

## Policy & Guidelines

### ***Principles of Consultation for Transit Permits on the Aboriginal Lands Trust Estate***

#### **1. 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 AAPA Permit system.

#### **2. Legislative requirement**

It is an offence under section 31 AAPA Act to enter or remain within the boundaries of Part III land unless a person:

- (a) is of **Aboriginal** descent;
- (b) is a member of the **police force**;
- (c) is an officer of a **public authority**;
- (d) is an authorised officer under the ***Public Health Act 2016*** (WA);
- (e) is a member of either **House of Parliament (State or Commonwealth)**;
- (f) is a person lawfully exercising a **function under the AAPA Act**;
- (g) is a person acting in pursuance of a **duty imposed by law**; or
- (h) *has an entry permit issued by the Minister for Aboriginal Affairs (the Minister) under the Aboriginal Affairs Planning Authority Act Regulations 1972 (WA) (AAPA Regulations).*

Regulation 8 of the AAPA Regulations requires that:

- A person who is not within the above categories (a) – (g) 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**; and
- If the Minister's decision varies from the advice of the ALT, he/she is required to cause a report on his/her decision to be laid before both houses of State Parliament.

An entry permit may be issued subject to specified conditions.

In addition to fulfilling the requirements of the AAPA Act, Transit Permits are intended to:

- help protect the privacy of Aboriginal communities;
- preserve Aboriginal heritage and culture;
- safeguard the natural environment; and
- promote visitor safety.

### 3. Penalties

Where a person does not fall within one of the categories at (a) – (g) above, it is an offence to enter or remain within the boundaries of a proclaimed reserve without a permit, which could result in penalties of up to:

- **\$1,000 or imprisonment for 9 months** for a first offence; and
- **\$5,000 or imprisonment for 12 months** for a second or subsequent offence.

### 4. AAPA Permit Types

For practical reasons two types of permits have been created: **Mining Entry Permits** and **Transit (non-mining access) Permits**. Please refer to the *Principles of Consultation for Mining Entry Permits on the Aboriginal Lands Trust Estate* policy for further information on requirements/process.

#### Purpose

Transit permits are usually sought for the purposes of:

- transit/refuelling through reserve lands;
- meetings arranged with communities;
- recreational activity/tourism;
- commercial tour operations; and
- contractors undertaking work on communities within reserve lands.

#### Applicant type

- Individual:** permits can be issued to individual/private travellers
- Organisation:** permits can be issued to an entity, its employees and contractors for longer term access requirements
- Contractor/Subcontractor of Government\*:** entry permits should not be refused for the purpose of government service provision under contract (unless there is a reasonable explanation to decline access)
- Government Employee:** permits are not required for government employees acting in the course of their duties, however, a notification can be provided to community

*Sub-contractors/contractors of government (Local/State/Commonwealth) are not exempt from transit permits requirements under Section 31.*

The usual term for permits can be days/weeks depending on estimated travel time. Longer term permits may be issued where appropriate.

\*For the purposes of these principles, a contractor/subcontractor of government is a person or 'a body that provides to members of the public, service provision on behalf of Government (Local/State/Commonwealth)'.

## 5. Transit Permit Process

Transit permit applicants lodge an application for a Transit Permit through DPLH's online AAPA Lands Permit System (the System).

The System is built to issue permits for those applications that *do not* require community consultation for every application. Transit Permits that **may not** require community consultation are those for which:

- 'deemed approval' exists where prior agreement has been made between DPLH and the occupants of the reserve, authorising the auto-approval of a Transit Permit through the System;
- the applicant is providing goods or services to an Aboriginal community on behalf of a State or Commonwealth government; or
- there are no occupants of the reserve with whom the ALT can consult.

Those applications **requiring community consultation** take longer to process. These permits usually apply to people in the following circumstances:

- wishing to visit reserves for tourism or recreation purposes;
- wishing to travel through reserves for tourism, recreation or business purposes (other than mining purposes);
- visiting art or cultural centres; or
- undertaking pre-arranged business with communities (such as consultation on matters that are of interest to communities e.g. carrying out certain works at the community, community service/programs).

## 6. Consultation process

It is the practice and policy of the Department of Planning, Lands and Heritage (DPLH) to consult, on behalf of the ALT, with the Aboriginal occupants of the proclaimed reserve. This process informs the consultation between the ALT and the Minister.

When considering access to proclaimed reserves a primary consideration for the ALT are the rights and interests of ALT leaseholders and Aboriginal community occupants.

On this basis the following stakeholder hierarchy is to be applied for consultation prior to granting a Transit Permit:

1. Leaseholder
2. Community/Aboriginal inhabitants
3. Native Title holders

The following principles will guide the ALT consultation process where a Transit Permit is required for travel across proclaimed reserves in Western Australia.

LAND STATUS	CONSULTATIVE BODY
Unleased/Native Title Undetermined/Unoccupied land	None
Unleased/Native Title Undetermined/Occupied land	Community Corporation
Unleased/Native Title Determined/Unoccupied land	Representative Native Title Body Corporate
Unleased/Native Title Determined/Occupied land	Community Corporation
Leased/Native Title Undetermined/Unoccupied land	Leaseholder
Leased/Native Title Undetermined/Occupied land	
Leased/Native Title Determined/Unoccupied land	
Leased/Native Title Determined/Occupied land	

Consultation for Transit Permits is undertaken with the leaseholder, or the Aboriginal occupants (usually the Leaseholder/Community Corporation (on behalf of the Community Council)). Once consent is received from the relevant stakeholder, the permit is issued to the applicant.

Where no comment/response is received from the consultative body within a reasonable time frame from the request, the Permit Officer may issue the permit without consultation.

## 7. Notification to Native Title holders

Under the AAPA Act, the Minister has the right to control access to ALT reserves proclaimed under Part III of the AAPA Act. This right is separate from native title holder rights and interests under the *Native Title Act 1993*. Under Section 23 (c) of the AAPA Act, the ALT is required to “*ensure that the use and management of the land held by the Trust, for which the Trust is in any manner responsible, shall accord with the wish of the Aboriginal inhabitants of the area so far as that can be ascertained and is practicable*”.

In considering the interests of native title holders, where requested, DPLH will, on behalf of the Minister, **notify** the relevant native title holders of the Transit Permits issued if requested.

## 8. Other permits within Aboriginal Reserves

Permits under the AAPA Act are separate to any other permits that may exist.

### Visitor's Passes

For the following Aboriginal Reserves, additional permits are required in the form of a 'Visitor's Pass' (VP). VPs are not managed or administered by the Department. The applicant should contact the relevant Aboriginal Corporation prior to applying for an AAPA transit permit.

RESERVE NUMBER	RESERVE	NATIVE TITLE HOLDER
23079	KUNMUNYA	Dambimangari
15530	KUNMUNYA	
30674	WOTJALUM	
26417	MEDA	
24705	CAPE BOUGANVILLE	Uunguu
30643	ADMIRALTY GULF	

### Additional Fees/Charges

Additional fees/charges may be applied by the community for certain activities on Aboriginal reserves. These additional fees/charges are not managed or administered by the Department. The applicant will need to contact the relevant Aboriginal Corporation prior to the intended travel to obtain more information:

## 9. Aboriginal Heritage

The *Aboriginal Heritage Act 1972* protects all Aboriginal heritage sites in Western Australia, whether they are registered with DPLH or not. Consent is required from the Minister for Aboriginal Affairs for any activity which will negatively impact Aboriginal heritage sites.

Aboriginal heritage sites can be at risk of impact either from natural processes, such as erosion or from human action, such as regular visitation from tourists or development.

Please contact DPLH for further information on Aboriginal heritage sites.

## 10. Delegations

The Minister has delegated his/her powers to issue transit (non-mining access) permits to the DPLH 'Transit Permits Officer' which includes any officer acting in that position from time to time.

The ALT has also delegated its function of consulting with the Minister:

1. to the ALT member representing **Ngaanyatjarra Lands** where the Ngaanyatjarra Part III Reserves are concerned; and
2. to the **ALT Chairperson** to carry out its consultation function where other Part III land is concerned.