

Extract from 'RTM Mail' – February 2006

3801 Limited

Members may not all appreciate that the company 3801 Limited was established, in effect, by the NSWRTM and the ARHS (NSW Division), who were subscribers to the original Memorandum of Association in 1985, and who are the two Management Members of the Company.

3801 Limited is a company limited by guarantee, like the NSWRTM, with provision for a constituency of members, rather than shareholders as in a conventional public company. It was deliberately set up in this way so that the NSWRTM and the ARHS, the major stakeholders in rail heritage in NSW, each with a substantial membership, would control the company – both in a titular and representative sense, and in actuality. Appropriately, the original Articles of Association contained specific provisions to ensure that the two Management Members would each be represented on the Committee or Board of the Company by three nominees, which in the normal course of events would result in the two Management Members having a total of six out of nine of the directors. As well as the two Management Members, the Company has 15 'ordinary members' who are private individuals, who elect two of the directors.

Particularly in more recent years, the governance of the Company has not in actuality reflected these arrangements, and the NSWRTM (and for that matter the ARHS) has had little or no effective control or say in the Company's affairs. This is contrary to the intent and spirit in which the Company was established, and to the notion of support by a wide rail heritage constituency. Despite this, relations between 3801 Limited and the NSWRTM have generally been good, particularly at operational level.

In the last year or so, relations between 3801 Limited and the NSWRTM have become increasingly strained, and for some months, moves have been under way (by elements other than the NSWRTM nominees) to change the Articles of Association of 3801 Limited so as to exclude the Management Members from the Committee. After a number of attempts, these moves came to fruition at an Extraordinary General Meeting on 16 November 2005, when the Articles were changed with the intent of preventing the nominees of the Management Members from sitting on the Committee. The ARHS nominees supported the change, because the ARHS had decided it no longer had an interest in the management of the Company, and would not nominate representatives in future. Finally, at the Annual General meeting on 21 December, a new Committee comprising seven ordinary members, with no representation of the Management Members, was declared elected.

We, and our legal advisers, believe that these moves were not only inappropriate, but contrary to the Corporations Act, and have several times written to the Chairman of 3801 Limited putting that view, and cautioning him against the proposed actions. Subsequently, we wrote to the Australian Securities and Investments Commission (ASIC).

So the NSWRTM and the ARHS have been excluded from the running of 3801 Limited, even though we remain Management Members. Yes, it does seem odd, and certainly contrary to the original intent and purpose of the Company, but there it is.

What it means though is that 3801 Limited is now clearly no more than a group of private individuals, accountable to no constituency, running a railway company. The broader accountability of the Company and the public purpose of a company limited by guarantee have been lost.

Locomotive 3801

Since the announcement of our decision not to offer a new lease for locomotive 3801, there has been a considerable amount of misinformation about the NSWRTM's position. It has been suggested that we will park the loco in the shed and leave it there – that we do not have the capacity, or the will, to operate it. This is simply not true.

We said at the outset that we are committed to ongoing public access to 3801, and while ever viable and achievable, to its sustainable operation. As the organisation that saved and operated the locomotive originally, the NSWRTM recognises its iconic status and has an enormous stake in it, and is pledged to act in its best interests. Public accessibility and sustainable operation are our key concerns and aims.

We said we would establish an advisory committee to review future options for the locomotive's overhaul, operation and management, and we can at this stage say that the committee will be a high level one, with a number of credible, well-credentialed and independent members as well as appropriate representation from NSWRTM. We will be making announcements about this and other firm plans for the locomotive as the year progresses.

The facts are:

- After 20 years of operation it is apparent that the locomotive requires an extensive and expensive overhaul. Thus it will have to come out of traffic for that overhaul in the short to medium term, irrespective of whose custody it's in.
- Irrespective of whether the locomotive is with 3801 Limited, or with the NSWRTM, capital funds in excess of revenue from the locomotive's operations will need to be found to pay for this work.
- The NSWRTM is at least as well placed as anyone to raise the necessary funds for overhaul, and is committed to doing so and to operating the locomotive - sustainably.
- The NSWRTM operates steam tours that serve a similar market to 3801 Limited and has done so from its Thirlmere base for over 30 years.
- The Eveleigh workshops are not publicly accessible - public access to 3801 will be substantially improved when the locomotive is at Thirlmere.
- The NSWRTM's operations, and steam operations generally, are not reliant on the Eveleigh workshops. The NSWRTM recognises the inevitability of the proposed Redfern-Waterloo urban renewal project, and its impact on an inner-city steam locomotive operating base.
- The existing wide community exposure for 3801 can be maintained by the NSWRTM with judicious operation and without the necessity of the current additional operating base at Eveleigh.
- 3801 Limited has diverged from the intended model established in 1985, which provided the basis for our agreement for the 20-year lease of the locomotive. The Company has simply offered 'more of the same'. That is not sustainable, for the locomotive, the market or the industry. 3801 Limited has not articulated a vision that adds value beyond the NSWRTM's capabilities, or that recognises the serious issues facing rail heritage now and in the near future.
- The NSWRTM has a clear vision for the future of NSW's rail heritage. We will work in partnership with organisations who can assist our vision of telling the NSW rail story and consolidating sites and activities to build future sustainability, recognising the significant challenges faced by rail heritage.