



Department of Mines, Industry Regulation and Safety

Department of Biodiversity, Conservation and Attractions

Administrative Agreement

between the

**Department of Mines,
Industry Regulation and Safety**

and the

**Department of Biodiversity,
Conservation and Attractions**

Administrative Agreement between the Department of Mines, Industry Regulation and Safety and the Department of Biodiversity, Conservation and Attractions.

1. Introduction

This administrative agreement (the Agreement) is intended to provide a framework for effective communication and cooperation between the Department of Mines, Industry Regulation and Safety (DMIRS) and the Department of Biodiversity, Conservation and Attractions (DBCA) to facilitate the State's economic, social and environmental objectives. The Agreement is focused on managing the outcomes of interactions between mineral, petroleum and geothermal resource exploration and development activities and public reserves, native flora, fauna and ecological communities in Western Australia.

DMIRS is responsible for the regulation of mining, petroleum and geothermal energy¹ activities in Western Australia subject to the *Mining Act 1978*, the *Petroleum and Geothermal Energy Resources Act 1967* (PGER Act), the *Petroleum Pipelines Act 1969*, the *Petroleum (Submerged Lands) Act* and related regulations. DMIRS' responsibilities include regulating the environmental management of these activities to assist in achieving the sustainable exploration for and development of the State's mineral, petroleum and geothermal resources.

DBCA is responsible for managing and protecting the range of values of reserved lands and waters pursuant to the *Conservation and Land Management Act 1984* (CALM Act) including State forests, national parks, nature reserves, conservation parks and marine parks (CALM Act managed reserves) and the protection and management of biodiversity and biodiversity components pursuant to the *Biodiversity Conservation Act 2016* (BC Act), including flora, fauna and ecological communities. DBCA is responsible for ensuring that Western Australia's biodiversity attributes are suitably managed and protected in perpetuity.

The Agreement seeks to facilitate the effective administration of State legislation as identified above, noting that DMIRS and DBCA each have specific legislative and procedural responsibilities. The primary intent of the Agreement is to ensure when the agencies interact with each other, these legislative and procedural responsibilities are taken into account and regulatory processes are carried out in an efficient, fair, transparent and consistent manner.

2. Purpose

The purpose of the Agreement is to:

1. Outline a shared understanding for facilitating environmentally responsible and economically beneficial resource access, exploration and development activities in Western Australia.
2. Provide an agreed framework to facilitate transparent, efficient and effective communication, interaction and administration between DMIRS and DBCA in their respective performance of legislative responsibilities, facilitating high quality decision making for the benefit of the State and the community.

The Agreement is not intended to replace nor conflict with responsibilities that each agency has under their respective legislation and policies, or other legislation such as the *Environmental Protection Act 1986* and relevant State Agreement Acts.

¹ Herein after referred to collectively as resources.

3. Objectives

The objectives of the Agreement are to:

- identify shared principles of operation regarding interactions between resource development activities and CALM Act managed reserves and biodiversity values in Western Australia;
- define each agency's role and responsibilities in their interactions with each other;
- facilitate each agency understanding how the other is working within the constraints and frameworks of relevant State Government policies;
- facilitate effective, timely and efficient communication and consultation processes between DMIRS and DBCA to facilitate appropriate and timely assessment and approvals processes;
- maintain agency transparency for public benefit; and
- maximise consistency and minimise uncertainty for proponents and the public in relation to approvals and the outcomes of resource development activities.

4. Scope of agreement and commitment

This Agreement is primarily applicable to resource exploration, evaluation and development activities affecting existing public reserves managed by DBCA and native flora, fauna and ecological communities in Western Australia. Where appropriate, the processes, protocols or procedures developed and provided for under the Agreement may by mutual agreement, be more widely applied or adapted to other land areas or values.

DMIRS and DBCA are committed to implementing and maintaining arrangements, protocols and other documents as set out below and in the accompanying schedules, to ensure that resource exploration and development activities are effectively facilitated and are planned and undertaken in a responsible manner in a way that maintains the values, purposes and uses of CALM Act reserves and native flora, fauna and ecological community biodiversity values.

5. Framework

DMIRS and DBCA acknowledge the underlying objective of the Agreement is to facilitate the implementation of legislative and procedural responsibilities in an efficient, fair, transparent and consistent manner in pursuit of the social, economic and environmental objectives of the State and will be guided by the following approaches to interagency interaction:

5.1 Shared recognition of roles and responsibilities:

Both agencies will work collaboratively, recognising and respecting each other's roles and responsibilities and will undertake to use a coordinated and consistent approach to considering applications for approvals under each agency's relevant legislation.

5.2 Contentious Issues Management

Both agencies will endeavour to coordinate advice on contentious issues to the relevant Ministers and media.

5.3 Information sharing and consultation:

In accordance with the Agreement, both agencies agree to:

- i) freely exchange relevant information and advice about resource exploration and development activities;
- ii) freely exchange relevant information and advice regarding potentially impacted biodiversity values and relevant values and attributes; and
- iii) ensure appropriate consultation occurs when there are proposed changes to legislation, policies, guidelines and standards or new plans or activities relevant to the purpose of the Agreement.

6. Duration

The Agreement will commence from the date of execution and continue on its terms, as amended from time to time, until it is terminated by written notice by either party or replaced.

7. Review

The Agreement is subject to a full review every five years. A review of the general Agreement or particular schedules may be undertaken sooner if there is a change in State Government legislation or policy affecting the content or interpretation of the Agreement.

Amendments to the Agreement (including creation, revision or deletion of schedules) may be implemented with the signed approval of both Directors General.

8. Schedules

Schedules pertaining to the Agreement may be developed by the agencies to give effect to specific arrangements and procedures that are agreed pursuant to the Agreement objectives. Schedules will be appended to the Agreement and can be updated or revised by mutual agreement as required, without requiring amendment of the Agreement.

Schedule 1 of the Agreement provides a list of the other Schedules outlining agreed interagency arrangements and procedures and also will be updated as these Schedules are completed or revised.

9. Dispute resolution

DMIRS and DBCA will endeavour to resolve any disputes arising in relation to the implementation of the Agreement or the Schedules by negotiation. Dispute resolution will occur between relevant officers with elevation to more senior levels only if necessary.

10. Endorsement

The signatories below endorse this Administrative Agreement.



Richard Sellers
Director General
Department of Mines, Industry
Regulation and Safety



Mark Webb
Director General
Department of Biodiversity,
Conservation and Attractions

Date: 29 October 2021

Date: 16 November 2021

Schedule 1 – Abbreviations used and List of Schedules.

The following abbreviations are used throughout the Agreement and Schedules. They are outlined in full in the Agreement, with acronyms only used throughout the Schedules.

Abbreviation	Full name
Agreement	This Administrative Agreement
BC Act	<i>Biodiversity Conservation Act 2016</i>
CALM Act	<i>Conservation and Land Management Act 1984</i>
CALM Act managed reserves	Lands managed under the CALM Act by DBCA on behalf of the Minister for Environment and responsible body/s, including national parks, nature reserves, conservation parks State forest, timber reserves, marine parks etc.
CPC	Conservation and Parks Commission (in which all CALM Act managed reserves are vested)
DBCA	Department of Biodiversity, Conservation and Attractions
DMIRS	Department of Mines, Industry Regulation and Safety
Mining Act	<i>Mining Act 1978</i>
PGER Act	<i>Petroleum and Geothermal Energy Resources Act 1967</i>

Schedule 2 Agreed principles for agency cooperation

Agreed principles for the consideration, approval and management of mineral and petroleum exploration and development activities affecting biodiversity values protected under the CALM Act managed reserves.

Date approved: 16 November 2021

Status: Current

Schedule 3 Interagency advice, information sharing and timeframes

A framework for collaboration and communication between DMIRS and DBCA concerning the provision of advice and information sharing for resources development applications and approvals in the context of ensuring Western Australia's biodiversity attributes are suitably managed and protected to meet Government and community expectations.

Date approved: 16 November 2021

Status: Current

Schedule 4 Protocol for management of applications to undertake exploration or mining activities in CALM Act managed reserves

A summary of interagency roles and expectations to support the administrative procedure and interagency consultation for consent to undertake mining activities (exploration and mining) on tenements occurring on CALM Act managed reserves pursuant to section 24 of the *Mining Act 1978*.

Date approved: _____

Status: Under development

Schedule 5 Protocol for management of applications to undertake petroleum and geothermal activities on CALM Act managed reserves

A summary of interagency roles and expectations to support the administrative procedure and interagency consultation for consent to undertake petroleum and geothermal energy exploration or recovery activities (PGERA operations) occurring on CALM Act managed reserves, pursuant to section 15A of the PGER Act.

Date approved: _____

Status: Under development

Schedule 2 – Agreed principles for agency cooperation.

Purpose

Schedule 2 outlines the agreed principles between DMIRS and DBCA for the consideration, approval and management of mineral, petroleum and geothermal energy exploration and development activities affecting biodiversity values protected under the BC Act and CALM Act managed reserves.

Principles

Both agencies agree to the following principles, which underpin interagency cooperation:

1. Mineral, petroleum and geothermal energy exploration and development is a key industry sector for Western Australia and makes a critically important contribution to Western Australia's and Australia's economic and social development.
2. CALM Act managed reserves form part of Western Australia's and Australia's Comprehensive, Adequate and Representative reserve system, which is a critical component of State and national biodiversity conservation, environmental protection and sustainability strategies. These areas are also important for sustaining a variety of non-mining industries and public values and uses, such as water catchment, wildflowers, recreation and tourism and for the preservation of Aboriginal heritage, culture and economic and social development.
3. The conservation and protection of biodiversity (including flora, fauna and ecological communities), biodiversity components and ecosystems is a shared whole-of-Government responsibility. Conservation of biodiversity is a key principle of ecologically sustainable development as set out in the BC Act, implemented by DBCA through management of the reserves as set out in the CALM Act and policy implementation as provided for in the BC Act.
4. Access to and approval of activities on CALM Act managed reserves is subject to appropriate Ministerial and other consent processes, under relevant legislation, based on consideration of environmental, social, and economic impacts and benefits, together with best practice management, rehabilitation and site closure.
5. Exploration is conventionally viewed as a logical precursor to productive mining, however, in the case of activities affecting CALM Act managed reserves there should be no presumption that mining will necessarily receive approval. Accordingly, where decisions are made to grant new exploration titles or consents affecting CALM Act managed reserves, it may be appropriate for those decisions to identify to the applicant whether there are any risks that need to be taken into account in relation to the potential for a future grant of title and/or consent for productive development and resource extraction.
6. Work by agencies to assist decisions on whether consents for resource activities on CALM Act managed reserves will be undertaken on the basis that these decisions are determined by arrangements between the Minister responsible for approving the development (the Minister for Mines and Petroleum) and the Minister responsible for the CALM Act (the Minister for Environment). Decisions of the relevant Ministers will be informed by information from the proponent seeking the access and advice provided by the agencies and other relevant government agencies and statutory authorities, such as the Conservation and Parks Commission and the Environmental Protection Authority.
7. The interests of key stakeholders, including traditional owners, native title holders and broader society interests, will be important in government consideration of approvals for mineral, petroleum or geothermal energy activities, particularly within reserves.

Schedule 3 – Interagency advice, sharing of information and timeframes for off CALM Act managed reserve matters.

Purpose

Schedule 3 outlines the agency roles, administrative procedures and interagency consultation to support implementation of the respective responsibilities of DMIRS and DBCA. Specifically, this Schedule outlines the agreed circumstances and arrangements relating to the exchange of information and advice, and the relevant associated timeframes for matters other than those relating to resource development activities in CALM Act managed reserves.

Legislation

DMIRS and DBCA have specific regulatory responsibilities as provided in the *Mining Act 1978* (Mining Act), *Petroleum and Geothermal Energy Resources Act 1967* (PGER Act) (and other petroleum-specific legislation), Part V of the *Environmental Protection Act 1986* (EP Act - under delegations), the *Conservation and Land Management Act 1984* (CALM Act) and the *Biodiversity Conservation Act 2016*, and their associated regulations, respectively.

Additionally, both agencies are subject to the *Environmental Protection Act 1986* in regard to decisions about proposals that may result in a significant environmental impact, which may impact upon the operation of this Schedule.

In performing their respective regulatory roles, both agencies recognise the value and importance of interagency advice and assistance. Interagency assistance may be in the form of providing specialist advice on specific subject matter expertise, exchanging information to clarify matters or providing notification of potential issues or problems of mutual concern. The specific framework for interagency collaboration and the relevant associated timeframes relating to the CALM Act reserve consent provisions of the Mining Act is detailed in Schedule 4.

Advice requests for activities subject to applications for approval

Timely and effective consideration and decision-making in relation to resource development applications is a high priority. To minimise approvals timeframes for government, the agencies will use their best endeavours to achieve timely and efficient processes and responses. Effective interpersonal communication and open dialogue are also critical to enable a cooperative approach and allow for management of advice requests on a priority basis during periods of high demand. Providing targeted and clear requests and responses will minimise, as far as practicable, the need for subsequent follow-up or clarification that may otherwise relate in unnecessary approval delays.

It is recognised that requests for advice on environmental applications administered by DMIRS have the potential to delay the assessment and also impact the ability for DBCA to undertake its other critical work. It is also recognised that staff within the DMIRS Environmental Compliance Branch have adequate environmental skills and knowledge to undertake appropriate environmental assessments in most situations. Therefore, it is important that requests for advice from DMIRS to DBCA are limited to situations where the information required for DMIRS to undertake an appropriate environmental assessment is not available to DMIRS, or where specific technical expertise is required from DBCA on matter(s) that are integral to the assessment and outside the expertise of DMIRS.

A list of key contacts in each agency will be regularly updated to promote effective communication.

Table 1: Interagency referrals and administration for applications that do not directly affect CALM Act managed reserves.

Application	Considerations for referral	Process	Timeframe
Environment Plans and other application documents submitted in accordance with the Petroleum and <i>Geothermal Energy Resources Act 1967</i> , <i>Petroleum Pipelines Act 1969</i> and <i>Petroleum (Submerged Lands) Act 1982</i> .	DMIRS <u>will</u> seek advice from DBCA where the application will directly or indirectly impact, or has the potential to impact: - threatened flora; - threatened ecological communities; - threatened fauna; and may seek advice for applications that will significantly impact, or have the potential to significantly impact:	DMIRS will initially screen the application and complete a preliminary assessment to determine whether there is sufficient and current information to enable its assessment and whether there is a need to seek DBCA advice. Where the need for advice is identified, the application and the necessary supporting documentation will be forwarded to a single identified DBCA contact as per the interagency contact list.	DMIRS will request DBCA provide advice within 20 business days for applications under the Mining Act, 20 calendar days for applications under the Petroleum legislation or 28 calendar days for clearing permits. Both agencies understand the requirement for applications to be considered and approvals issued within reasonable timeframes, taking into account the risks posed by each application or proposal to public interest values, and will consistently act to minimise delays in seeking and providing information and advice.
Native Vegetation Clearing Permits in accordance with the <i>Environmental Protection Act 1986</i> .	- Priority flora; - Priority ecological communities; - Priority fauna;	DMIRS will outline the reasons for the advice request and identify specific aspects that DMIRS is seeking advice about.	If DBCA believes it will not be possible to provide advice within the requested timeframe, it will contact DMIRS as soon as possible but no later than eight business days after the request is received, and discuss options, which could include DMIRS determining advice is no longer needed, agreement to a revised timeframe in which DBCA will provide advice, or seeking further information from the proponent.
Programmes of Work, Mining Proposals and Mine Closure Plans in accordance with the <i>Mining Act 1978</i> .	- Ramsar-listed wetlands; DMIRS <u>will</u> consult with DBCA on applications within formally proposed conservation reserves endorsed by Government ² , including lands that are wholly managed by DBCA that are not currently public reserves falling within the scope of Sections 23 24 or 24A of the Mining Act.	Any separate but related environmental procedures or approvals required that relate to the application under consideration that are in progress and administered by DMIRS (such as native vegetation clearing permits) and other agencies from whom advice is being sought will also be identified in the information provided to DBCA.	

The same processes and timeframes identified above will apply for ad hoc advice requests.

² These are shown as 'proposed conservation reserves' or 'FNAs' in DMIRS' Tengraph system.

Schedule 4 - Protocol for management of proposals to undertake exploration or mining activities on CALM Act managed reserves.

Currently under development.

Schedule 5 – Protocol for management of applications to undertake petroleum and geothermal activities on CALM Act managed reserves.

Currently under development.

Government of Western Australia

**Department of Mines, Industry Regulation
and Safety**

8.30am – 4.30pm

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