



Department of Biodiversity,  
Conservation and Attractions



**SWAN CANNING  
RIVERPARK**

# **RIVERS & ESTUARIES BRANCH**

## **DEVELOPMENT CONTROL PROCEDURES**

**2020**



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## **Introduction**

The Swan River Trust (the Trust) was established in 1989 with planning, protection and management functions for the Swan and Canning rivers and associated land.

The *Swan and Canning Rivers Management Act 2006 (SCRM Act 2006)* aims to ensure that land use planning and development protects and enhances the ecological health, amenity and heritage value of the Swan Canning river system for the public benefit of Western Australia.

On 1 July 2015, the functions of the Trust were merged with the then Department of Parks and Wildlife, now the Department of Biodiversity, Conservation and Attractions (DBCA). DBCA assumed all planning authority under the *SCRM Act 2006*.

The Trust remains as an advisory body to the Minister for Environment and provides advice under Clause 30A of the Metropolitan Region Scheme (MRS).

These guidelines have been prepared to assist local government, public authorities and stakeholders in understanding the statutory planning functions and procedures of DBCA and the Trust.

## Swan Canning Development Control Area

DBCA has overall planning, protection and management responsibility for the Swan Canning river system under the *SCRM Act 2006*. DBCA provides advice, makes recommendations to and comes under the jurisdiction of the Minister for Environment.

The Swan Canning Development Control Area (DCA) under the *SCRM Act 2006* is described in Schedule 3 of the *SCRM Act 2006* as – all of the land and waters shown bordered in red on Deposited Plan 47465. It can be generally described as comprising:

- (a) the waters –
  - of the Swan River upstream of the Fremantle Port Authority boundary;
  - of the Avon River to its confluence with Moondyne Brook;
  - of the Helena River to the lower diversion dam on the river;
  - of the Southern River to the Allen Road crossing;
  - of the Canning River to its confluence with Stinton Creek;
  - that area reserved under Clause 12 of the MRS for “waterways”; and
- (b) lands adjoining those waters that are reserved for "parks and recreation" under Clause 12 of the MRS.

The Riverpark area managed by DBCA may be described as comprising all of the above, excluding freehold land in private ownership.

Maps of the DCA and Riverpark can be viewed on DBCA's website [www.dpaw.wa.gov.au/management/swan-canning-riverpark](http://www.dpaw.wa.gov.au/management/swan-canning-riverpark).

## **Department of Biodiversity, Conservation and Attractions statutory**

### **planning functions**

Generally DBCA's statutory planning functions are to:

1. Make recommendations to the Minister for Environment concerning development proposals in the DCA.
2. Issue permits and licences for works, acts and activities in accordance with the *Swan and Canning Rivers Management Regulations 2007 (SCRM Regulations 2007)*.
3. Provide advice to the Western Australian Planning Commission (WAPC) concerning amendments to the MRS and other strategic planning instruments.
4. Provide advice to the WAPC in relation to subdivision proposals.
5. Provide advice to local governments on planning scheme amendments or other proposals that may affect the DCA, such as structure plans and outline development plans.
6. Provide advice to and obtain advice from public authorities concerning their responsibilities in terms of the *SCRM Act 2006*.
7. Provide clearance of conditions of approval and advice on the implementation of DBCA approvals.
8. Update procedural matters associated with development assessments, review the development control policies, model conditions and DCA boundary as necessary.

### **Swan River Trust statutory planning functions**

Generally the Trust's statutory planning functions are to:

1. Provide advice to DBCA on Part 5 development proposals.
2. Provide advice to the WAPC and local governments in relation to development proposals and clearance of conditions in accordance with Clause 30A of the MRS.

## **Department of Biodiversity, Conservation and Attractions development approval process**

The *SCRM Act 2006* sets out DBCA's statutory planning role in relation to proposals located in the DCA.

1. Part 5 of the *SCRM Act 2006* – development wholly in the DCA (Figure 1);
2. The *SCRM Act 2006* also provides for a number of works and activities to be assessed and controlled by regulations. This process is further discussed on pages 10-12.

## **Swan River Trust development approval process**

The Trust provides advice, considers and makes recommendations on development and land use applications that affect the DCA under four different statutory processes set out under Clause 30A of the MRS:

1. Clause 30A(2)(a)(i) of the MRS – development of land, any part of which is in the DCA (Figure 2);
2. Clause 30A(2)(a)(ii) of the MRS – development of land that is not in the DCA but abuts waters in the DCA (Figure 3);
3. Clause 30A(2)(b)(i) of the MRS – development of land that abuts land in the DCA (Figure 4); and
4. Clause 30A(2)(b)(ii) of the MRS – development likely to affect waters in the DCA, other than a development to which the above mentioned processes apply (Figure 5).

The figures in this guideline illustrate the above statutory processes.

## **Definition of development under the *SCRM Act 2006***

Section 3 of the *SCRM Act 2006* 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;
  - (b) a material change in use of land or waters; and
  - (c) any other act or activity in relation to land or waters declared by the regulations to constitute development,
- but does not include any work, act or activity declared by the regulations not to constitute development.

## **Exclusions from the definition of development**

Exclusions from the definition of development are prescribed in the *SCRM Regulations 2007*. The several classes of works, acts and activities that are excluded from development may be authorised by DBCA through the issue of a permit.

The *SCRM Regulations 2007* should be read in conjunction with this guideline.

The following works, acts and activities do not constitute development for the purposes of the definition of 'development' in Section 3 of the *SCRM Act 2006* –

- (a) the exhibition of a sign, including a traffic control sign or device;
- (b) repairs to or maintenance of an existing structure that -
  - (i) are not related to a change of use or any part of the structure; and
  - (ii) do not alter the structure's function or appearance;
- (c) the carrying out of work inside a building that is not related to a change of use of any part of the building and does not alter its external appearance;
- (d) works, acts and activities urgently required to avoid or mitigate danger to public safety or significant damage to property or the environment;
- (e) works, acts and activities undertaken –
  - (i) by a Schedule 5 authority for the purpose of controlling erosion; or
  - (ii) by any other person for the purpose of controlling erosion on private property that is contiguous with the River Reserve;
- (f) the placement of temporary structures, including structures associated with spectator events, for a period not exceeding six months, and the removal of those structures;
- (ga) works, acts and activities by leaseholders that are of a value less than \$50 000;

- (g) works, acts and activities by Schedule 5 authorities that are not for commercial purposes or use and -
  - (i) are carried out in accordance with a management programme; or
  - (ii) are of a value of less than \$500 000;
- (h) acts and activities that do not involve the erection, construction, demolition, alteration or carrying out of any building, excavation, or other works, in, on, over or under land or waters;
- (i) fire hazard reduction (other than fire hazard reduction referred to in paragraph (j), including the creation of access tracks for the purpose of fire hazard reduction;
- (j) fire control in the course of fighting a fire, including the making of fire breaks, providing access, burning or other means used to reduce fire hazards;
- (k) maintenance dredging in waters in the Riverpark or development control area;
- (l) scientific studies; and
- (m) aircraft activity in the Riverpark or development control area.



## **Part 5 development applications under the *SCRM Act 2006***

Part 5 applies to a development proposed to be undertaken in the DCA and no part of it is proposed to be undertaken on land or water that is in whole, or in part outside that area (Section 69 *SCRM Act 2006*). Refer to **Figure 1**.

Applications must be lodged with sufficient detailed information for DBCA to accurately assess the proposed development. Applications that are deficient in detailed information will be returned with a request for further information to be supplied, thus lengthening the processing time.

Where development is in the DCA and located in the district of a local government or redevelopment authority area, the following process applies.

1. The DBCA Form 1 application must be signed by the landowner, the applicant or the applicant's authorised agent (if applicable), with the applicant's written authorisation attached.
2. The application must include scaled plans and specifications, one set being A3 in size. Sufficient detailed information must be provided so that DBCA can make an informed assessment of the proposal.
3. Where development is to be located in a local government or redevelopment authority scheme area, the application must be submitted to the respective agency, which then has seven days to forward the application to DBCA for assessment. See Section 72(6) of the *SCRM Act 2006* for details.
4. On receipt of a valid application, DBCA will refer the application to the local government or redevelopment authority and any public authorities for their advice and comments. Agencies have 42 days to respond to DBCA.
5. DBCA will concurrently review the application and may decide to advertise it by public notice. Any submissions received will be included in the draft report.
6. DBCA prepares a draft report concerning the application, which is considered by the Trust. The Trust's comments are included in DBCA's draft report.
7. A copy of the draft report is provided to the applicant, local and public authorities consulted and any person who made a submission.
8. The draft report is published on DBCA's website for a 14 day public comment period. DBCA considers any comments received and makes amendments, as appropriate.
9. DBCA's recommendation and report is published on the DBCA website and forwarded to the Minister for Environment to determine.

**NOTE:** The DCA boundary generally aligns with the boundary of land reserved for Parks and Recreation under the MRS, but may sometimes differ due to changes to the MRS boundaries.

### **Appeal rights under Part 5 of the *SCRM Act 2006***

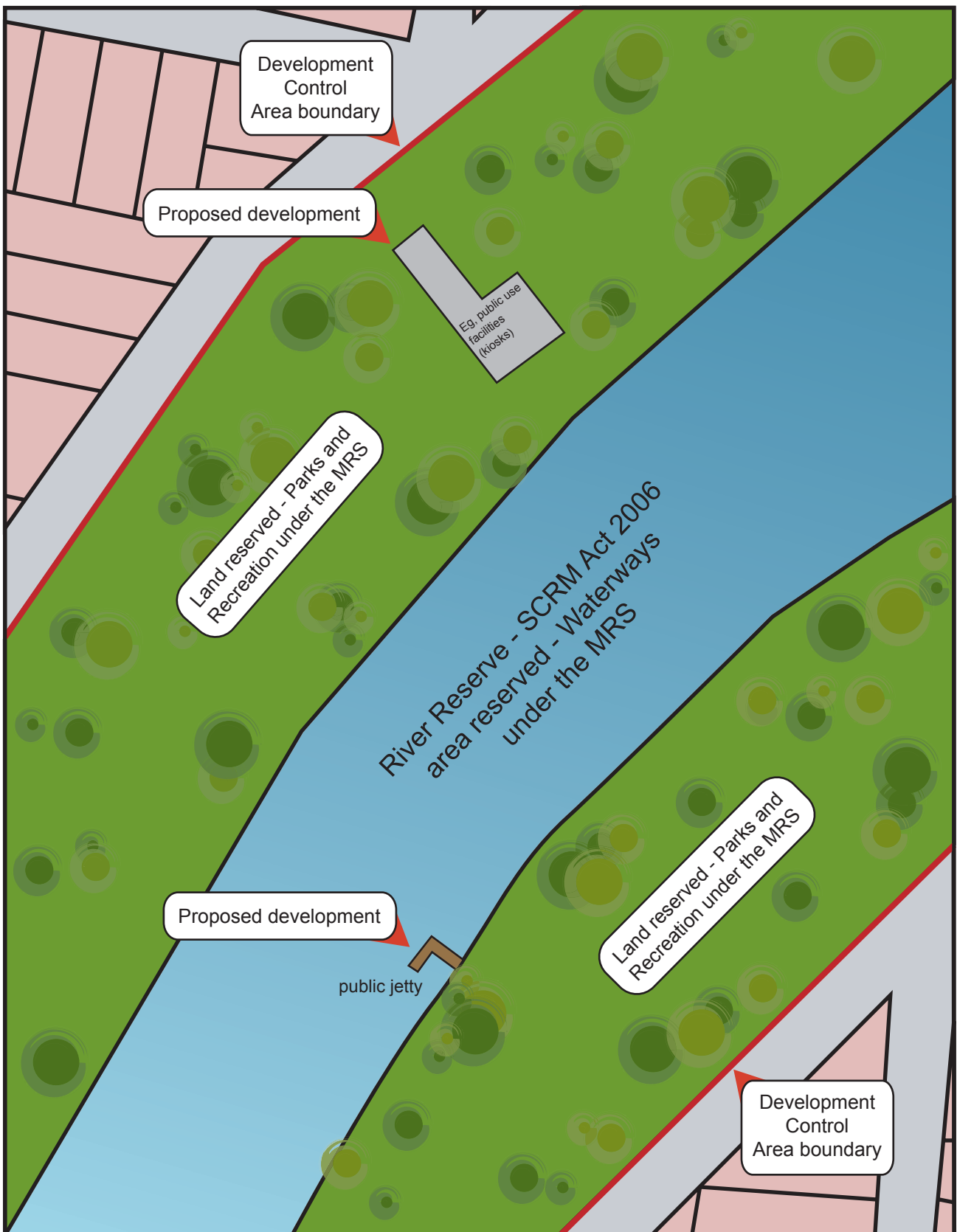
Under Part 5 of the *SCRM Act 2006*, there is **no** appeal right against a decision of the Minister for Environment. However, under Section 77(1)(b)(ii) of the *SCRM Act 2006*, the Minister may appoint a review committee to consider DBCA's recommendation, which will report directly to the Minister prior to their determination of the application.

### **Reconsideration and changes to Part 5 approval conditions**

Section 82 of the *SCRM Act 2006* allows for an applicant to request the Minister to reconsider a condition or restriction of development consent issued under Part 5 of the *SCRM Act 2006* within **28 days** of receiving the notice of the Minister's decision.

### **Variation or extension of a Part 5 approval**

Section 84 of the *SCRM Act 2006* allows for an applicant to request the Minister to authorise a **minor** variation to an approval or extend the time for which the approval remains in force by a further period of not more than 12 months. Such an extension can only be granted once per approval.



**Figure 1: Part 5 Swan and Canning Rivers Management Act 2006**

Part 5 applies to development proposed wholly in the Swan Canning Development Control Area (DCA) and no part of the development is proposed on land or waters wholly or partly outside the DCA (Section 69 *Swan and Canning Rivers Management Act 2006*).

## Licences affecting the River Reserve

Acts or activities located in the River Reserve as defined in Schedule 4 of the *SCRM Act 2006* will require a licence under Section 32 of the *SCRM Act 2006*. An example of a River Reserve licence proposal would be the operation of a charter vessel in the Swan River. Maps illustrating the River Reserve can be viewed on the DBCA website [www.dpaw.wa.gov.au/management/swan-canning-riverpark](http://www.dpaw.wa.gov.au/management/swan-canning-riverpark).

A DBCA Form 8 Application must be completed for a new licence, renewal of licence or transfer of licence. The information supplied with an application must be detailed and sufficient for DBCA to accurately assess the proposal.

Completed Form 8 applications can be lodged with DBCA at the following address:

Rivers and Estuaries Branch  
Department of Biodiversity,  
Conservation and Attractions  
17 Dick Perry Avenue  
Technology Park, Western Precinct  
**KENSINGTON WA 6151**

or posted to: Rivers and Estuaries Branch  
Department of Biodiversity,  
Conservation and Attractions  
Locked Bag 104  
**BENTLEY DC WA 6983**

or emailed to: [rivers.planning@dbca.wa.gov.au](mailto:rivers.planning@dbca.wa.gov.au)

## Licence application process and requirements

The following process will apply to licence applications:

1. On receipt of a valid application, DBCA may refer the licence application to local government or public authorities for comment or any other agency that may have an interest in the proposal.
2. The licence application will be assessed on its merits, with reference to policies and any other relevant strategic guidelines and documents.
3. DBCA will endorse conditions upon the licence when granted, renewed or transferred and the conditions may be added to, cancelled, suspended or varied by DBCA during the operation of the licence.
4. The licence holder must not contravene or fail to comply with a condition endorsed or attached to the licence (Section 32(5) of the *SCRM Act 2006*).

### Penalty:

- (a) a fine of \$50 000;
- (b) for each separate and further offence committed by the person under the *Interpretation Act 1984* Section 71, a fine of \$5 000.

## **Works, acts and activities requiring permits under the *SCRM Regulations 2007***

Certain classes of works, acts and activities are excluded from the definition of development (see pages 5-6 for the exclusions) under the *SCRM Regulations 2007*. However, many of those works, acts and activities will require approval by DBCA and a permit application will need to be lodged for assessment.

Part 4 of the *SCRM Regulations 2007* identifies the works, acts and activities that may be considered under the permit process. There are also some limited categories of works, acts and activities that may not require DBCA approval.

If there is any doubt concerning the need for a permit or other form of DBCA authorisation, reference should be made to the *SCRM Regulations 2007* or the matter discussed with the Rivers and Estuaries Branch.

The DBCA Form 7 application for a permit can be downloaded from the DBCA website [www.dpaw.wa.gov.au/management/swan-canning-riverpark/planning-development-and-permits/making-an-application](http://www.dpaw.wa.gov.au/management/swan-canning-riverpark/planning-development-and-permits/making-an-application).

Completed Form 7 applications can be lodged with DBCA at the following address:

Rivers and Estuaries Branch  
Department of Biodiversity,  
Conservation and Attractions  
17 Dick Perry Avenue  
Technology Park, Western Precinct  
**KENSINGTON WA 6151**

or posted to: Rivers and Estuaries Branch  
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Locked Bag 104  
**BENTLEY DC WA 6983**

or emailed to: [rivers.planning@dbca.wa.gov.au](mailto:rivers.planning@dbca.wa.gov.au)

### **Permit application process and requirements**

The following process will apply to permit applications:

1. If the application is not fully completed and executed or accompanied by sufficient detailed information for DBCA to assess it, the application will be immediately returned.
2. On receipt of a valid application, DBCA may refer the permit application to local government or public authorities for comment or any other agency that may have an interest in the proposal. If DBCA requires additional information to be presented, this will be requested from the applicant.
3. DBCA officers will assess the application with reference to the *SCRM Act 2006* and *SCRM Regulations 2007*, policies and other documents considered relevant.
4. DBCA may impose conditions or restrictions on a permit when granted.
5. DBCA may amend a permit to correct clerical mistakes or unintentional errors or omissions. A permit may be amended on application by the permit holder or on the initiative of DBCA.

## **Revocation or suspension of a permit**

DBCA may revoke or suspend a permit (Regulation 34) where:

1. there has been a breach of the conditions or restrictions to which the permit is subject; and
2. false or misleading information in a material respect was contained in supporting documentation in the permit application.

DBCA must give the permit holder written notice before revoking or suspending a permit.

## **Immediate suspension of a permit**

A permit may be immediately suspended despite Regulation 34 (or where action has commenced under that regulation), if DBCA considers there is an immediate and serious risk of harm to the ecological and community benefits and amenity of the Riverpark or DCA.

## **Penalties**

The permit holder who contravenes a condition or restriction imposed on the permit commits an offence. Penalty: a fine of \$5 000.

## Clause 30A processes under the Metropolitan Region Scheme

The general procedure by which the Trust deals with applications made under Clause 30A of the MRS are set out below. Where applications are consistent with Trust policy, DBCA officers issue advice under delegation on behalf of the Trust.

Clause 30A(2)(a) relates to:

- (a) A development on land comprised in a lot, any part of which is in the DCA or that is not in the DCA but abuts waters that are in the DCA.

The Trust provides advice to the WAPC in relation to Clause 30A(2)(a) applications and the WAPC is obliged to determine the application in a manner consistent with the Trust advice. If the WAPC disagrees with part or all of the Trust advice, the matter is to be determined by the WAPC, as directed by the Minister for Planning in consultation with the Minister for Environment.

Clause 30A(2)(b) relates to:

- (b) A development of land that abuts the DCA or that in the opinion of the WAPC is likely to affect waters in the DCA.

The Trust provides advice to local government acting under delegation from the WAPC in relation to Clause 30A(2)(b) applications and the local government is to have regard to the Trust advice when determining the application. If the local government disagrees with the Trust recommendation, the matter is forwarded to the WAPC for determination.

### MRS Clause 30A(2)(a) procedure

The following outlines the process by which development applications are considered under Clause 30A(2)(a), which relates to development on land comprised in a lot –

- (i) any part of which is in the DCA, refer to **Figure 2**; or
  - (ii) that is not in the DCA but abuts waters that are in the DCA, refer to **Figure 3**.
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 the Trust.
  2. The Trust considers the application and forwards 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 the Trust advice (Clause 30A(5)).
  4. If the WAPC disagrees with part or all of the Trust advice, the matter is to be determined with the involvement of the Minister for Planning and the Minister for Environment (Clause 30A(7)(a)).
  5. The WAPC issues the determination to the applicant and a copy is sent to the Trust and the local government authority.



**Figure 2: Clause 30A(2)a(i) - MRS**

A development on land comprised in a lot, any part of which is in the Swan Canning Development Control Area.





**Figure 3: Clause 30A(2)a(ii) - MRS**

A development on land comprised in a lot, that is not in the Swan Canning Development Control Area (DCA) but abuts waters that are in the DCA.

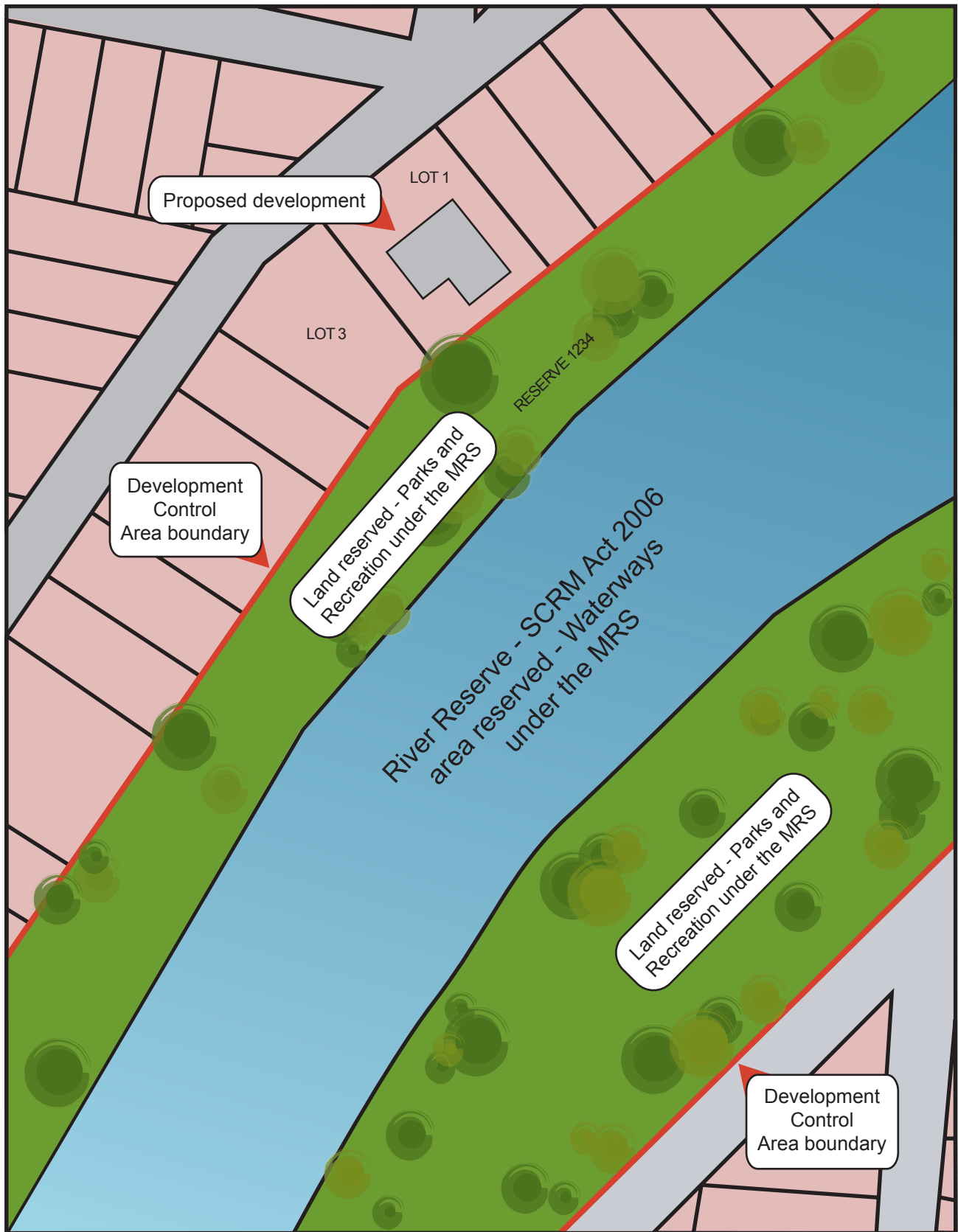
## **MRS Clause 30A(2)(b) procedure**

The following outlines the process by which development applications are considered under Clause 30A(2)(b), which relates to development –

- (i) of land that abuts the DCA, refer to **Figure 4**; or
  - (ii) that in the opinion of the WAPC is likely to affect waters in the DCA, refer to **Figure 5**.
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 the Trust within seven days of its receipt.
  3. The Trust considers the application and forwards its advice in writing to the local government within 42 days, including any conditions to be imposed by an approval (Clause 30A(3)).
  4. The local government is to have regard to the Trust's advice in determining the application.
  5. If the local government disagrees with the Trust's recommendation, it forwards the application to the WAPC for determination in accordance with Schedule 1 of the Delegation Notice.
  6. The WAPC is to have regard to the Trust's advice in determining the application, but is not required to make a determination that is consistent with that advice (Clause 30A(6)).

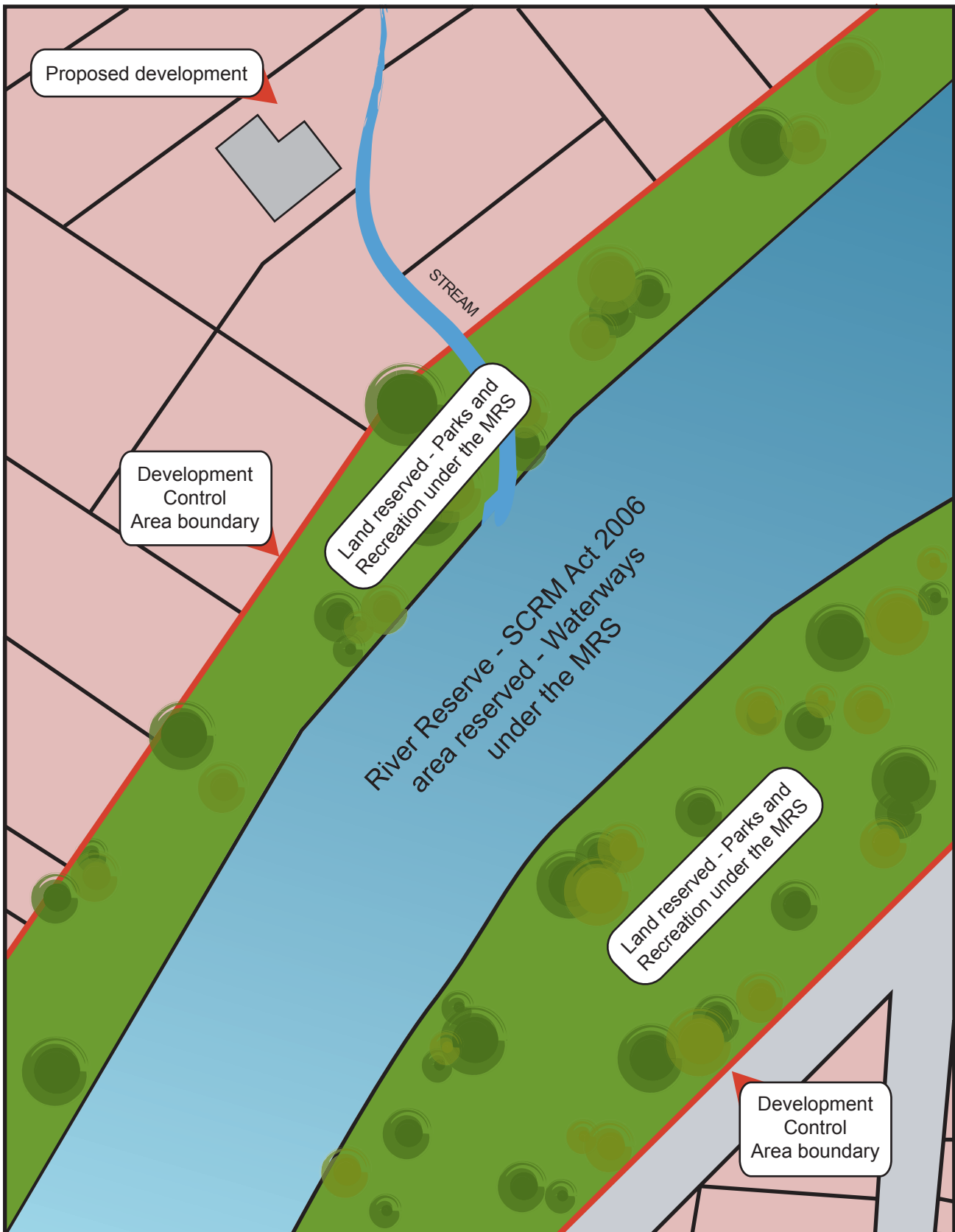
## **Delegations**

**NOTE:** In accordance with the Delegation by the WAPC under Section 16 of the *Planning and Development Act 2005* and published in the Government Gazette on 23 December 2011. The decision-making powers of the WAPC to determine applications for development of land abutting land in the DCA or development likely to affect waters in the DCA, are delegated to local government. This Delegation also applies more generally on most land zoned under the MRS.



**Figure 4: Clause 30A(2)b(i) - MRS**

A development of land that abuts the Swan Canning Development Control Area.



**Figure 5: Clause 30A(2)b(ii) - MRS**

A development that in the opinion of the WAPC is likely to affect the waters in the Swan Canning Development Control Area. For example, impacts can occur from pollutants mobilised to the DCA via streams, drainage systems or groundwater flows.