Across all access seekers, TAHE recovered around 80% of its costs of serving the combined coal and freight group of access seekers on the network. This was an under-recovery of around $1.5 million in 2021-22.

TAHE's cumulative over-recovery was $8.8 million in 2020-21.[1] TAHE's under-recovery in 2021-22, and a tax allowance adjustment for previous years (discussed in section 3.3.5), has reduced this cumulative balance to $6 million as at June 2022.

We recognise TAHE's progress in reducing its cumulative over-recovery, consistent with our 2020-21 final decision. It has begun work on an unders and overs account policy, which it will develop in consultation with access seekers. We will assess TAHE's proposed policy once it has been submitted to IPART for approval, as required under the Undertaking.

1.1.3 Non-Hunter Valley coal freight network

Our decision is that TAHE has demonstrated to IPART's reasonable satisfaction that access revenue for each sector was no more than 80% of the full economic cost of providing access. Therefore, we have not undertaken a detailed review of TAHE's compliance with the ceiling test, for this part of its network.

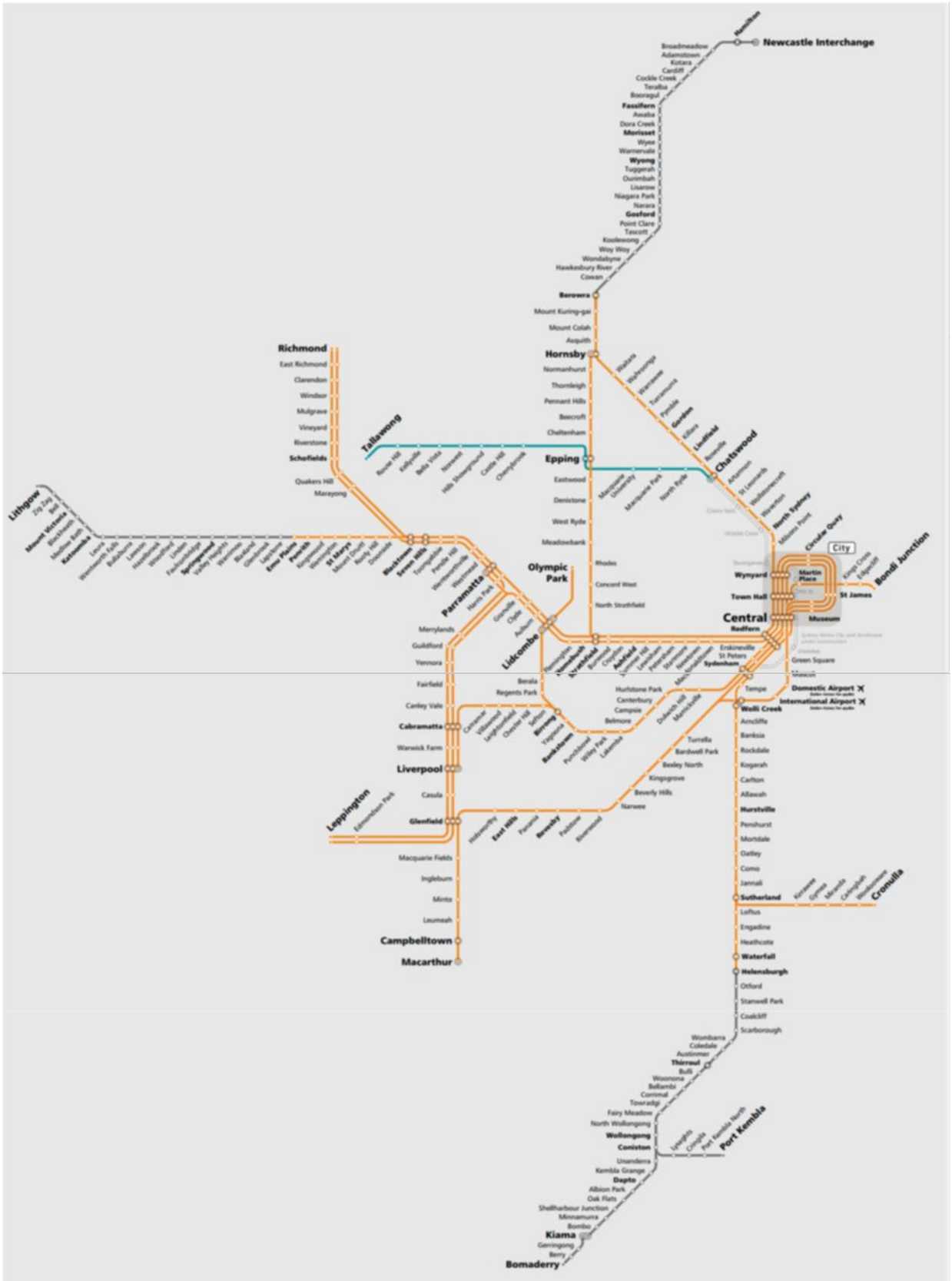
Final Decisions

[a] Full economic cost is a defined term in Schedule 3 of the Undertaking. Full economic cost reflects in part TAHE's actual costs as well as regulated outcomes, such as rate of return that is determined by IPART.

Final Recommendation

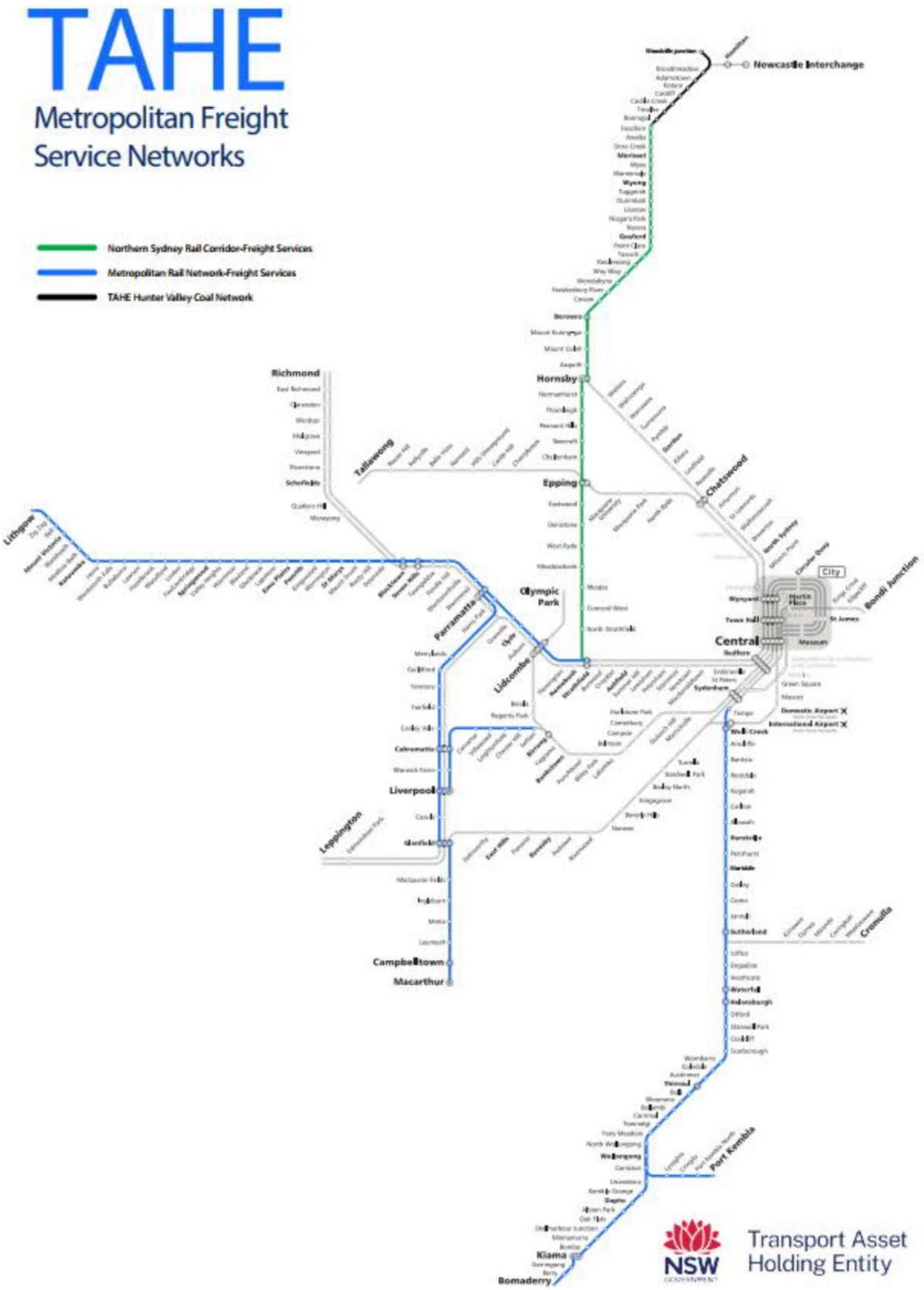
1.	That TAHE complete its unders and overs account policy in consultation with access seekers and submit it to IPART for approval as required under clause 4(t) of Schedule 3 of the Undertaking by 31 May 2023.	17

Figure 1 TAHE's Metropolitan Passenger Network



Source: TAHE, 2022 access pricing compliance submission to IPART, December 2022.

Figure 2 TAHE's Metropolitan Freight Network



Source: TAHE, 2022 access pricing compliance submission to IPART, December 2022.

2 Metropolitan Passenger Network

TAHE's Metropolitan Passenger Network is used by Sydney and NSW Trains to provide passenger operations. It consists of the metropolitan rail network, but excludes the new metro lines (turquoise lines in Figure 1 above). Sydney Trains operates suburban services entirely within the passenger network. NSW Trains uses the network to operate intercity and regional services that may have an origin or destination outside of the Metropolitan Passenger Network. Sydney Trains is responsible for maintaining the Metropolitan Passenger Network.[2,b]

2.1 How we assessed compliance

Clause 5 of Schedule 3 of the Undertaking requires TAHE to provide an annual compliance statement to IPART demonstrating its compliance with the ceiling test, including the asset valuation roll forward principles. For the Metropolitan Passenger Network, this test requires TAHE to not earn more than the full economic cost of providing access to the network for Sydney and NSW Trains.

IPART is required to assess this information to determine if TAHE has complied with these requirements.

We consider that an assessment of the ceiling test on a standalone basis requires estimating costs for a hypothetical network that is purpose-built and optimised for that group of access seekers. The actual costs of the existing infrastructure are not relevant unless they are efficient for a group of access seekers. Specifically, any extra costs that are driven by freight trains must be excluded from the ceiling test for passenger access seekers. Similarly, passenger train costs must be excluded when assessing the hypothetical freight networks.

TAHE has conducted the ceiling test using two asset valuations, one based on a depreciated optimised replacement cost (DORC) methodology and the other using a discounted cashflow methodology. TAHE's submission notes that the discounted cashflow methodology is the approach that is consistent with the asset values used in its financial accounts.[3] Its submission further notes that this approach results in access revenue that earns a commercial return on its economic asset value over the medium term.[4]

We have not confirmed this as the Undertaking requires a DORC valuation to be used for the purpose of the ceiling test.[5] We have assessed the DORC methodology valuation provided by TAHE.

Although we do not have a formal compliance role in relation to the 'floor test', we also considered whether this test has been met.

[b] NSW Trains also paid a fee to Sydney Trains for the provision of maintenance and train control expenditure. See TAHE, *2022 access pricing compliance submission to IPART,* December 2022 p 24.

2.2 Assessment of the ceiling test

TAHE has calculated the full economic cost of the Metropolitan Passenger Network on a standalone basis for the passenger operators (Table 1). Our decision is that it meets the ceiling test.

In calculating the costs of providing access, TAHE has included some variable expenditure incurred by other entities. This reflects that some activities necessary for access are undertaken by other parties and incurred on TAHE's behalf. Accounting for these costs provides a wholistic assessment of the cost of providing access to the passenger network.

Table 1 TAHE's ceiling test for the Metropolitan Passenger Network ($ m)

	TAHE's estimates			IPART scenario
	Sydney Trains	**NSW Trains**	**All passenger access seekers**	**All passenger access seekers**
Variable operating costs	10.1	4.1	14.2	14.2
Variable maintenance costs	47.1	17.1	64.2	64.2
Capitalised maintenance costs as a levellised charge (IPART scenario)	-	-	-	5.6
Total direct costs	57.1	21.2	78.4	84
Train control costs	111.2	111.2	111.2	111.2
Fixed maintenance expenditure	490.1	490.1	490.1	490.1
Fixed operating costs	72.4	72.4	72.4	72.4
Depreciation	764.9	764.9	764.9	762.2
Return on RAB	1,145.8	1,145.8	1,145.8	1,140.6
Tax allowance	324.3	324.3	324.3	322.8
Full economic costs	**2,965.9**	**2,930**	**2,987.1**	**2,983.2**
Full incremental costs			601.3	601.3
Access revenue paid to TAHE	187.3	67.4	254.8	254.8
In-kind contributions	524.7	149	673.7	673.7
Total access revenue and in-kind contributions	**712**	**216.4**	**928.6**	**928.6**
Total access revenue and in-kind contributions less full economic costs	**-2,253.8**	**-2,713.5**	**-2,058.5**	**-2,054.6**
Recovery Rate	24%	7.4%	31%	31.1%

Note: The IPART scenario includes TAHE's capitalised major periodic maintenance costs as a direct cost rather than a capital cost.
Source: TAHE, 2022 access pricing compliance submission to IPART, December 2022 and IPART analysis.

TAHE has included some major periodic costs as capital expenditure. However, it is possible that these costs should be included as a levellised charge, as per the definitions in Clause 2.1 of Schedule 3 of the Undertaking:

- **Capital expenditure** means expenditure undertaken in order to increase the capacity, service quality or useful life of an asset, but not including maintenance or operating expenditure.
- **Major periodic maintenance** (MPM) means planned maintenance expenditure on infrastructure assets at intervals of more than one year, including activities that renovate and refurbish the assets to achieve their predetermined service life and service level.
- **Direct costs** means efficient, forward-looking costs which vary the usage of a single operator within a 12-month period, plus a levellised charge for variable MPM costs, but excluding Depreciation.

The capitalised major periodic maintenance should be included by TAHE in its direct costs as a levellised charge if the costs related to activities that occur more than once a year and are 'variable' (that is, they are the result of the use of the infrastructure). It is unclear whether these conditions have been met. Therefore, we have included a scenario to test whether TAHE remains compliant with the pricing principles if capitalised maintenance costs are instead included as a levellised charge. We have found that TAHE is compliant under both scenarios.

2.2.1 Variable operating costs

TAHE has assumed that the proportion of its operating costs that vary with network usage is 10%. It arrived at this percentage by first considering the proportion of its operating costs that related to its regulated assets.[c] TAHE then considered what proportion varied with usage and the driver of the costs.[d] The remainder of the operating expenditure has been treated as a fixed cost.

2.2.2 Variable maintenance

TAHE has included its variable maintenance, as required by the Undertaking.[6] TAHE has noted in its submission that there will be future variations in the figure due to the impact of COVID-19 and recent natural disasters.[7] It also noted that Sydney Trains has put in place strategies to lower maintenance costs over time.[8] TAHE expects that these strategies will deliver a cost-efficient maintenance program.

2.2.3 Capitalised major periodic maintenance

TAHE has excluded capitalised major periodic maintenance from its variable maintenance cost figures. It has instead included this cost as part of capital expenditure. As noted above, we have included a scenario where these costs are accounted for through a levellised charge.

[c] Regulated assets refers to TAHE's rail networks, which are regulated by the NSW Rail Access Undertaking. TAHE also has assets that are not regulated by the Undertaking - mainly train stations and the property around them.

[d] Cost drivers considered by TAHE included trip length, carriage weighted trip length, gross tonne kilometres and service count. See TAHE, 2022 access pricing compliance submission to IPART, December 2022, p 55.

2.2.4 Train control costs

TAHE has treated train control costs as a fixed cost, and has not escalated this cost between 2020-21 and 2021-22. We consider this is reasonable as the network control costs are unlikely to vary substantially between years for the passenger network.

2.2.5 Capital costs

TAHE has calculated the RAB for 2021-22 in accordance with the principles in the Undertaking (Table 2). It has used a DORC valuation as the opening value for its passenger network. TAHE has then increased this value by CPI and added capital expenditure for the given year, less any depreciation and asset disposals.

Table 2 Asset roll forward valuation for the Metropolitan Passenger Network ($ m)

Roll forward component	TAHE's estimates 2021/22	IPART scenario 2021/22
Opening value 30 June 2021	21,563.4	21,563.4
Indexation	324.1	324.1
Capital expenditure	583.7	382.9
Additions	-	-
Depreciation	764.9	762.2
Disposals	31.9	31.9
Closing value 30 June 2022	21,674.4	21,476.3
Average RAB	21,618.9	21,519.9

Source: TAHE, 2022 access pricing compliance submission to IPART, December 2022 and IPART analysis.

Capital Expenditure

TAHE has incurred capital expenditure to improve the quality of the passenger network. The largest expense is the improvement to rail signalling systems. TAHE has also included other capital expenditure, such as replacement of rail infrastructure and capitalised major periodic maintenance.

As noted above, we have included a scenario where the major periodic maintenance is removed from the capital expenditure, and is instead treated as a levellised charge.

Depreciation

TAHE has included depreciation on all asset classes (excluding land) for the Metropolitan Passenger Network. It has calculated this figure over the estimated useful life of its assets on a straight line basis, consistent with the requirements of the Undertaking.[9] TAHE has also depreciated new capital expenditure by half a year, also required by the Undertaking.[10]

However, there are elements of TAHE's depreciation expense that may relate to major periodic maintenance. If this is the case, then they would not be included in depreciation and instead included as a levellised charge (as per the IPART scenario).

Return on RAB

TAHE has applied the correct rate of return to the average of the opening and closing values of the RAB. The rate of return is set by IPART in our 5-yearly rate of return and remaining mine life review.

2.2.6 Tax allowance

TAHE has incorporated a tax allowance as required when using a real post-tax rate of return. It has estimated the tax allowance by applying the ratio of the real pre-tax rate and post-tax rate of returns from our 2014 and 2019 rate of return determinations.[11] We consider that this is a reasonable method for calculating a tax allowance.

Decision

1. TAHE has complied with the ceiling test for its Metropolitan Passenger Network.

2.3 Assessment of the floor test

Clause 1 of Schedule 3 of the Undertaking requires the access revenue from every access seeker to at least meet the direct cost imposed by that access seeker. This is known as the floor test.

As noted above, direct costs are the efficient, forward-looking costs which vary with the usage of a single operator within a 12-month period, plus a levellised charge for variable major periodic maintenance costs, but excluding depreciation.[12]

We consider the floor test has been met by TAHE for both Sydney Trains and NSW Trains (Table 3).

As discussed above, not all of the costs of providing access are incurred by TAHE. Namely, Sydney Trains carries out maintenance and train control for the Metropolitan Passenger Network for TAHE under current arrangements.[13] TAHE treats this as an "in-kind" contribution. Table 3 shows that the floor test is also met when the cluster costs and corresponding in-kind contributions are excluded (i.e. only the costs incurred by TAHE are captured).[14]

As with the ceiling test, we have tested TAHE's estimates against the scenario where all major periodic maintenance is captured as a levellised charge in direct costs, rather than capitalised. The floor test is met under both scenarios.

TAHE has split the variable periodic maintenance expenditure between Sydney Trains and NSW Trains on a ratio of 73/27 (Table 4).[15] It arrived at this ratio on a gross tonne kilometre basis.[16] We consider this to be a reasonable approach as it reflects the wear and tear caused by each passenger operator, and have adopted it in the IPART scenario.

Table 3 Floor test for the Metropolitan Passenger Network ($ m)

	TAHE's estimates			IPART scenario		
	Sydney Trains	**NSW Trains**	**All passenger access seekers**	**Sydney Trains**	**NSW Trains**	**All passenger access seekers**
Transport cluster basis						
Access revenue paid to TAHE	187.3	67.4	254.8	187.3	67.4	254.8
In-kind contributions	524.7	149	673.7	524.7	149	673.7
Total access revenue and in-kind contributions	**712**	**216.4**	**928.6**	**712**	**216.4**	**928.6**
Total Direct costs	57.1	21.2	78.4	62.2	23.1	85.4
Access revenue less direct costs	**654.9**	**195.2**	**850.2**	**649.8**	**193.3**	**843.2**
TAHE only costs						
Access revenue paid to TAHE	187.3	67.4	254.8	187.3	67.4	254.8
Total Direct costs	5.4	2.4	7.8	10.5	4.3	14.8
Access revenue less direct costs	**181.9**	**65**	**247**	**176.8**	**63.1**	**240**

Note: Access revenue for all passenger access seekers includes $0.1 m from other passenger access seekers who use the passenger network, such as heritage passenger operators.
Source: TAHE, 2022 access pricing compliance submission to IPART, December 2022.

Table 4 Direct costs for the Metropolitan Passenger Network ($ m)

	TAHE's estimates			IPART scenario		
	Sydney Trains	NSW Trains	All passenger access seekers	Sydney Trains	NSW Trains	All passenger access seekers
Transport cluster basis						
Variable operating costs	10.1	4.1	14.2	10.1	4.1	14.2
Variable maintenance expenditure	47.1	17.1	64.2	47.1	17.1	64.2
Levellised charge	-	-	-	4.1	1.5	5.6
Total Direct costs	**57.1**	**21.2**	**78.4**	**61.2**	**22.7**	**84.0**
TAHE only costs						
Variable operating costs	5.4	2.4	7.8	5.4	2.4	7.8
Variable maintenance expenditure	-	-	-	-	-	-
Levellised charge	-	-	-	4.1	1.5	5.6
Total Direct costs	**5.4**	**2.4**	**7.8**	**9.5**	**3.9**	**13.4**

Source: TAHE, 2022 access pricing compliance submission to IPART, December 2022.

3 TAHE's Hunter Valley Coal Network

3.1 How we assessed compliance

We have assessed TAHE's compliance with the ceiling test for its Hunter Valley Coal Network. We:

- Considered whether TAHE had performed the test for all relevant access seekers or groups of access seekers.
- Considered whether TAHE had correctly calculated the full economic costs of the Hunter Valley Coal Network on a standalone basis for each of those groups. This included testing whether TAHE had complied with the asset roll forward requirements in the Undertaking. We compared TAHE's calculations against our own assessment of costs.
- Compared access revenues received by TAHE, with our calculations of full economic costs for each group.

Our decision is that TAHE has complied with the ceiling test for all relevant groups of access seekers.

3.2 Relevant access seekers

TAHE submitted ceiling tests conducted on 3 different groups of access seekers:

1. combined coal and general freight
2. coal
3. general freight.

We find the 3 groups proposed by TAHE are appropriate.

Both coal and general freight access seekers need to use the same assets. This means the full economic cost is similar for each group, differing only by the extent that direct costs (i.e. variable costs) are different.

3.3 Assessment of costs and revenue

TAHE calculated the full economic costs for each group of access seekers on a standalone basis (Table 5), consistent with the Undertaking and our 2020-21 decision. Specifically, it has excluded any extra costs that are driven by other access seekers (namely passenger trains).

Table 5 Ceiling test for the Hunter Valley Coal Network ($)

	2020-21 (from IPART's 2020-21 decision)	2021-22 (from TAHE's submission)
All access seekers (combined coal and freight)		
Maintenance costs	4,461,392	4,672,091
Network control costs	579,837	602,530
Corporate and system overheads	463,793	485,265
Depreciation	682,145	689,623
Return on assets	708,762	681,395
Tax allowance	-	192,848
Full economic cost	6,895,929	7,323,751
Access revenue	4,741,291	5,839,624
Cost recovery	-2,154,638	-1,484,127
Coal		
Maintenance costs	4,072,231	4,296,994
Network control costs	579,837	602,530
Corporate and system overheads	427,990	450,756
Depreciation	682,145	689,623
Return on assets	708,762	681,395
Tax allowance	-	192,848
Full economic cost	6,470,965	6,914,146
Access revenue	3,219,801	4,122,691
Cost recovery	-3,251,164	-2,791,455
General Freight		
Maintenance costs	4,174,641	4,336,170
Network control costs	579,837	602,530
Corporate and system overheads	437,412	454,360
Depreciation	682,145	689,623
Return on assets	708,762	681,395
Tax allowance	-	192,848
Full economic cost	6,582,796	6,956,926
Access revenue	1,521,490	1,716,933
Cost recovery	-5,061,306	-5,239,993

Source: 2020-21 final decision, TAHE, 2022 access pricing compliance submission to IPART, December 2022

3.3.1 Maintenance costs

TAHE has applied the same general approach that we used in our 2020-21 decision. It used the benchmarking data provided by SNC Lavalinc to determine the benchmark fixed maintenance costs (per km of track) and variable costs (per thousand gross tonne kilometres (gtk)).[e]

TAHE has escalated its maintenance cost estimates using CPI, rather than the maintenance cost index (MCI) as proposed in our 2020-21 decision.[f] This leads to lower maintenance costs, as CPI is lower than MCI.

3.3.2 Network control costs

TAHE has escalated last year's network control costs by CPI rather than applying a rate of $2.89 per train kilometre, as per IPART's 2020-21 decision.[g] TAHE has adopted this approach on the basis that network control costs are fixed and do not vary by the number of access seekers or volume of freight. We consider that this approach is reasonable.

3.3.3 Corporate and system overheads

TAHE has used IPART's 2020-21 estimate of an efficient level of corporate and system overheads equal to 9.2% of the sum of maintenance and network control. This is derived from industry benchmarking we commissioned in 2009-10.[17] This 'mark-up' approach is generally accepted industry practice. We would not expect the percentage of costs allocated for corporate and system overheads to increase over time for an efficient firm.

TAHE has noted that there is a slight difference in corporate and system overheads between coal and general freight access seekers. It states that this reflects the difference in direct (variable maintenance) costs relating to each group of access seekers. We consider that this approach is reasonable.

3.3.4 Capital costs

TAHE has calculated the RAB for 2021-22 according to the roll forward principles in the Undertaking (Table 6). It must use the RAB in the prior year plus the CPI increase on that prior RAB. TAHE must then add capital expenditure in the given year, less depreciation and any asset disposals in the given year.

TAHE has correctly adopted the asset life from our asset mine life determination and applied depreciation on a straight line basis.

It has also applied the correct rate of return to the average of the opening and closing values of the RAB. The rate of return is set by IPART in our 5-yearly review.

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[e] RailCorp contracted SNC Lavalin to estimate efficient costs for the 2015-16 to 2017-18 compliance assessments.

[f] MCI measures the change in price of standard inputs used in maintenance, for example fuel costs and metal products. It may more accurately reflect the change in maintenance costs than CPI as it does not include goods that are not relevant to maintenance (e.g. grocery prices and the cost of residential rental).

[g] The $2.89 per train kilometre rate was first adopted and is escalated by CPI to be in nominal terms.

Table 6 TAHE's asset roll forward valuation for combined coal and general freight access seekers ($)

	2020-21	2021-22
Opening RAB	13,642,901	13,102,839
Opening RAB x CPI	142,083	196,951
Add Capex	0	0
Add Additions	0	0
Less Depreciation	-682,145	-689,623
Less Disposals	0	0
Closing RAB	13,102,839	12,610,166

Note: The figures for 2020-21 are from our 2020-21 final decision.
Source: TAHE, 2022 access pricing compliance submission to IPART, December 2022.

3.3.5 Tax allowance

TAHE has estimated the tax allowance by applying the ratio of the real pre-tax rate and post-tax rate of returns from our 2014 and 2019 rate of return determinations. We consider that this is an appropriate method for calculating the tax allowance.

Decisions

2. TAHE has complied with the ceiling test for its Hunter Valley Coal Network.

3. TAHE has complied with the asset valuation roll forward principles in the NSW Rail Access Undertaking for its Hunter Valley Coal Network in 2021-22.

3.4 TAHE's unders and overs account

When the Undertaking was established, it was recognised that it may be impractical to set access prices in a way that would always avoid over-recovery of full economic costs. This is because prices must be set before the tonnage for the year is known. Prices set with an expectation of low tonnage will generate too much revenue if tonnage turns out to be high (and vice versa).

In order to adjust for these under or over-recoveries of the ceiling revenue, the Undertaking provides for an unders and overs account. The expectation is that the net balance of this account would remain close to zero, even though it might fluctuate from time to time.

We must have regard to the operation of the unders and overs account as part of our compliance reviews.

3.4.1 The unders and overs account balance

Our finding is that the unders and overs account balance is just under $6 million as at 30 June 2022.

Table 7 IPART findings on unders and overs account ($)

	All access seekers (combined coal and freight)	Coal	General Freight
Balance at 30 June 2021	8,801,213		
Tax allowance adjustment	-1,341,998		
2021-22 revenue minus costs	-1,484,127	-2,791,454	-5,239,992
Balance as at 30 June 2022	5,975,088		

Source: TAHE, 2022 access pricing compliance submission to IPART, December 2022 and IPART analysis.

Table 7 includes an adjustment for the previous years' tax allowance. In our 2014 rate of return and remaining mine life determination, we decided to adopt a post-tax rate of return.[18] This means that a tax allowance should also be included in the calculation of full economic costs. However, prior to this compliance submission, TAHE had not included a tax allowance.[19] The adjustment accounts for the cumulative tax allowance from 2015-16, which reduces the over-recovery by around $1.3 million.

3.4.2 Developing an unders and overs account policy

TAHE is developing an unders and overs account policy, consistent with our previous recommendations. In our Draft Report, we recommended TAHE complete the policy, in consultation with its access seekers, for submission to IPART by 31 March 2023. This reflected TAHE's compliance submission, which stated that it would submit its policy in early 2023.[20]

Following our Draft Report, TAHE proposed in its submission to our Draft Report to extend the deadline to 31 May 2023.[21] We recognise TAHE's proposal is consistent with our 2020-21 compliance decision, which required an unders and overs account policy to be submitted within 12 months.[22] Therefore, we have amended our final recommendation to allow TAHE to complete the policy for submission to IPART by 31 May 2023.

Recommendation

1. That TAHE complete its unders and overs account policy in consultation with access seekers and submit it to IPART for approval as required under clause 4(t) of Schedule 3 of the Undertaking by 31 May 2023.

4 TAHE's non-Hunter Valley Coal freight networks

Several segments of TAHE's network are accessed by freight trains to transport goods to domestic and export markets. They carry a diverse range of goods, including grain, cotton and containerised freight. The specific segments used are the:

- Country Regional Network
- Northern Sydney Rail Corridor
- Metropolitan Rail Network – freight.

These segments are treated as hypothetical standalone networks for the purposes of the Undertaking. This ensures freight operators are only charged the efficient cost of using the network (i.e. so that costs attributable to passenger trains are not passed on to freight trains).

4.1 How we assessed compliance

We have assessed TAHE's compliance information under clause 5(f) of the Undertaking. Under this clause, IPART is not required to undertake a detailed compliance review where a rail infrastructure owner can demonstrate that access revenue for a sector is no more than 80% of the full economic cost for that sector.

We last conducted a detailed review for the non-Hunter Valley Coal freight networks in 2017-18. We found that access revenue for these networks was below the 80% threshold. Our standard practice is to undertake detailed reviews every 5 years.

Between detailed reviews, we confirm with rail infrastructure owners whether there has been a material change to revenues and the cost base that would cause revenue to approach the 80% threshold. We have found that revenues and costs have changed, increasing recovery rates since 2020-21 for the Northern Sydney Corridor and Metropolitan Network (Table 8). However, our decision is that we are satisfied that access revenue has remained below 80% of full economic cost for each of the network sectors.

Our next detailed compliance assessment is due to start in late 2023.

Table 8 Estimated cost recovery rate by network for 2020-21 and 2021-22 (%)

	Excluding capital costs		Including capital costs based on IPART estimates	
	2020-21	**2021-22**	**2020-21**	**2021-22**
Country Regional Network	15.1	17	9.6	11.2
Northern Sydney Rail Corridor	76.3	84.1	58.6	66.7
Metropolitan Rail Network – Freight	78.3	79.5	36.3	40.4

Source: TAHE, 2022 access pricing compliance submission to IPART, December 2022 and IPART analysis.

4.1.1 Mobilisation Payment

TAHE has included a one-off mobilisation payment as part of its costs for the Country Regional Network. It has explained that this payment was part of the cost of switching to a new provider for the Country Regional Network. TAHE advised that it selected the new provider following a successful tender process and that the new provider represented best value for money, even with the mobilisation payment.

TAHE has allocated the payment across the life of the contract, so that a portion of the payment is recognised in the full economic cost of the Country Regional Network each year. We consider that this is a reasonable approach as it will prevent large fluctuations in the full economic cost of the network between financial years.

Decision

4. TAHE has demonstrated to IPART's reasonable satisfaction that access revenue for each non-Hunter Valley coal freight sector was no more than 80% of the full economic cost of providing access.

1 IPART, Final decision – TAHE's compliance for its Hunter Valley Coal Network – 2020-21, May 2022, p 2.
2 TAHE, *2022 access pricing compliance submission to IPART,* December 2022, p 14.
3 TAHE, *2022 access pricing compliance submission to IPART,* December 2022, p 32.
4 TAHE, *2022 access pricing compliance submission to IPART,* December 2022, p 32.
5 cl 2.1 of Schedule 3 of the NSW Rail Access Undertaking.
6 cl 2.1 of Schedule 3 of the NSW Rail Access Undertaking.
7 TAHE, *2022 access pricing compliance submission to IPART,* December 2022, p 26.
8 TAHE, *2022 access pricing compliance submission to IPART,* December 2022, p 26-27.
9 cl 2.1 of Schedule 3 of the NSW Rail Access Undertaking.
10 cl 3.2 of Schedule 3 of the NSW Rail Access Undertaking.
11 IPART, Final Report and Decisions - NSW Rail Access Undertaking - Review of the rate of return and remaining mine life - from 1 July 2014, July 2014 and IPART, Final Report – Review of rate of return and remaining mine life from 1 July 2019, July 2019.
12 cl 2.1 of Schedule 3 of the NSW Rail Access Undertaking.
13 TAHE, *2022 access pricing compliance submission to IPART,* December 2022, p 24.
14 TAHE, *2022 access pricing compliance submission to IPART,* December 2022, p 24.
15 TAHE, *2022 access pricing compliance submission to IPART,* December 2022, p 55.
16 TAHE, *2022 access pricing compliance submission to IPART,* December 2022, p 55.
17 IPART, *Compliance with the NSW Rail Access Undertaking RailCorp HVCN, 2009/10*, Final Report, August 2012, p 14. and Sapere Research Group, *A ceiling test protocol for RailCorp – prepared for IPART*, November 2011, p 12.
18 IPART, Final Report and Decisions - NSW Rail Access Undertaking - Review of the rate of return and remaining mine life - from 1 July 2014, July 2014.
19 IPART, *Railcorp compliance with the NSW Rail Access Undertaking for 2014-15*, Final Decision, February 2017, p. 6-7.
20 TAHE, *2022 access pricing compliance submission to IPART,* December 2022, p 42.
21 TAHE, *Submission to the Draft Decision*, 9 February 2023, p 1.
22 IPART, Final decision – TAHE's compliance for its Hunter Valley Coal Network – 2020-21, May 2022, p 3.

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