

Policy & Guidelines

Guidelines for Aboriginal Lands Trust Leaseholders and Lease Applicants

Introduction

Since the commencement of the *Aboriginal Affairs Planning Authority Act* (AAPA Act) in 1972, the Aboriginal Lands Trust (ALT) and the Aboriginal Affairs Planning Authority (AAPA) have issued over 270 Leases over land to individuals and organisations.

Why does the ALT issue Leases?

Leases on Aboriginal reserves are an important property right which enable Aboriginal people to exercise rights and interests over the land in addition to rights associated with Native Title.

Many of these Leases are to Aboriginal Corporations acting on behalf of a community group. Some Leases are to government agencies, service providers or to individual Aboriginal people.

These Leases allow communities, corporations or individuals to develop the land in an orderly way. They ensure that rights are coupled with responsibilities so that investment in buildings and infrastructure can occur and there are clear lines of responsibility to the Leaseholder and any partners the leaseholder may seek to engage.

Leases on reserves have been (and continue to be) used for:

- Commercial development (e.g. retail stores and other businesses);
- Tourism (hotels and tourism camps);
- Farming operations;
- Communities;
- Housing (including individual home ownership); and
- Community facilities (e.g. health clinics, community buildings, service depots).

Under its legislation, ALT Leases must be for the use and benefit of Aboriginal people.

How are lease applications considered?

Any Aboriginal person can apply for a Lease on an ALT reserve. Other parties (e.g. Government agencies) can also apply for a Lease where they can demonstrate the Lease is for the use and benefit for Aboriginal people. Applications will be considered more favorably by the ALT where:

- There is support from the registered Native Title Prescribed Body Corporate and the community where the Lease is being sought;
- The applicant can demonstrate it has the capacity to manage the Lease and create new opportunities from the Lease;
- The applicant can demonstrate the alternative tenure arrangements resulting in the divestment from the ALT estate have been considered and it is clear a Lease from the ALT is the best option;
- The applicant can demonstrate the Lease will be for the use and benefit of Aboriginal people;
- Where Leases are being considered in remote Aboriginal communities, the proposed Lease area aligns with land use planning principles - that is:
 - It aligns with community layout plans (including lots, roads and infrastructure corridors);
 - The Lease area can appropriately be serviced; and
 - The Lease area takes into consideration existing infrastructure and services; and
- Where broad-acre Leases are being considered, there is a strong alignment between Native Title areas and the organisation seeking to hold the Lease.

On receipt of a Lease application, the ALT may consult across a range of other stakeholders.

The Department of Planning, Lands and Heritage (DPLH) staff can provide assistance to Lease applicants.

The Minister for Aboriginal Affairs is the ultimate decision maker, on the recommendation of the ALT.

What is a Lease?

A Lease (also called Leasehold) is a legally binding agreement where a landholder, in this case the AAPA or ALT, grants an interest in the land to a person or organisation known as the Lessee or Leaseholder. The Leaseholder can hold, occupy and use the land in the manner set out in the Lease.

In most cases the Lease will expire on a certain date. A Lease will usually be for a set time and for a specific purpose. Under the provisions of the AAPA Act, the ALT must manage the land for the benefit of Aboriginal people. As such when the ALT grants a Lease, the purpose of the Lease must be for the use and benefit of Aboriginal people.

What does the ALT expect from Leaseholders?

The grant of a Lease will carry with it certain conditions or requirements. If the requirements of the Lease are not met, then the ALT may seek to end the Lease agreement.

As well as complying with State laws and local government by-laws a Leaseholder must comply with all conditions or requirements set out in the Lease. The ALT expects Leaseholders to:

- Keep the land and any structures clean and in good repair;
- Obtain all necessary ALT land development approvals, building permits and meet other statutory requirements;
- Pay all outgoings, (including where specified, rates, taxes, impositions, assessments, duties and fees of any public, local government or statutory body etc.);
- Pay all water, gas, electricity, telephone, waste disposal or other utility fees and charges;
- Effect and maintain public risk insurances and any other appropriate insurance policies;
- Undertake any fire management and feral animal control; and
- At the end of the Lease, surrender the land clean, free from rubbish and in good condition.

What rights do Leaseholders have?

The person or organisation which holds a Lease has certain rights. If they comply with the Lease conditions, Leaseholders are entitled to hold, occupy and use the land without unreasonable interference from the Lessor (in this case the ALT).

The ALT supports Leaseholders utilising the land for the use and benefit of Aboriginal people through commercial and economic development, service delivery and residential development. In some case a Lease may be Sub-Leased, or even transferred, to another person or organisation. Depending on the Lease's purpose and the length of the Lease, sometimes Leased land can be used as security to raise loans from banks and other financial institutions.

In accordance with the AAPA Act requirement to ensure that the use of the land is managed for the benefit of Aboriginal people, proposals for the use, development or mortgaging of ALT Leased land must be considered and approved by the ALT and the Minister for Aboriginal Affairs.

Further information on Guidelines for ALT Leaseholders can be obtained from DPLH (08) 6551 8000 or by emailing alt@daa.wa.gov.au.

The ALT also encourages Leaseholders to obtain their own legal advice in relation to the management of Leases.