

Policy & Guidelines

Principles of Consultation for Mining Entry Permits on the Aboriginal Lands Trust Estate

Introduction

There are 80 reserves on the Aboriginal Lands Trust (ALT) estate that are the subject of a proclamation by the Governor under Part III of the *Aboriginal Affairs Planning Authority Act 1972* (AAPA Act). Part III status confers special protections upon those reserves, one of those being the Permit system.

The Permit system is enshrined in legislation at Section 31 of the AAPA Act, which provides an offence of entering or remaining within the boundaries of a proclaimed reserve unless a person is:

- Of Aboriginal descent;
- A member of Parliament;
- A person acting under a duty imposed by law (e.g. public servants acting in the course of their duty/employment); or
- Authorised in that behalf under the *Aboriginal Affairs Planning Authority Act Regulations 1972* (AAPA Act Regulations).

Regulation 8 of the AAPA Act Regulations provides that:

- A person who is not within the above categories who wishes to enter or remain within the boundaries of a proclaimed reserve for any stated reason must apply to the Minister for a permit;
- Before granting a permit the Minister must consult with the ALT; the ALT in turn is required to consult with the Aboriginal inhabitants of the proclaimed reserve;
- If the Minister's decision varies from the advice of the ALT, they are required to cause a report on their decision to be laid before both houses of State Parliament; and
- An entry permit may be issued subject to specified conditions.

The Minister's right to control access is ***separate from any native title rights and interests under the Native Title Act 1993 (NTA) or any access controls under the Aboriginal Communities Act 1979.***

To enable the effective administration of the Permit system, two types of permits have been created: **Transit (non-mining access) Permits** and **Mining Entry Permits (MEP)**.

In the case of a Mining Entry Permit, the combined effect of the *Mining Act 1978* and the AAPA Act means there are ***two separate actions required from the Minister for Aboriginal Affairs - a recommendation on a consent to mine, and, a Mining Entry Permit.***

In summary:

- No mining activity (whether prospecting, exploration or mining) can take place within a Reserve managed by the ALT (proclaimed or otherwise) without the written consent of the Minister for Mines.
- Before granting **consent to mine** the Minister for Mines must consult the Minister for Aboriginal Affairs and obtain a recommendation as to whether mining should be allowed.
- The Minister for Mines is not bound to follow the recommendations of the Minister for Aboriginal Affairs and may give consent to mine even where the Minister for Aboriginal Affairs has recommended that consent be refused.
- Separately, a **Mining Entry Permit** is also required under the AAPA Act for mining activity on, or related transit across, any proclaimed reserve.
- Before providing a recommendation on the consent to mine or issuing a Mining Entry Permit, the Minister for Aboriginal Affairs is required to seek the views of the ALT (section 30 AAPA Act).

Consultation by the ALT

The ALT consultation process is guided by the requirement that the Trust act in accord with the wishes of the Aboriginal inhabitants of the area (section 23(c) AAPA Act).

To ensure that the views of all Aboriginal people who live on, or have interests in, the land are considered, the ALT requires consultation with:

- Aboriginal people who generally live on the land or hold a legal interest (such as a Lease from the ALT) and their organisations;
- The registered native title body corporate if the area is subject of an approved determination of native title;
- The registered native title claimants, if the area is subject of a registered native title claim; and
- Other Aboriginal people who the ALT consider may have a legitimate interest in the land.

Consent to Mine and Mining Entry Permit Process

The flow chart below outlines the processes for the Minister for Aboriginal Affairs providing a consent to mine and the issuing of a Mining Entry Permit.

