



Determination Processes

The State Government has recognised the importance of the Derbal Yirragan Djarlgarro (Swan Canning river system) by legislating specifically for its planning, protection and management through the *Swan and Canning Rivers Management Act 2006* (SCRM Act).

The SCRM Act establishes the River reserve, Riverpark, [development control area \(DCA\)](#) and catchment as key legislative management areas and creates a governance, regulatory and approvals process to guide land use planning decision-making.

The Department of Biodiversity, Conservation and Attractions (DBCA), Swan River Trust, Western Australian Planning Commission (WAPC), State Government and local governments are responsible for the effective planning and management of land use and development within, abutting or affecting the waters within the DCA, at all stages of the planning process.

Overview

The SCRM Act and the Metropolitan Region Scheme (MRS) set the administrative decision-making process for **development applications** associated with the DCA. The location of the development application proposal in relation to the DCA determines the decision-making authority and the referral requirements, as shown in Figure 1 and below:

- Proposals that fall wholly within the DCA are determined by the Minister for the Environment, on the advice of DBCA.
- Proposals that are partially within or abut the waters of the DCA are to be determined by the WAPC, on the advice of DBCA.
- Proposals on lots that abut land within the DCA or, in the opinion of the WAPC, are likely to affect the waters of the DCA are to be determined by the WAPC or the relevant local government (as a delegate of the WAPC), on the advice of DBCA.

Proposals that may affect the waters of the DCA include, but are not limited to, developments that might mobilise sediment, nutrients and non-nutrient contaminants to the DCA via streams, stormwater or groundwater management infrastructure, or groundwater flows; or may alter the hydrology of the DCA.

DBCA acts as a delegate for the Swan River Trust when providing advice on development applications under the MRS.

In performing its statutory functions, DBCA and the Swan River Trust also provide advice and recommendations on **scheme amendments, structure plans, subdivisions, and land use and development proposals under other approval pathways** to protect and enhance the ecological health, community benefits and amenity of the DCA. These proposals are subject to control under the MRS, *Planning and Development Act 2005* (P&D Act) and other State Government legislation. Additionally, DBCA and the Swan River Trust provide advice and recommendations on **legislation, policies, guidelines and strategic documents** that may affect the Swan Canning river system.

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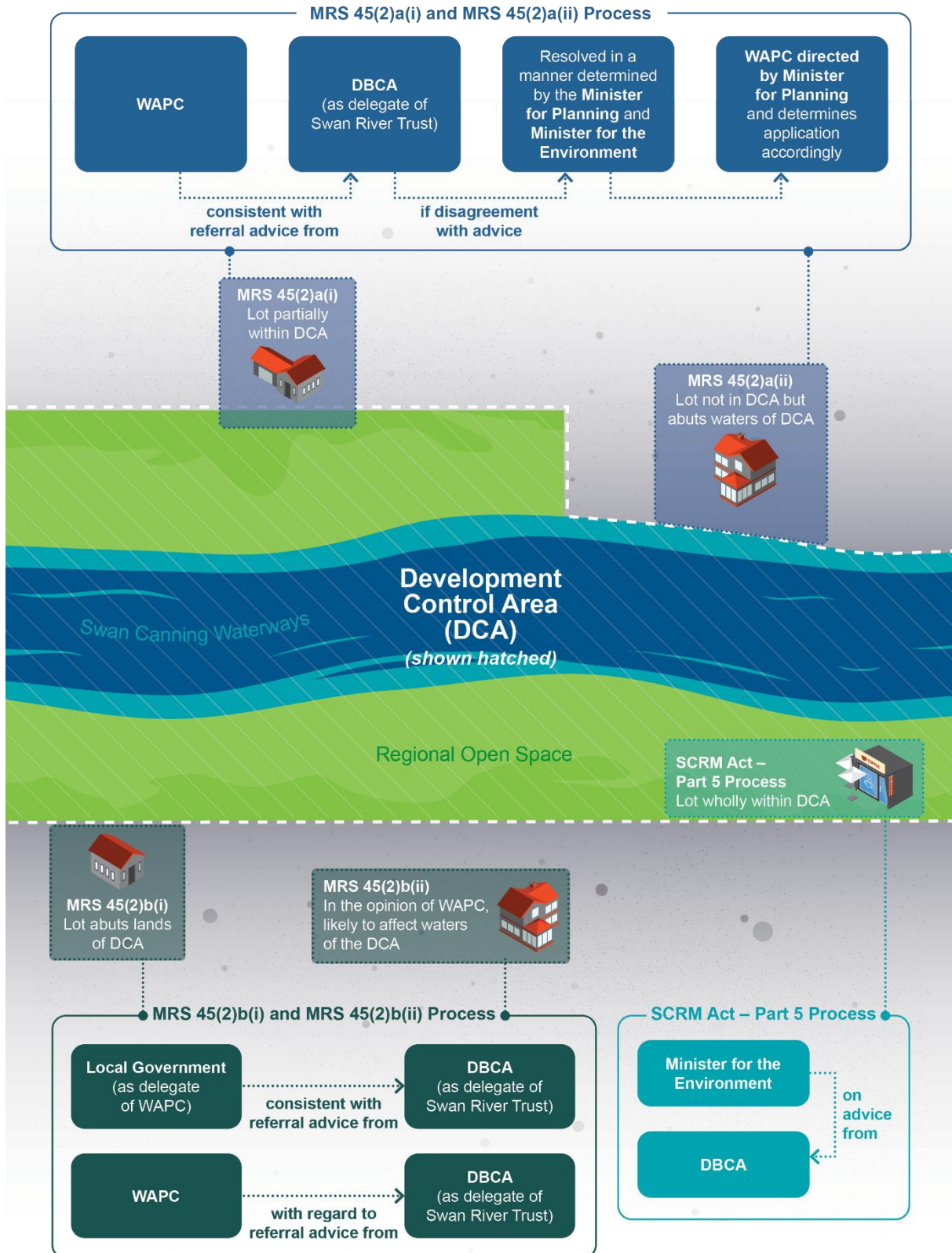


Figure 1: DCA determination processes for development applications

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SCRM Act and SCRM Regulations determination processes

The SCRM Act sets out DBCA's statutory planning role in relation to proposals located in the DCA. Under section 70 of the SCRM Act, all development in the DCA is subject to approval and control.

Section 3 of the SCRM Act defines development as:

- (a) the erection, construction, demolition, alteration or carrying out of any building, excavation, or other works in, on, over or under land or waters; and
- (b) a material change in the use of land or waters; and
- (c) any other act or activity in relation to land or waters declared by the Swan and Canning Rivers Management Regulations 2007 (SCRM Regulations) to constitute development,

but does not include any work, act or activity declared by the SCRM Regulations not to constitute development.

As a result, there are two main pathways for assessment of proposals located in the DCA:

1. Part 5 of the SCRM Act – applies to **development**. DBCA assesses and provides advice and recommendations to the Minister for the Environment for development assessed under Part 5 of the SCRM Act. The CEO of DBCA is also authorised under section 85 of the SCRM Act to approve certain classes of development in the DCA.
2. SCRM Regulations – applies to **works, acts and activities** declared not to constitute development (Part 2) and works, acts and activities controlled for the protection of the Riverpark and DCA (Part 3). The CEO of DBCA is responsible for issuing permits for works, acts and activities under the SCRM Regulations.

SCRM Act Part 5 development application process

Part 5 of the SCRM Act applies when no part of the development is proposed to be undertaken on land or water that is, in whole or in part, outside the DCA (section 69).

Where development is on a lot/s wholly within the DCA, the following Part 5 development application process applies.

1. The DBCA [Form 1 application](#) must be signed by the landowner and the applicant, and the applicant's authorised agent (if applicable).
2. Where development is to be located in a local government or redevelopment authority scheme area, the application must be submitted to the local government or redevelopment authority, which then has seven days to forward the application to DBCA.
3. On receipt of a valid and complete application, DBCA will refer the application to relevant local governments and public authorities for advice and comments. The referred local governments and public authorities have 42 days to respond to DBCA. DBCA may request additional information for the application to be accepted as valid and complete.
4. The application is published on DBCA's website. DBCA may decide that the proposed development is of significant public interest and should require additional advertising, such as by public notice.
5. DBCA prepares a draft report on the proposed development, which will include copies of referral responses from relevant local governments and public authorities as well as summaries

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of any public submissions. The draft report is considered by the Swan River Trust and the Swan River Trust's comments are then included in the draft report.

6. The draft report is published on DBCA's website for at least 14 days for public comment.
7. A copy of the draft report is provided to the applicant, local governments and public authorities consulted and any person who made a submission in step 6.
8. DBCA considers comments received and amends the report, as appropriate.
9. DBCA's recommendation and final report is published on the DBCA website and forwarded to the Minister for the Environment for a decision. The Minister is provided with copies of all submissions made.
10. The Minister's decision, known as the determination, is published on DBCA's website. Notice of the determination is provided to the applicant, local governments and public authorities consulted and persons who made a submission.

SCRM Regulations permit application process

Where works, acts and activities are excluded from the definition of development or are controlled for Riverpark and DCA protection, a permit approval is required under the SCRM Regulations, and the following process applies.

1. The DBCA [Form 7 or 8 application](#) must be signed by the landowner and the applicant, and the applicant's authorised agent (if applicable).
2. On receipt of a valid and complete application, DBCA will refer the application to relevant local governments and public authorities for advice and comments. The referred local governments and public authorities have 21 days to respond to DBCA.
3. DBCA may decide that the proposal is of significant public interest and additional advertising is required.
4. DBCA assesses the application with reference to the SCRM Act and SCRM Regulations, DBCA or State planning policies, and other relevant guidelines and documents. Any submissions received in step 3 will be given due regard.
5. DBCA may, at any stage of the process, request additional information required for proper consideration of the proposal and/or suggest changes to ensure the proposal aligns with DBCA or State planning policies and other relevant guidelines and documents.
6. DBCA will make a determination, including any conditions of approval.
7. A permit may subsequently be amended due to a clerical mistake or unintentional error or omission. Amendments may also be made to vary any conditions or restrictions imposed in the permit, on application by the permit holder or DBCA.

MRS determination processes

Clause 45 of the MRS details the statutory planning role of DBCA (as a delegate of the Swan River Trust) in relation to development of land affecting the DCA. DBCA provides advice and recommendations to either the local government or WAPC. Depending on the location of the development in relation to the DCA, the determining authority is required to give varying degrees of consideration to DBCA's advice. Where the authority is required to determine the application consistent with DBCA's advice and a variance is proposed, the MRS sets out procedures for resolving the matter.



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MRS Clause 45(2)(a) process

The following outlines the process by which development applications are considered by DBCA under Clause 45(2)(a), which relates to development on land comprised in a lot –

- (i) any part of which is in the DCA; or
- (ii) that is not in the DCA but abuts waters that are in the DCA.

1. An MRS Form 1 development application must be completed and lodged with the local government. Within seven days of receipt, the local government forwards the application and plans to the WAPC, which forwards it to DBCA.
2. DBCA, as a delegate of the Swan River Trust, considers the application and provides its advice in writing to the WAPC within 42 days, including any conditions to be imposed by an approval.
3. The WAPC is to determine applications in a manner consistent with DBCA's advice (Clause 45(6)).
4. If the WAPC disagrees with part or all of DBCA's advice, the matter is to be determined with the involvement of the Minister for Planning and the Minister for the Environment (Clause 45(7)).

The WAPC issues the determination to the applicant and a copy is sent to DBCA and the local government.

MRS Clause 45(2)(b) process

The following outlines the process by which development applications are considered by DBCA under Clause 45(2)(b), which relates to development –

- (i) in a lot that abuts the DCA; or
- (ii) that in the opinion of the WAPC is likely to affect waters of the DCA.

1. An MRS Form 1 development application must be completed and lodged with the local government.
2. The local government must refer the application to DBCA within seven days of its receipt.
3. DBCA, as a delegate of the Swan River Trust, considers the application and provides its advice in writing to the local government within 42 days, including any conditions to be imposed by an approval (Clause 45(3)).
4. The local government is to determine applications in a manner consistent with DBCA's advice.
5. If the local government disagrees with DBCA's recommendation, it forwards the application to the WAPC for determination in accordance with the P&D Act delegations.
6. The WAPC is to have regard to DBCA's advice in determining the application, but is not required to make a determination that is consistent with that advice (Clause 45(8)).