

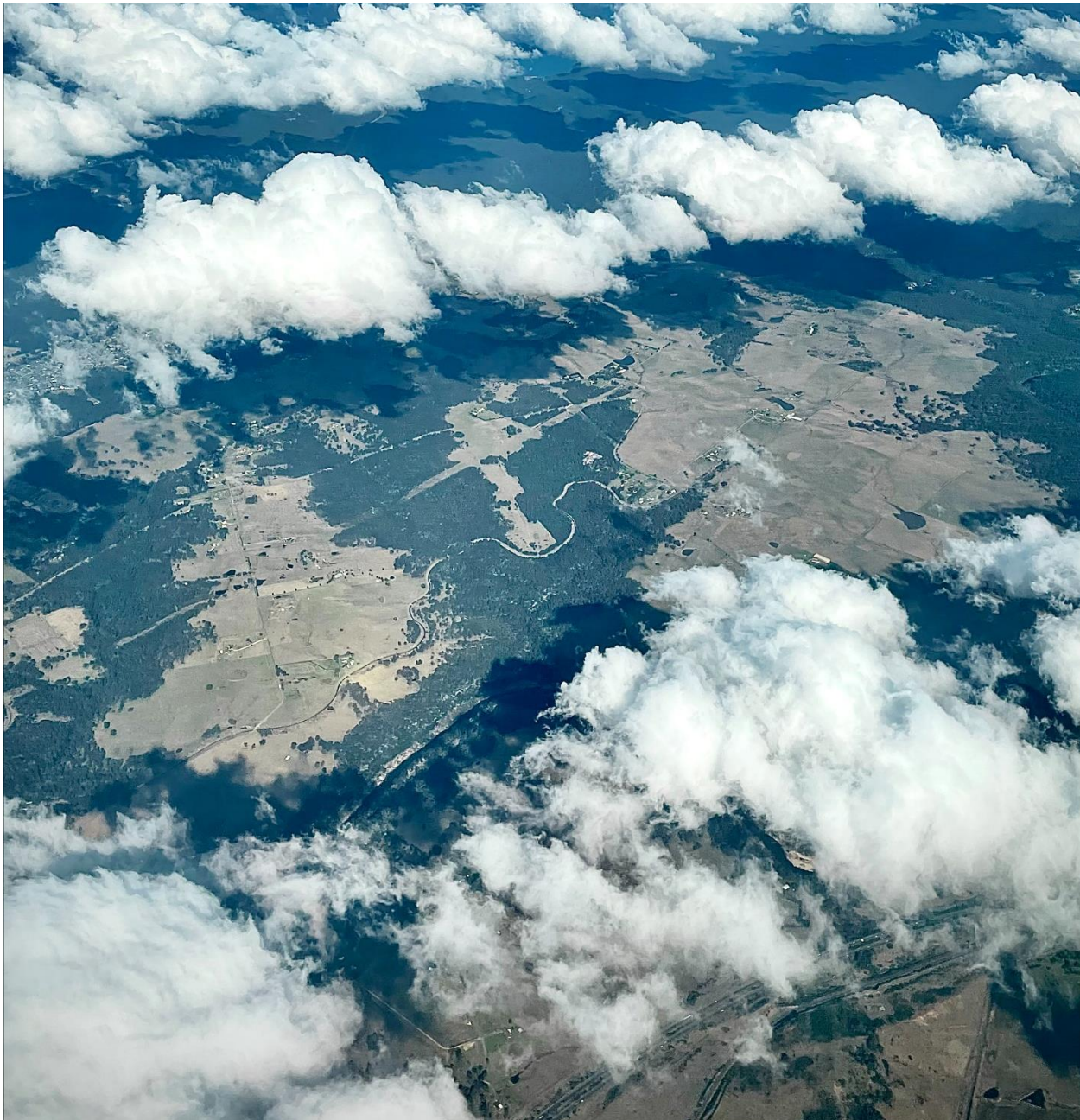
Department of Planning and Environment

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Review of the Technical Assurance Panel Pilot Program for the Greater Macarthur Growth Area

September 2022





Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Glossary

CPCP	Cumberland Plain Conservation Plan
DPE	Department of Planning and Environment
EHG	Environment and Heritage Group
GA NSW	Government Architect NSW
GMGA	Greater Macarthur Growth Area
GMTNP	Greater Macarthur Transport Network Plan
HNSW	Heritage NSW
OCSE	NSW Office of the Chief Scientist and Engineer
SHR	State Heritage Register
TAP	Technical Assurance Panel
TfNSW	Transport for NSW
VPA	Voluntary Planning Agreement

1. Purpose of the TAP program

1.1 Why have a Technical Assurance Panel?

The Technical Assurance Panel (TAP) sought to establish a new way to address local, state and strategic matters before commencing a statutory rezoning process. This aimed to reduce future delays during the statutory process through faster decision making while creating a clear roadmap for development.

The TAP program aimed to give the community confidence that important issues have been thoroughly investigated and addressed early in the preparation of a draft proposal.

1.2 Which precincts did the TAP consider?

The program applied to:

- Lendlease's Gilead 'Stage 2' site within the Gilead Precinct, and
- Walker Corporation owned land (and some smaller adjoining landholdings) within the Appin Precinct

1.3 What were the TAP program objectives?

The TAP program aimed to produce draft proposals that would address key matters such as:

- protect koala corridors and provided habitat revegetation,
- implement the recommendations of the OCSE's report, *Advice on the protection of the Campbelltown koala population*,
- align to the (then) draft Cumberland Plain Conservation Plan,
- adopt the Government Architect's (then) draft Connecting with Country Framework, and
- investigate required enabling infrastructure to support the draft proposals.

1.4 Who participated in the program?

Initially, the assurance panel included representatives from:

- Staff representatives from Wollondilly Shire and Campbelltown City Councils,
- Government Architect NSW,
- Environment and Heritage Group,
- Transport for NSW,
- Sydney Water, and
- the Department of Planning and Environment who provided secretariat services and Chaired meetings.

Due to evolving work programs, the Department's Urban Design specialist team replaced the GA NSW representation. Heritage NSW and the NSW Rural Fire Service were also consulted as the process developed.

Proponents had responsibility for the preparation of supporting technical studies, preparing the draft proposal, and addressing feedback from the assurance panel members.

The assurance panel was not a statutory body and had no statutory role. It did not duplicate or replace any of the statutory functions of a Planning Proposal Authority, such as submitting a draft proposal to the Minister for a Gateway determination or arranging public exhibition of the draft proposal.

1.5 How did we anticipate the program would be implemented?

Initially, the program was intended to comprise a relatively quick series of full assurance panel meetings and targeted workshops if required. These were to be delivered over a period of approximately five months.

The anticipated key stages of the program were:

- Confirm the Terms of Reference,
- Define the site boundaries for a structure plan and site proposed to be rezoned,
- Agree on required technical studies and their scopes, review those studies and provide advice on the studies to proponents,
- Iterate revisions of the draft proposal through co-design collaboration,
- Identify potential infrastructure requirements which could inform local and state VPAs, and
- Issue a final letter of assurance to proponents advising of any outstanding matters to address before the proposal would be considered ready for lodgement.

In conjunction with the Terms of Reference, the Department prepared a guideline and probity plan as governance documents to guide the program (see Appendices A, B and C).

1.6 Who funded the program?

The assurance panel program was established with a flat rate fee for state agency members assuming five full panel, half day meetings. These costs were to be paid by the proponents and were based on the established rates for other Planning Panels. There were no fees assigned to any working group meetings. The Department prepared funding agreements reflecting this arrangement. Fees were negotiated with each Council separately. The assurance panel fees did not replace any fees required as part of the statutory planning process. Secretariat services provided by the Department were funded by the Department's existing staffing budgets.

1.7 Where have public details of the TAP program appeared?

Information on the program was provided on the Department's website at <https://www.planning.nsw.gov.au/Plans-for-your-area/Technical-Assurance-Panel>. This webpage briefly outlines the two sites, assurance panel membership, and program objectives.

Further, in December 2021, the Department published an update to the Greater Macarthur Growth Area. This publication highlighted a range of projects and initiatives being undertaken by Councils and state agencies. The technical assurance panel program was further discussed in this publication: <https://preview.planning.nsw.gov.au/-/media/Files/DPE/Brochures/Greater-Macarthur-2040-Update.pdf?la=en>

2. Outcomes of the TAP program

2.1 Program timeline

The table below records the major milestones the program achieved. Section 2.2 will cover the details of workshops, meetings, studies, and scope of the program's 6 stages.

October 2020 <i>An Enthusiastic Start</i>	<ul style="list-style-type: none">• Inception meetings conducted• Preliminary workshops and discussions held• Confirmed Terms of Reference• Discussed the site boundaries for a structure plan and the rezoning site• Determine required technical studies for Appin and their scopes, review those studies and provide advice to proponents
April 2021 <i>Program Paused</i>	<ul style="list-style-type: none">• Various agencies required time to progress significant projects that were necessary to inform the draft proposals.• Where possible, the Department continued to progress elements of the program with proponents and stakeholders.• DPE commenced its Aboriginal engagement for the Greater Macarthur Growth Area in September 2021
February 2022 <i>Intensive Workshops and Collaboration</i>	<ul style="list-style-type: none">• Program resumed with working groups and a plan to complete the program by mid-year• Proponents presented their draft proposals to members of the Aboriginal community through the Department's Aboriginal engagement program in May 2022

<p>June 2022 <i>Key Milestone Achieved: Draft Proposals Presented</i></p>	<ul style="list-style-type: none"> • Proponents presented the final draft proposals to the panel members • Panel commenced review of the draft proposals
<p>September 2022 <i>The Path Toward Proposal Submission</i></p>	<ul style="list-style-type: none"> • Proposals reviewed and feedback received • Department preparing final letter of assurance for TAP Chair. • The letter of assurance summarises feedback from panel members, including advice on the changes required to the draft proposals. • The Department conducted a review of the program

2.2 How the program was implemented

Proponents, agencies and Council staff all agreed to participate in the program. The governance documents contained in the Appendices adequately guided the program, providing clarity around the purpose, governance structure, participant roles and intended outcomes.

Contributing to the success of the program was the Department meeting its commitment to providing a Chair for meetings, providing secretariat services to coordinate meetings, agendas, minutes, follow up on action items, and be a consistent contact point for assurance panel members and proponents.

A summary of the implementation steps is provided below.

1. Confirm the Terms of Reference.

Draft Terms of Reference were prepared by the Department and issued prior to the inception meeting, where they were adopted.

2. Define the site boundaries for a structure plan and the rezoning site.

For the Gilead TAP, a structure plan for the whole Gilead Precinct was not pursued for a number of reasons, including:

- there was already a planning proposal to amend the planning controls for Figtree Hill (also known as Stage 1),
- preliminary discussions were being held separately in relation to two sites immediately to the north and south of the Stage 2 site,
- investigations to deliver Koala Corridor A along Menangle Creek were underway. Delivery of this corridor is to be partially delivered by the Stage 2 site, the Cumberland Plain

Conservation Plan (CPCP), the existing Noorumba bio-bank site and the State Heritage Listed Mt Gilead Homestead, and

- the Department was undertaking studies and other investigations with a view to update the structure plan for the growth area.

As a result, the draft proposal was limited specifically to the Gilead Stage 2 site, with the Department actively managing the interdependencies noted above.

For the Appin TAP, a structure plan for both the Appin and North Appin precincts was prepared and submitted as part of the draft proposal. The rezoning site was predominantly Walker Corporation's landholding, with some smaller adjoining landholdings included. A structure plan was considered necessary given the rezoning site sits within the Appin Precinct and a structure plan demonstrated how the rezoning site related to the broader Appin and North Appin Precincts.

The structure plan addressed:

- the indicative road layout including the corridor for the Outer Sydney Orbital Stage 2 and the transit corridor which traverses the rezoning site,
- the proposed State Heritage listing for the Appin Massacre Cultural Landscape which is partially within the rezoning site,
- open space provision, which is distributed across the precincts, and
- the proposed location of local centres which are distributed across the precincts.

Although the structure plan submitted to support the draft proposal is more detailed than the broader growth area structure plan being prepared by the Department, these plans complement each other and provide flexibility where possible for future rezonings within the precincts.

3. Determine required technical studies and their scopes, review those studies and provide advice to proponents.

For the Gilead TAP, the proponent was already well advanced in the preparation of technical studies for the site prior to the program commencing. These studies formed part of the draft proposal submitted to the assurance panel for review.

For the Appin TAP, the assurance panel worked with the proponent to identify the types of studies required, and their scopes.

There was negligible benefit comparing these two approaches, however there were some minor areas requiring further information arising from the Gilead TAP which possibly could have been avoided if the panel were involved in discussing the scope of works.

4. Iterative revisions of the draft proposal through co-design collaboration.

Delays in the required strategic inputs meant this approach was not easily implemented. Further, the need for an extensive program of targeted workshops took priority over full panel meetings. The full panel meetings evolved into a forum to report back to the whole group about what discussions and decisions that had taken place, and next steps in relation to a particular topic.

In total, there were approximately:

- 12 full panel meetings (7 for Appin and 5 for Gilead)
- 3 site visits
- 12 Aboriginal engagement sessions (6 each for Appin and Gilead) and
- 34 working group meetings (17 for Appin and 17 for Gilead) which focussed on the following topics:
 - o Infrastructure planning (e.g., open space, Voluntary Planning Agreements, and local contributions)
 - o Urban design and planning
 - o Heritage (Aboriginal and non-Aboriginal)
 - o Transport
 - o Biodiversity
 - o Water and wastewater servicing
 - o Bushfire
 - o Statutory Planning
- Comprising an overall total of **61** meetings.

A draft of each proposal was submitted for the panel to review, and this required the input of all the working groups that had taken place. Any earlier versions of the draft proposal would have been premature. Even with all the meetings and working groups that had taken place, several minor issues were not able to be considered until the draft proposals were submitted.

5. Identify potential infrastructure requirements which could inform local and state Voluntary Planning Agreements.

Targeted workshops were held to discuss local and state infrastructure items, however further work is required between the proponents and the Department's specialist VPA team to progress these planning agreements.

6. Issue a final letter of assurance to proponents.

Final letters of assurance are being prepared by the chair for issue to the proponents by the Chair. The letters advise on outstanding matters to address before the proposal would be considered ready for lodgement and matters that could be progressed post exhibition.

2.3 Key Successes: Meeting our Objectives

It is important to note that the program achieved all the identified objectives. Commentary is provided against each of the objectives below.

Objective 1 & 2: Protect koala corridors and provide habitat revegetation and implement the recommendations of the OCSE's report, *Advice on the protection of the Campbelltown koala population*

- The program provided for extensive collaboration between various teams and divisions within the Department, Councils, and proponents to consider and consistently implement the advice of the OCSE in planning for the Greater Macarthur Growth Area including the two draft proposals. The assurance panel also wrote to the OCSE and obtained clarification advice to assist in its implementation. Further, the koala corridors were included in the Department's December 2021 Greater Macarthur Growth Area 2040 Plan update. These corridors will be delivered over time through rezonings arising from the strategic planning for Gilead and the CPCP.

Objective 2: Align to the (then) draft Cumberland Plain Conservation Plan.

- Although the CPCP does not include the Gilead Stage 2 site, the Department has consistently applied all the OCSE's advice in finalising the CPCP and to investigate the two east-west koala corridors in the Gilead Precinct, and the Gilead Precinct's contribution to the Nepean River corridor. The two east-west corridors are:
 - o Corridor A along Menangle Creek, and
 - o Corridor B along Woodhouse Creek.
- The range of permissible uses in the koala corridors is consistent in Gilead and Appin and will be applied throughout the growth area and wherever a planning proposal includes a koala corridor.

Objective 3: Adopt the Government Architect's draft Connecting with Country Framework

- The Department undertook an extensive engagement program to listen to traditional owners and knowledge holders. The Department actively sought to understand cultural values of the growth area, and specifically the Gilead and Appin draft proposal sites. An understanding of these cultural values has informed the draft proposals. The Department worked to minimise 'consultation fatigue' and align engagement with the aboriginal community across multiple projects (such as the state heritage investigations for the Appin Massacre Cultural Landscape, the Outer Sydney Orbital Stage 2 corridor, and the Departments broader work to update the structure plan for the whole growth area).
- This program also included several workshops where proponents presented their draft proposals to members of the Aboriginal community prior to their submission to the assurance panel. The presentations addressed the Connecting to Country objectives and desired

outcomes for the sites which were provided directly by the traditional owners and knowledge holders.

Objective 4: Investigated enabling infrastructure to support the draft proposals.

- Several working groups were held to specifically discuss potential local and state items which could form part of future Voluntary Planning Agreements. Other agencies including Schools Infrastructure NSW were involved with these working groups. This provided the Department and the proponents with the opportunity to discuss the timing of the proposals and the potential for infrastructure to be provided.

Further to the above, other key successes of the program included:

- The Department acquired an update to the 2017 Employment Lands Study for the growth area. This study investigated and confirmed the need for the land identified as 'potential employment' in the Greater Macarthur Interim 2040 Plan. This study is now available on the Department's website and will inform an update to the structure plan for the growth area.
- Extensive collaboration with Heritage NSW which was not initially anticipated when the program commenced. The resolution of the Heritage Council of NSW in July 2021, to investigate a SHR listing of the Appin Massacre Cultural Landscape provided an opportunity for the Department, HNSW, TfNSW to work together to plan for the growth area, in conjunction with engaging the Aboriginal community through the Connecting with Country framework. The program provided a forum for this collaborative work to be undertaken, which informed the draft proposal for Appin.

In the longer term, the success of the program will also be informed by the length of time required to complete the statutory process, and whether any delays could have been addressed by the assurance panel ahead of the statutory process.

2.4 Lessons Learned - General

Following commencement of the program, it was quickly understood that the number of full meetings was underestimated and there would be a significant increase in the number and frequency of working groups. This evolution of the program resulted in the funding agreements not being fit for purpose. The program was sufficiently progressed that it was able to inform the TAP established for the Aerotropolis. Future programs are likely to be more efficient where the strategic framework has been more finalised and a draft proposal is guided to implement that framework. With the subject Greater Macarthur pilot program, although the Greater Macarthur 2040 Interim Plan and associated Ministerial Direction is in place, several large strategic questions needed to be further progressed before a draft proposal could be

adequately prepared. At the time of the draft proposals being submitted for review, the following projects and initiatives were still in progress:

- TfNSW was finalising the Greater Macarthur Transport Network Plan which is required to understand key corridors and modelling for precinct specific traffic studies, which will in turn inform VPA negotiations,
- The proposed SHR listing was on public exhibition,
- Sydney Water was finalising its servicing strategy for the growth area, and
- The CPCP was under assessment by State and Federal regulators.

More of a co-design approach could have been better implemented with more flexible funding agreements and a more finalised structure plan for the Growth Area. Progressing draft proposals as a successful way to investigate and provide finer grain outcomes envisaged by the Interim Plan, concurrent to various agencies working to further establish the strategic framework proved challenging but was ultimately achievable.

2.5 Lessons Learned - Confidentiality Agreements and Transparency Concerns

During the program, concerns were raised by Wollondilly Shire Council about the lack of any role for elected Councillors and the use of confidentiality agreements, which all participants in the program had signed. This matter also was the subject of discussions at Budget Estimates in mid-2022.

Currently, it is not uncommon for proponents to have a pre-lodgement meeting with state agencies and local Councils prior to submitting planning proposals. These meetings are often held at officer level and any advice provided is also issued at officer level. Aside from any pre-lodgement meetings, proponents largely prepare their proposals in isolation which has proven to result in strategic misalignment with local and state objectives, requests for additional information and sometimes substantial delays in the plan-making process resulting in Gateway determinations being either not being supported or cancelled¹ due to the proposals inability to meet the specified timeframes. As mentioned above, one of the objectives of the program was to investigate a new way to prepare a planning proposal. It is noted that elected Councillors and Ministers do not have any known role in pre-lodgement processes and therefore were not removed from meetings or other deliberations by the program that they would ordinarily have participated in. It is open to proponents to have meetings or briefings with Council staff or Councillors outside of the TAP program if they wished to do so.

The confidentiality agreements used by the program only applied to information that was not yet in the public domain. The agreements enabled all participating parties to share relevant information to the preparation of the draft proposals. A longstanding criticism of government is that it operates in 'silos', and

¹ The *Environmental Planning and Assessment Act 1979* provides that issued Gateway determinations may be altered to 'do not proceed'. The Department may alter a Gateway determination to 'do not proceed' where an outstanding issue requires further time to be resolved before the proposal should be resubmitted for a new Gateway determination.

various efforts have been made to improve open lines of communication between local and state government. The program achieved this efficient sharing of information due to the confidentiality agreements. For example, the confidentiality agreements allowed the sharing of the following information ahead of its public release:

- reports and advice from the OCSE in relation to the protection of koalas,
- final draft Cumberland Plain Conservation Plan mapping,
- information relating to the SHR nomination of the Appin Massacre Cultural Landscape, and
- information relating to the Greater Macarthur Transport Network Plan and Outer Sydney Orbital Stage 2 corridor, and
- Sydney Water's servicing Strategy for the Greater Macarthur Growth Area.

It is not feasible that a robust planning proposal could have been prepared in the absence of this information. The benefit of government and Councils working with the proponent achieves and expedites the implementation of the initiatives listed above. In relation to transparency, as already noted above, information on the program was published on the Department's website and included in the update to the Greater Macarthur Growth Area published in 2021. Outcomes of the program (such as the final advice provided to proponents and this Review of the program) will be published on the Department's website and be further discussed subsequent updates to the Greater Macarthur Growth Area. The outcomes of the program will inform rezoning proposals which will be eventually exhibited for the public, Councils and Agencies to review and comment on.

The assurance panel had considered establishing landowner reference groups in conjunction with the potential to prepare draft proposal for the entire Appin and Gilead Precincts. However, as the draft proposals generally apply to the landholdings of Walker Corporation and Lendlease, there was no role for these reference groups. Further to the update published in December 2021, the Department has separately engaged with a number of landowners within the growth area and has provided extensive pre-lodgement engagement outside of the TAP program. As noted above, the assurance panel had no statutory role or function. It should be noted that any draft rezoning package will require community consultation and be publicly exhibited for a minimum of 28 days.

2.6 Probity

A Probity Plan (**Attachment C**) was prepared and distributed to members prior to the first meeting. A probity officer attended the full panel meetings to monitor and ensure probity matters throughout the program. A standing item of every meeting agenda was for attendees to declare any conflict of interest at the beginning of the meeting. It is worth noting that throughout the duration of the program, only two declarations were made, and these were not considered by the assurance panel to be matters that warranted the members being removed from the discussion.

2.7 Feedback from Participants

Feedback	DPE response
The program was supported as it provided greater communication and collaboration, and recommended the approach be rolled out across Metro Sydney.	Noted
Concerns regarding probity and inequitable knowledge sharing between landholders in and out of the TAP process.	As noted in section 2.5 above, there were a range of measures in place to manage these concerns. Namely, a probity officer present at panel meetings and meeting attendees were required to declare any potential conflicts of interest at the beginning of every meeting. It was a matter for every agency to decide what information they were willing to share within the program, and it was open to any agency to undertake any consultation with the community on their specific project as was considered necessary. The TAP program did not restrict or limit the independence of agencies and participation in the TAP program was voluntary.
Working groups were positively received.	As noted in section 2.2 above, the role of the working groups eventually took priority over the full panel meetings. The recommendations note the importance of forecasting and scheduling working groups.
Program felt rushed and had unanswered questions at the submission of the draft proposal.	This review notes in section 2.4 above that there were a range of projects not yet complete when the program finished and therefore had limited ability to inform the draft proposals. The TAP program did not set out to resolve every matter and every possible question, however aimed to prioritise key strategic matters to achieve an 'exhibition ready' draft proposal, while acknowledging further work would be required during the statutory rezoning process.

3. Recommendations

On balance, the pilot program was successful and enabled efficient and effective collaboration between local councils, state government, proponents to discuss a substantial range of complex and contentious matters. Should the program be rolled out to additional sites, the following recommendations should be considered:

1. Governance documents (such as Terms of Reference, Probity Plan, Guidelines) should be prepared and adopted at the outset.
2. Secretariat and dedicated project officer resourcing should be provided to allow efficient and timely operation of the TAP.
3. Consideration should be given to forecasting the themes or topics of required working groups, the number of meetings likely required and their frequency.
4. Probity officers should be present at meetings.
5. Consideration be given to making a greater number of documents publicly available where possible, such as guidelines, terms of reference, maps, program status, meeting agendas and minutes. This will ensure greater access to information about the program.
6. Sites with multiple owners may require consideration of landowner reference groups. These groups would require careful consideration as to their terms of refence, role, purpose and whether there is proportionate benefit to the overall process such as the potential for consultation fatigue and confusion with any subsequent statutory process.
7. Any participating Council staff should be encouraged and supported to brief their Councillors on the program as much as practicable.
8. An adequate funding agreement established with appropriate payment schedules, potentially informed by any adopted fee schedule for state led rezonings, or other relevant case studies such as the Technical Assurance Panel established for the Aerotropolis (where an independent study was commissioned to determine fees) Funding agreements should provide flexibility to account for emerging or unforeseen issues.
9. It is not advisable for Council staff and proponents to negotiate fees for Council participation. The Department should confirm the fees payable, and it is open to all parties to decide whether to participate for the specified funding.
10. The Chair could be an independent expert however consideration should be given to the selection process and required funding for the role.

11. Before any future program is commenced, the role of a future assurance panel program should be considered in light of possible alternatives, such as:
- the recently updated Guidelines for Planning Proposals which include a scoping phase to obtain agency feedback early in the plan making process,
 - any other formalised process for the Department to seek nominations for a State-led rezoning,
 - whether the draft proposal is already sufficiently prepared (i.e., potentially 'exhibition ready') so that the Department can tailor appropriate Terms of Reference and Guideline of any future TAP.
 - whether the strategic framework is sufficiently established to avoid delays in preparing the draft proposal and ongoing unresolved issues.

Appendix A – Terms of Reference

Appendix B – TAP Guidelines

Appendix C – Probity Plan