

### 11.1 - Council Consideration of Revised Advocacy Position - Development Assessment Panels and State Development Applications (SJ1288)

<b>Responsible Officer:</b>	Director Development Services
<b>Senior Officer/s:</b>	Director Development Services
<b>Disclosure of Officers Interest:</b>	No Officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the <i>Local Government Act 1995</i> .

### Authority / Discretion

Executive	The substantial direction setting and oversight role of the Council such as adopting plans and reports, accepting tenders, directing operations and setting and amending budgets.
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### Report Purpose

The Western Australian Local Government Association (WALGA) is seeking Local Government comment on a revised advocacy position that updates and expands on the Development Assessment Panels (DAPs) advocacy position to include all State Government development assessments and approvals, including the significant development pathway.

Comments on this revised position have been requested by 23 May 2025, with a preference for Council endorsed comment.

The current WALGA DAP advocacy position, endorsed in May 2022, requires updating to take account of recent planning reforms that replaced the proposed special matters DAP with the permanent significant development pathway (Part 11B).

WALGA has opposed DAPs since their inception in 2011 and has undertaken two previous reviews of the performance of the DAP system in 2016 and DAP 2020. These reviews have informed WALGA's current advocacy position that recommends several changes to the DAP system to ensure it operates in an efficient, effective, and transparent way, and appropriately considers matters of local planning context in decision making.

From the perspective of the Shire, our context as the fastest growing local government in Western Australia sees development pressure as a significant and persisting challenge. Growth management is seen to be best managed where development is dealt with at the closest level of government to the community, and where such is aligned to the adopted planning framework.

Officers have prepared a comment on the revised advocacy position (**attachment 1**), and it is recommended this be endorsed by Council as the Shire's response to WALGA's request for comment.

### Contact Us

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### Relevant Previous Decisions of Council

Nil.

### Background

Development Assessment Panels (DAPs) were introduced in Western Australia on 1 July 2011 through amendments to the *Planning and Development Act 2005* and the introduction of the *Planning and Development (Development Assessment Panels) Regulations 2011*. The stated intent of the reform was to bring additional expertise and consistency to decision-making for complex and high-value development proposals. Under the then DAP system, certain applications meeting prescribed monetary thresholds - generally over \$10 million, or \$2 million if the applicant opted in - were required to be determined by a panel comprising three specialist members and two elected local government members.

Since their inception, DAPs have been a subject of ongoing concern for local governments and local communities due to issues including diminished local autonomy, concerns about community input and participation in decision making, and perceived prioritisation of private development interests over local planning schemes and strategic frameworks. In response to these concerns, the Western Australian Local Government Association (WALGA) has consistently advocated for reform or abolition of the DAP system, including the conduct of two performance reviews: the "DAP Review 2016" and "DAP Review 2020".

In 2020, as part of the State Government's COVID-19 economic recovery strategy, temporary legislative provisions were enacted to establish the *Significant Development Pathway* (SDP). This allowed proponents of developments with a value of \$20 million or more (or \$5 million in regional areas) to bypass normal local and DAP assessment processes and instead have their applications determined by the Western Australian Planning Commission (WAPC), following assessment by the State Development Assessment Unit (SDAU) within the Department of Planning, Lands and Heritage. This consideration by WAPC was particularly unique on the basis that they were not bound by the limitation of the prevailing Local Planning Scheme, for example in respect of land use permissibility.

This temporary SDP was initially framed as an extraordinary measure to fast-track development approvals during the pandemic. However, in 2023/24, the State Government moved to make the pathway permanent, introducing *Part 11B* into the *Planning and Development Act 2005* via the *Planning and Development Amendment Act 2020 (Stage 2 Reforms)*. This replaced the previously proposed Special Matters DAP with a new permanent Significant Development Pathway administered by the SDAU, thereby embedding a parallel State-led assessment regime alongside the existing DAP and local government systems.

The establishment of a permanent SDP has raised further concerns regarding the erosion of local government decision-making authority, public transparency, and alignment with community-endorsed local planning frameworks (this latter point being of significant local concern and consequence). These developments have prompted WALGA to review and update its existing advocacy position to encompass all State-led development assessment mechanisms, including DAPs and the SDP.


### Community / Stakeholder Consultation

WALGA have requested consideration and feedback from member local governments by 23 May 2025.



### Comment

The revised advocacy position is as follows:



## Draft Advocacy Position

### State development applications and decision making

WALGA calls on the State Government to:

1. Ensure that decision making on development applications (DAs) is:
  - a. consistent and accountable
  - b. accessible to local communities
  - c. respects and appropriately applies local planning frameworks in line with their statutory weight.
2. Reform the Development Assessment Panel (DAP) system to:
  - a. raise the DAP threshold from the current \$2 million to \$5 million and mandate periodic reviews of the threshold
  - b. modify the composition of DAPs to provide equal representation of Specialist Members and Local Government Members
  - c. review DAP processes to ensure proponents provide necessary information in a timely manner
  - d. provide clear guidance on the roles and functions of Local Government officers at DAP meetings
  - e. allow the use of the State Referral Coordination Unit for DAP applications to ensure timely and adequate referral responses from State Government agencies are provided to Local Governments.
3. Abolish the state significant development assessment pathway (Part 11B of the *Planning and Development Act 2005*). Should the significant development assessment pathway continue to operate it should be reformed to:
  - i) raise the cost threshold to \$50 million
  - ii) align statutory timeframes with DAP and Local Government determined development applications
  - iii) ensure all developments are consistent with applicable statutory planning instruments, specifically local planning schemes or planning instruments that have been reviewed in the last 10 years, or at a minimum provide comprehensive guidelines for applying extraordinary discretion
  - iv) delete references to 'mandatory significant development' to ensure the Part 11B Pathway remains entirely opt-in
  - v) remove the ability for the Premier to give authorisation for the lodgment and determination of an application.

In response to this, officers make the following primary observations:

### Development Assessment Panels

Development Assessment Panels (DAPs) were originally established to ensure that complex, major, and strategically significant development proposals were subject to an expert-led decision-making process, with the intent of improving the quality, consistency, and transparency of planning determinations. The core rationale was that certain and quite specific proposals, by virtue of their scale, land use intensity, or strategic importance, required a higher level of technical expertise and independence than might typically be available within other decision-making frameworks



In principle, the idea of using panels composed of technical experts and elected member representatives to assess those most complex, significant, development applications was defensible. However, in practice, there has been a concerning drift away from this founding purpose. Increasingly, DAPs are being tasked with determining applications that do not meet a threshold of complexity or strategic relevance.

Many of these proposals are, in substance, quite routine in nature – lacking the scale, sensitivity, or policy weight that would justify referral to an expert panel. This trend raises fundamental questions about the appropriate role and scope of DAPs within the planning system, if at all.

From the perspective of the Shire, Officers have primarily witnessed the use of DAP pathways specific to child minding centres and service stations. The nature of these appear to be far more effectively and efficiently capable of being handled at the local government level.

The routine involvement of DAPs in what appears non-complex matters undermines the principle of subsidiarity, where decisions should be made as close as possible to the communities they affect. It can also erode the accountability of local governments and marginalise elected representatives, particularly when proposals could reasonably be handled through normal development assessment, delegated authority and/or council reporting mechanisms. This has the potential to divert the panel's time and expertise away from truly complex proposals, where their specialised input is most needed.

From an officer standpoint, the current pattern risks diminishing both the efficiency and legitimacy of the system as it was initially intended in 2011. It creates unnecessary friction for straightforward matters, contributes to community frustration, and weakens the public's confidence in the integrity of local decision-making. Where public confidence in planning is paramount to the continued transition of Perth and Peel from a sprawled out to more consolidated urban form, a clearer and more disciplined application of the DAP referral criteria is needed – one that refocuses the panels on genuinely complex and regionally significant development applications. This should thus see the return of ordinary, non-strategic development assessments to the local level where they properly belong and can be best determined.

### Recommended comments on DAPs

Officers recommend that Council respond to WALGA, advising that the advocacy position pertaining to DAPs include more effective and targeted criteria or thresholds, that clearly delineate the types of applications warranting panel-level consideration. This would help refocus DAPs on their intended purpose – expert assessment of genuinely complex, regionally significant, or strategically sensitive development proposals

It is suggested that the following criteria could be applied:

- 1. Strategic Significance:** The proposal is demonstrably aligned with or affects the delivery of a regional, sub-regional or state plan or project, or has implications for a major infrastructure corridor or precinct identified in a strategic plan.
- 2. Scale and Intensity:** The development involves a substantial built form (e.g., above a specified number of storeys), or a land use intensity that could generate significant traffic, amenity, or environmental impacts beyond the immediate locality of 1000m.
- 3. Complexity of Land Use:** The application involves a land use or combination of land uses that are listed within the EPA Guidance Statement pertaining to Separation Distances with sensitive development.





4. **Public Interest or Controversy:** The proposal has attracted significant, substantiated community objection or raises matters of broader community concern that require an independent and expert decision-making process.
5. **Innovation or Unusual Design:** The development departs substantially from standard planning provisions and represents a novel or atypical design or planning approach that requires detailed architectural or planning scrutiny.
6. **Cost:** The development exceeds an estimated cost of \$15m within the South West Region of Western Australia, or \$5m in other regions.

Applications that do not meet any of the above thresholds - particularly those that involve standard forms of development consistent with the planning framework, involve low levels of community concern, and fall well within accepted policy parameters - should be assessed and determined by local governments.

### Changes in the preparation of Responsible Authority Reports

With respect of recent reforms to mandate the preparation of responsible authority reports at CEO and Director levels, there is much needed policy guidance needed for this. Councils clearly are concerned with their ability to have input into decision making processes, and have every right under democratic principles to be a participant in the process. It is unacceptable to have vague sector advice provided on how Councils can participate in the process, and this must be made a priority of WALGA to obtain clear procedural advice from DPLH on how this takes place.

A range of legitimate and unresolved procedural questions arise for local governments, including:

- How can Council give itself sufficient time to make a submission which must adhere to the 21 day advertising process. This time limit would appear to make a submission not possible.
- Where an application is particularly contentious or has broad community impact, what is the mechanism for Council to make a submission without creating at least perceived interference in the RAR's objectivity?
- What is the status of a Council's submission on a DAP, particularly where it differs from the RAR, and how is it weighted in the determination process?
- Will DPLH or the DAP Secretariat be issuing template procedures, protocols or reporting timeframes to support consistent implementation across all local governments?

Until these matters are resolved, there remains significant ambiguity surrounding the proper integration of democratic input within the statutory RAR process by Councils. This risks undermining both the integrity of local government involvement and public confidence in the transparency of development assessment decision-making in Western Australia.

### Significant Development Pathway

The data collected for development that has undergone the 'Significant Development Pathway', demonstrates a lack of efficiency due to lengthy timeframe, despite the legislative intent to streamline approvals for genuinely state-significant projects.

Retaining a mechanism intended for major, strategic significant projects that are even more consequential than development assessment panel applications, may have some benefit, however such is yet to be clearly illustrated. Especially where a decision maker is not limited by the planning framework, such decision-making process represents a very unique situation, that needs to be very carefully managed.



The potential for such a pathway to streamline complex inter-agency approvals, unlock regionally significant investment, or facilitate projects of State importance cannot be entirely discounted. But, where such is eroding public confidence in development being required to comply with a planning framework they have helped shape, serious questions are raised as to the appropriateness of this.

The absence of measurable performance benchmarks for the Significant Development Pathway risks enabling its use for proposals that are neither exceptional in scale nor genuinely aligned with broader State strategic objectives. This lack of definitional clarity opens the door for proponents to bypass conventional local assessment processes, not on the basis of strategic merit, but for convenience - undermining the integrity and consistency of the State's planning system.

The pathway's centralisation of decision-making within the Western Australian Planning Commission, without mandatory regard to local planning schemes or strategies, has further compounded concerns regarding transparency, accountability, and community trust. Decisions that depart from established local frameworks - without clear justification or opportunity for meaningful local input - will erode the legitimacy of the planning system in the eyes of both the community and local government stakeholders.

While inter-agency coordination and approvals remain a persistent challenge in complex development proposals, the solution should not come at the cost of procedural fairness or strategic alignment.

### Recommended comments on the Significant Development Pathway

In order to better justify any continued existence and use of the significant development pathway, it is recommended that the State Government undertake a formal review and publish a clear framework that addresses:

1. **Purpose and Scope** - Clearly define the types of projects for which this pathway is intended, and how it differs substantively from the DAP process.
2. **Assessment Criteria** - Establish transparent thresholds relating to economic value, job creation, infrastructure integration, or strategic alignment, which must be met for eligibility. Not merely a cost of development value.
3. **Performance Evaluation** - Regularly report on the outcomes of applications determined under the significant development pathway, including timeframes, community engagement processes, planning departure and decision quality.
4. **Public Confidence in the form of Third-Party Appeals** - Ensure the process incorporates meaningful community consultation and maintains accountability through published reasoning and opportunities for third party appeals where decisions depart from the planning framework in the form of otherwise prohibited development being approved.

Without such reforms, the significant development pathway risks being perceived as duplicative, insufficiently rigorous, or susceptible to perceptions of preferential treatment - particularly where its use is not linked to improved strategic outcomes or planning integrity.



### Options

#### Option 1

That Council:

1. In response to the revised advocacy position of WALGA pertaining to DAPs and significant development pathways, ENDORSES the response provided as **attachment 1** as the official comment of the Shire of Serpentine Jarrahdale on this matter.
2. REQUESTS the Shire President sign this letter and provide it to WALGA by the due date of 23 May 2025.

#### Option 2

As per Option 1, however with the following additional points to be added to the submission contained in **attachment 1**:

(List points)

Option 1 is recommended.

### Conclusion

This report sets out the recommended comment from the Shire on the revised advocacy position of WALGA on DAPs and significant development pathways. It is recommended that Council endorse the draft submission provided.

### Attachments (available under separate cover)

- **11.1 - attachment 1** - Draft Submission (E25/5345)

### Alignment with our Council Plan 2023-2033

Thriving
1. Plan for the sustainable growth of the Shire of Serpentine Jarrahdale
4. Ensure sustainable and optimal use of Shire resources and finances

### Financial Implications

There are a range of potential risks to the Shire in having diminished decision-making roles in developments. These include the inability to precipitate conditions to require reasonable contributions to infrastructure upgrades, which could pose a serious financial risk to the Shire.

**Risk Implications**

Risk has been assessed on the Officer Options and Implications:

Officer Option	Risk Description	Controls	Principal Consequence Category	Risk Assessment			Risk Mitigation Strategies (to further lower the risk rating if required)
				Likelihood	Consequence	Risk Rating	
1	This is considered the lowest risk option.						
2	If Council adds additional points which depart from the key messages of the response, it could impact the submission.	Officers assisting Elected Members with their alternative recommendations.	Reputation	Possible	Moderate	MODERATE	Accept Option 1

**Voting Requirements:** Simple Majority

**Officer Recommendation:**

**That Council:**

1. In response to the revised advocacy position of WALGA pertaining to DAPs and significant development pathways, **ENDORSES** the response provided as attachment 1 as the official comment of the Shire of Serpentine Jarrahdale on this matter.
2. **REQUESTS** the Shire President sign this letter and provide it to WALGA by the due date of 23 May 2025.