

GUIDE FOR THE MINERALS INDUSTRY ON LAND ACCESS IN NEW SOUTH WALES

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Prepared by Association of Mining and Exploration Companies Inc (AMEC)

AMEC is a leading national minerals industry association representing over 500 member companies across Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses and services working in and for the minerals industry.

AMEC acknowledges the Traditional Custodians of the lands on which we work, meet and live across Australia (and beyond) and pay our respects to Elders past, present and emerging.

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INTRODUCTION TO THIS GUIDE

NSW has great mineral potential as well as many alternative land users within what is often considered a complex regulatory regime.

This Guide provides clear information for mineral explorers in NSW to assist them to understand the requirements for land access and provides a step-by-step guide for negotiating land access in NSW. This Guide accompanies the AMEC NSW Land Access Agreement template and AMEC fact sheets to provide a tool kit for explorers to negotiate land access.

This Guide is focused on land access for privately owned land in NSW, with **ANNEXURE A** providing explanations of native title and Aboriginal cultural heritage considerations and **ANNEXURE B** providing guidance on Crown Land or land owned by the State.

This Guide is based on current NSW legislative requirements for mineral exploration and common practice only and is not applicable in other States or Territories, nor applicable for petroleum exploration. This Guide provides AMEC members with information to assist them to develop land access arrangements, each of which must be tailored to accommodate the individual needs of the landholder and mineral explorer. This guide provides general information but does not constitute legal advice and the information should always be confirmed for currency.

FOUNDATIONS FOR LAND ACCESS

NSW is generously endowed with mineral potential as well as a popular place to live and work. For mineral explorers in NSW, alternative land users and towns or cities are never far away. With the many land users and activities in NSW, it is critical for mineral explorers to prioritise effective and regular community engagement with key landholders.

Community engagement can make or break an exploration project in NSW.

Respect, courtesy, and honesty, along with engaging early and often, are sound principles to guide your community engagement. The core of a good working relationship is great communication. In both initial negotiations of access arrangement for exploration and ongoing communication, it is important to understand that explorers are temporary visitors or guests on the land, just as it is for the landholders to understand the needs and rights of an explorer.

***Engage early and often
with respect, courtesy
and honesty.***



Drilling is one of the most advanced forms of exploration.

TOOLS AVAILABLE TO ASSIST NEGOTIATIONS FOR ACCESS

Access arrangements must always be individually negotiated and tailored to the needs of the landholder, explorer, and the exploration program.

AMEC has developed the following toolkit (available at <https://amec.org.au/jurisdiction/nsw>) to assist mineral explorers negotiate access:

- **AMEC GUIDE FOR THE MINERALS INDUSTRY ON LAND ACCESS IN NSW** (this document) – provided as a guide for minerals industry representatives on land access in NSW.
- **AMEC NSW LAND ACCESS AGREEMENT TEMPLATE FOR MINERAL EXPLORATION** – a clear, plain English template for explorers and landholders to use as a basis to negotiate an agreement.
- **FACT SHEETS** – clear, plain English information for minerals industry representatives to use in assisting the wider community understand exploration, including:
 - *AMEC NSW Fact Sheet - Exploration Explained*
 - *AMEC NSW Fact Sheet - Exploration Methods*
 - *AMEC NSW Fact Sheet – Rehabilitation for Exploration*
 - *AMEC NSW Fact Sheet – Regulation for Land Access in NSW*
 - *AMEC NSW Fact Sheet – Compensation Guide*
 - *AMEC NSW Fact Sheet – Frequently Asked Questions*
- **AMEC VIDEO MINERAL EXPLORATION EXPLAINED** – link available on AMEC website.

The *AMEC NSW Land Access Agreement Template for Mineral Exploration* is a clear template agreement that may be used as a basis to form an access arrangement. This template is accompanied by AMEC fact sheets that provide clear information on land access written in plain English to assist landholders and the wider community understand exploration. **ANNEXURE E** of this Guide includes the AMEC fact sheets and access agreement template (also available as stand-alone documents).

The AMEC NSW Land Access template is a streamlined, user-friendly version of the NSW Government template that was updated in 2021. The AMEC template aligns with the current legislative requirements and provides additional guidance to assist explorers and landholders reach an agreement. The AMEC template and the accompanying information are written in plain English and outline practical conditions, with options, to allow the agreement to reflect the individual needs of both the landholder and explorer.



Courtesy, honesty, and respect go far in building a working relationship between landholders and explorers.

Note that the AMEC template, guide, fact sheets and other information provide guidance but do not constitute legal advice. All documents are available free of charge at www.amec.com.au

STEPS TOWARDS LAND ACCESS ON PRIVATE LAND

The following steps will assist you to develop a good working relationship with private landholders.

1. Ensure that land access and community consultation are a strategic component of your exploration program

Without land access there is no onsite exploration permitted on private or public land in NSW. Land access and community consultation are critical elements of any exploration program and so must be included and prioritised in any planning for exploration activities. Negotiating for access for exploration can be a lengthy process. It can take one meeting or months or years, and so should be commenced as soon as practical.

2. Implement a Community Consultation Strategy

Land access in NSW is just one part of community consultation that is a mandatory requirement of exploration licences in NSW. The *Exploration Code of Practice: Community Consultation*¹ provides detail on the requirements, with mandatory requirements including:

- a) Conduct a risk assessment to identify and consider opportunities and threats associated with community consultation and engagement.
- b) Prepare a Community Consultation Strategy - this strategy must include:
 - Establish the objectives of the strategy.
 - Include a detailed description and analysis of potential community stakeholders.
 - Describe how community consultation will be undertaken.
 - Set out mechanisms for revising the community consultation strategy to ensure it continues to meet the requirements of the Code.
- c) Implement, monitor, and report annually on the Community Consultation Strategy (noting recent changes to publication and submission requirements)
- d) Keep and maintain the records - see **ANNEXURE D**.



Agreements between landholders and explorers are required before any on the ground exploration activity in NSW.

3. Ensure that company resources and time are invested and WHS is considered

Community engagement can make or break an exploration project.

Engagement should be managed by senior staff or an authorised person with appropriate knowledge, expertise and importantly, personal skills. Community engagement should not be undertaken by junior staff without careful supervision, review, and management. Involvement of senior staff in community consultation demonstrates respect for community and will help earn trust and support. Generally, landholders appreciate meeting the people that will be working on their property and knowing whom to contact if there is an issue.

¹ <https://www.resourcesregulator.nsw.gov.au/rehabilitation/exploration/exploration-codes-of-practice/code-of-practice-for-community>

Consider Work, Health, and Safety (WHS) during land access negotiations. This should include safety considerations and the number of personnel who attend meetings with landholders (especially on site or in a landholder's home), check-ins with the office before and after meetings and in related communications, as well as mental health for personnel if negotiations are protracted.

4. Ensure that you know what is required for land access

Ensure that community consultation requirements in NSW are clearly understood by the staff managing this process. The following resources could assist:

- AMEC Guide for the Minerals Industry on Land Access in NSW (this document)
- *NSW Mining Act 1992* and *Mining Regulation 2016*² (noting the recent 2022 legislative changes with the Amendment Bill and Regulation)
- Related NSW Government information including guidance information, template Access Agreement, Fact sheets and *Exploration Code of Practice: Community Consultation*, published by NSW Government³,

5. Clarify exactly where and when you need access

Be clear on the areas where access will be needed for your exploration program. Negotiating access takes time and resources for all parties and so should only be commenced in a new area that is specifically needed for access, rather than every property within the exploration licence.

6. Find out who are the landholder/s

'Landholder' is clearly defined in the *Mining Act 1992* and includes owners in fee simple and native title holders as well as the holder of a lease, licence, or continued tenure (within the meaning of Schedule 1) under the *Crown Land Management Act 2016* (full detail of the definition of 'landholder' in *Mining Act 1992, Dictionary*).

Note that 'secondary landholders' include a person in any registrar or record kept by the Registrar-General as having an interest in the land other than a mortgagee, lessee as well as a Minister or public authority having an interest in the land under a conservation, natural heritage or biobanking agreement. Land access arrangements are not required to be negotiated with 'secondary landholders' but they may be eligible for compensation (*Mining Act 1992* sections 262 - 3).

Determining the landholders for the key areas needed for access can be difficult in NSW. Sources of cadastral information include:

- Register of Title Deeds at http://www.nswlrs.com.au/land_titles/public_registers/general_register_of_deeds
- Other Title Deed sources such as <https://www.confirm.com.au/> or www.directinfo.com.au
- Neighbours, phone books and local information may also be useful.

Ensure that you have a copy of a recent title search when drafting the land access arrangement to ensure that it includes the correct ownership information and description of the land. Note if there are multiple owners of the land.

If the title search does not record a private landowner (for example, the title deed notes the owner as 'The State of NSW', the Crown or a Minister) the land may be owned by the NSW Government and known as Crown land. For more information on gaining access in these areas, see **ANNEXURE B**.

² <https://www.legislation.nsw.gov.au/>

³ <https://meg.resourcesregulator.nsw.gov.au/mining-and-exploration/land-access>

7. Ensure that you know the legal requirements

All relevant company personnel responsible for land access must understand the NSW legal requirements detailed in the *Mining Act 1992*. Further detail is available in the [AMEC NSW Fact Sheet – Regulation Explained](#), with an outline below:

- **Access arrangements between an explorer and landholder must be written** - verbal agreements, even for reconnaissance exploration activities, are not valid following legislative changes in 2015 (section 140).
- **Separate arrangements** may (but need not) be agreed or determined with different landholders or to preserve confidentiality of all or part of the agreement (section 140(2), (3)).
- **Access arrangements** may make provisions (section 141(1)) for the following:
 - a) Periods or time for permitted access.
 - b) Parts of the land permitted for access.
 - c) Kinds of prospecting or exploration activities that may be undertaken.
 - d) Conditions to be observed by the explorer.
 - e) Compensation to be paid by the explorer.
 - f) Manner of varying the arrangement and resolving disputes
 - g) Notification to the explorer of any changes in land ownership.
- **To initiate an access arrangement the explorer** may, by written notice, (section 142(1)) served to the landholder (section 383 for requirements for service of documents) to give intention to seek an access arrangement. Under legislative requirements, this notice must (section 142(2)):
 - a) State the explorer's intention.
 - b) Contain a plan and description of the area over which the access is sought sufficient to enable the ready identification of that area, and
 - c) Include a description of the prospecting methods intended to be used in that area and be delivered in accordance with the Act.
- **Costs payable by the explorer** to the landholder (section 142 (2A-G), 262-3) include:
 - a) 'Reasonable costs of the landholder in participating in negotiating the access arrangement' - The maximum amount of reasonable costs was set out by the Minister by order published in the NSW Gazette on 1 December 2016 as \$1,500 (ex. GST) for exempt or low impact prospecting operations and \$2,500 (ex. GST) for assessable prospecting operations. These costs 'have regard for' the time spent negotiating the access arrangement, legal costs, and costs of engaging experts as part of the negotiation process. Nothing prevents the explorer paying other amounts.
 - b) 'Compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights' - See separate [AMEC NSW Fact Sheet - Compensation](#) for more information.
- **Mortgagees (mortgage lenders) of the land must be notified by the explorer** within 14 days after of an access arrangement has been agreed (section 142A (1)). Note an access arrangement is also required if the holder of the land is the 'mortgagee in possession of the land'.

8. Do your homework on the local area

Before your initial contact with a landholder, you should do some research on the local area – local newspapers, television or online research may all be good sources of information. Find out about not only local news but also any other exploration and mining in the area as this may influence your timing and approach. For example, when an area is under threat of bushfires or floods or there has been a local tragedy, it may be appropriate to delay approaching landholders.

9. Make initial contact – first impressions count!

First impressions count, and your first contact should be appropriate to suit the landholder. It is recommended that you call to make an appointment to meet at a suitable time and place. Meeting face to face is always best when possible. Records should be kept of each and every contact (or attempted contact) with the landholder.

Ensure that you are professionally presented in both dress and manner. Company shirts should be worn where available and appropriate. When invited into a home, ensure you respect your surroundings and always show your appreciation for a landholder's hospitality and remove boots and hats. Sunglasses should be removed when speaking face to face.

Remember the guiding principles of respect, honesty and courtesy. Approach landholders with the same respect that you would a potential business partner. Ensure that your personal and written correspondence is appropriate in both tone and content.

Always listen carefully to the landholder and ask them to explain any concerns or misunderstandings they have about your proposed exploration activity. This can be your best opportunity to address these issues at the start of your relationship and is an important opportunity to understand any issues from the landholder's perspective.

Topics for discussion at an initial meeting could include:

- Introduction of all attendees and the company
- Overview of exploration and mining in general (if needed) – use [AMEC NSW Fact sheet - Exploration Explained](#)
- Overview of the exploration program and why the land is an area of interest (maps will assist and are often of interest to landholders)
- Access Agreement – requirements under legislation, format, content, external advice
- Explanation of the proposed exploration techniques – use [AMEC NSW Fact sheet - Exploration Methods](#)
- Farming practises and any biosecurity issues relevant to proposed exploration – may include any sensitive times of the year such as lambing, days of the week and the importance of leaving gates as they were found. Good biodiversity practices may also include washing down vehicles, equipment and boots as well as training, other cleaning procedures and having a record of explorer movements on the property.
- Agreed way forward, including follow-up method and timing of the next discussion, meeting or follow-up.

Appropriate information to take (and leave) at an initial meeting with landholders could include:

- Letter (personal, one page) from the Managing Director or CEO introducing the company, outlining the interest in the land and assurance of respect, honesty, and integrity of all company practises. Examples of letters are in
- **ANNEXURE C: EXAMPLES OF LETTERS FOR LANDHOLDERS**
 Note that to 'start the clock' on the negotiation process under the *Mining Act 1992* (important if negotiations fail and mediation or arbitration is needed), this letter should include the intention of the company to form an access agreement to satisfy the requirements under the *Mining Act 1992*, (Section 142) an access arrangement. Under legislative requirements, this notice must:
 - a) State the explorer's intention by providing written notice.
 - b) Contain a plan and description of the area over which the access is sought sufficient to enable the ready identification of that area, and
 - c) Include a description of the prospecting methods intended to be used in that area and be delivered in accordance with the Act.
- Business card for all attendees

- AMEC Fact Sheets – to provide background and explain exploration for the landholders.
- Draft Access Agreement, including maps etc, for discussion at the initial and/or later meetings.
- Copy of public liability insurance
- Copy of exploration licence.

10. Invest time to build trust

Landholders usually have a wealth of knowledge about the land, previous exploration programs, any local issues in the area and often have a strong interest in the geology. Genuine interest in the land and region is usually appreciated.

Investing time over a cup of tea (with your contribution of the cake) can be an important way to develop a sound working relationship and should always be valued – never be in a hurry when speaking to a landholder and allow plenty of time. It may help to also find a common interest such as sport or gardening.

11. Follow-up promptly and as agreed – do what you say

Ensure that following initial contact, appropriate follow-up is promptly undertaken, as agreed at the first meeting. Provide any further information or answers to queries promptly and appropriately.

This initial follow-up will set the tone for your future working relationship and is an opportunity to display your honesty and reliability for future dealings. This is also an important opportunity to show your company's respect, professionalism and integrity - that you will do what you have said you are going to do within the agreed time.

12. Negotiate the details of land access and compensation

Ensure that landholders fully understand the land access requirements, their roles, responsibilities, and rights to seek external advice. Some landholders may like to sign an agreement promptly, but others may need more time to review and seek legal advice. Ensure that you follow-up any queries and provide full and clear advice as required. It is always important to remember:

***‘The holder of the prospecting title and the landholder of the land concerned.
must negotiate on an access arrangement in good faith.’***

Mining Act 1992, section 142 (2G)

The AMEC NSW Land Access Agreement template is written in plain English and outlines practical conditions, with options, to allow the agreement to reflect the individual needs of the landholder and explorer. The template agreement is a good starting point for negotiating the terms for access, with the following important considerations:

- Ensure that the landholder details and description of the land align with the Title Deed
- Agree on entry details – paths of entry, days, times etc.
- Consider any specific farming protocols or safe biosecurity practices e.g., lambing, wet weather.
- Discuss rehabilitation and expectations on completion of each exploration activity.
- Agree on compensation – see [AMEC NSW Fact Sheet - Compensation](#) for more detail.
- Ensure that the access agreement is appropriately signed to ensure it is a legally binding document as follows:

For a company – companies can execute documents with:

- a) the signatures of two directors, or
- b) the signature of a director and the signature of a company secretary, or
- c) the company seal, or

d) the sole director, who is also the sole company secretary, of a proprietary company.

For a natural person – if the tenure or land is owned by a person, they may sign.

For an agent on behalf of a company (i.e., 'authorised signatory' or 'authorised representative') – the agent needs the following authority:

- a) for signing a contract, it's enough to have a Board Resolution authorising the agent.
- b) for signing a deed, you need to have a power of attorney authorising the agent.

Witness signature/s are recommended although not strictly required for a contract, only a deed. It has become best practice to have *all* signatures of natural persons witnessed. If a dispute arises from an agreement, witnesses may be useful for evidentiary purposes.

If negotiations on an access agreement break down, see further information in section 15 below.

Following completion of an access agreement:

- Ensure all parties have a copy of the fully executed (i.e. signed by all parties) agreement.
- Provide a copy of the agreement to the mortgagee (mortgage lender) within 14 days (this is a requirement of the explorer under the *Mining Act 1992*) - the mortgagee will be noted on the Title Deed
- Confirm next steps - ensure that you provide clear information on who, how and when further contact regarding work onsite will be undertaken.
- Check that the landholder has contact information for company contacts. It is also important to provide the landholder with contact details not only for the Project Manager, but also a head office contact (Managing Director or Community Engagement Manager) in case one is uncontactable, and the landholder has a query or urgent matter.

13. Stay in contact and introduce new visitors

Ensure that as a minimum, you meet expectations such as meeting or calling on time, keeping landholders up to date on exploration progress, and paying compensation promptly. Landholders should always be kept up to date on the results of exploration activities and plans for future programs. Regular meetings or calls should be scheduled to connect and ensure that the working relationship is on track as well as provide an opportunity to flag any issues early.

New site visitors should carry some identification (a letter of authority and/or company identification) and the landholder should always be informed and provided with an opportunity to meet new visitors first, if appropriate. Senior executives visiting the site should make time to meet key landholders when onsite to show respect and the importance of the landholder as an important stakeholder in the project.



Drilling can only occur once a land access is agreed between a landholder and explorer.

14. Ensure rehabilitation and compensation is completed promptly

Proposed rehabilitation methods and timing should be discussed early and compensation, as agreed, should always be paid promptly. See [AMEC NSW Fact Sheet - Rehabilitation](#) for more detail.

Prompt rehabilitation and compensation payments can be an important opportunity to exceed stakeholder expectations (or if delayed without consultation and understanding, can ruin your good working relationship and reputation).

15. Always meet or exceed expectations during each and every contact

Companies should aim to exceed expectations by being a good corporate partner to landholders. This could be through calling if you see something amiss on the property, providing a gift at Christmas or other key times of year or important religious holidays for the landholder, at the end of the exploration program (for example a tree seedling of their choosing for each drillhole).

Longer term exploration programs could also support the wider community through activities such as sponsoring a local sporting team or providing community grants, as appropriate. Ensure that there is equity, transparency, and sound governance in your community support.

16. Maintain contact with landholder and the broader community

Landholders may want regular contact and even to receive company public announcements, but at the least explorers should ensure that landholders are kept up to date with the exploration program. Remember that landholders can access ASX announcements (or may even be a shareholder in your company) so ensure that they are kept up to date and your information on ongoing plans for exploration activity aligns with company public announcements.

Continuity of contact between the key staff in the company and the landholder is important for your working relationship and should be maintained wherever possible.

Ensure you stay up to date with local news and events as they may impact your project planning.

17. Confirm satisfaction after every program

Make time following each exploration program or activity for a senior member of the team to meet with the landholder, confirm their satisfaction and any feedback on the exploration program and rehabilitation as well as provide some information on the next stages of the exploration project and expectations on future access. This is important both to maintain a working relationship and show honesty, transparency, and respect. In NSW, approval from the landholder is required prior to the return or adjustment of your security deposit so this is an opportunity to obtain this signature as required.

18. Maintain records for every contact with every landholder

Ensure that every contact (visit, telephone, email or other written correspondence) with every landholder or their representative by any company representative is always recorded in a correspondence log. ANNEXURE D has a sample template for a landholder contact log.

This is mandatory under the NSW Government's *Exploration Code of Practice: Community Consultation* and is required in the annual Government reporting. Records are invaluable if staff change, or issues arise.

All private and sensitive information should be stored securely and only distributed to employees or contractors as required.

‘Don’t try and pull the wool over our eyes. Be honest, stick to your word and keep the lines of communication open.’

Corey Smith, Farmer

BEYOND NEGOTIATIONS...

A negotiated access agreement is the best outcome and way to start a working relationship with a landholder.

If agreement for access cannot be achieved through negotiation, there is a process detailed in the *Mining Act 1992* that includes mediation, arbitration and potential appeal to the Land and Environment Court of arbitrated decisions, with (most) costs borne by both parties payable by the explorer. This process can take many months and involve significant financial and personnel resources, especially for the explorer.

Some strategies to avoid breakdown of negotiations could include:

- **Check progress of access negotiations and flag any issues early** – Community engagement can make or break exploration programs in NSW and must be strategically prioritised and resourced. Senior management should carefully track the progress of land access negotiations and ensure issues are flagged early and ‘nipped in the bud’ where possible. Senior management should also plan carefully and invest time and resources towards community engagement.



- **Listen** – Ensure that you understand the landholder’s concerns and consider alternatives as appropriate.

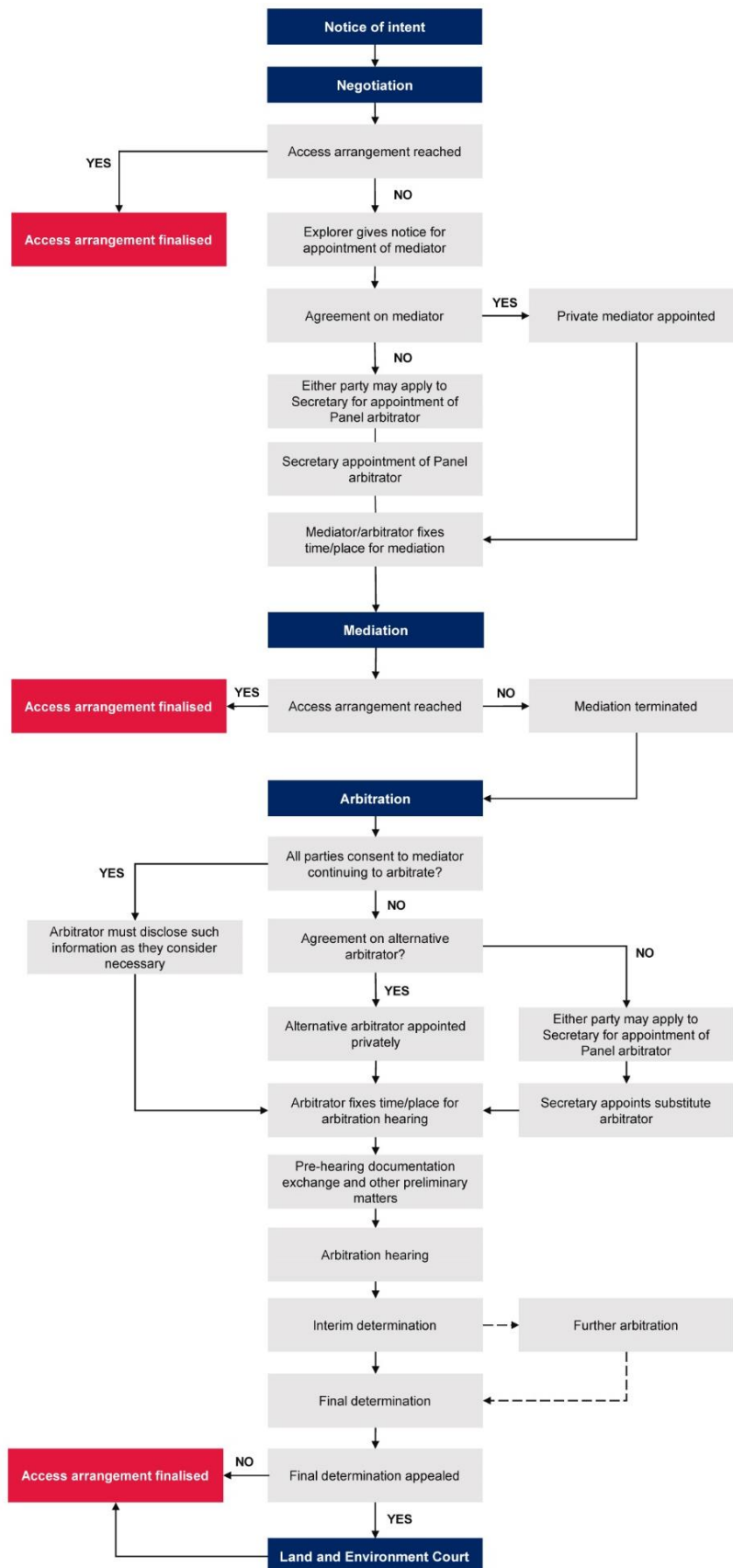
Just like any working relationship, landholders and explorers need to listen to each other to be able to work together.

- **Consider changing personnel managing negotiations** – Issues in negotiations can come down to personalities so a change in personnel acting in negotiations can sometimes help to work through issues. A third party such as a local expert or lawyer could also assist in negotiations.
- **Review access requirements and consider adjusting an exploration program or access** – An exploration program may be able to be amended in scope, timing or location to address a landholder’s concerns.

Further detail on the regulatory process is detailed in the [AMEC NSW Fact Sheet – Regulation Explained](#), with an outline below:

If the parties are not able to negotiate an access arrangement, then mediation/arbitration/review by the Land and Environment Court may be followed (*Mining Act 1992*, sections 139, 143 - 158). The flowchart below shows this process that is then explained below:

Process for land access in NSW (including mediation, arbitration, and review)



Source: Mining Exploration and Geoscience, Department of Regional NSW

Steps for mediation/arbitration/review by the Land and Environment Court:

- If by the end of 28 days after the explorer serves notice in writing on each landholder of the intention to seek access (as above and in section 143) and the parties have been unable to agree, the explorer may, by further notice in writing, request them to agree on the appointment of an arbitrator.
- If by the end of 28 days after this notice the parties cannot agree on the appointment of a mutually acceptable arbitrator, then either party may apply to the Secretary (Executive position in Government) to appoint a member of the Arbitration Panel as an arbitrator using the Government form (AD1⁴).
- The arbitrator is then appointed by agreement or from the Arbitration Panel who fixes a time and date for first conducting **mediation** where their best endeavours are used to bring the parties to settlement. This may include direct or virtual meetings and possibly a visit to site.
- If the parties are unable to agree in mediation, then **arbitration** follows with either the same arbitrator (if agreed by both parties) or another appointment from the Arbitration Panel. The arbitrator must then conduct the arbitration. As soon as possible after the arbitration, the arbitrator must make an interim determination and prepare a draft access arrangement. The interim determination and access arrangement are taken as final if no application is made for reconsideration or variation within 14 days. If a reconsideration or variation is sought by either party, then the arbitrator must continue the hearing and make a final determination. A copy of the final access arrangement determined by an arbitrator must be provided to the Secretary.
- A site inspection may be conducted during mediation or arbitration or both.
- Representation at mediation/arbitration may be by agent or legal practitioner for either party.
- Both parties must participate in the mediation (Section 145A) and arbitration (Section 148) in good faith.
- Direct costs for mediation and arbitration are borne by the explorer. This includes their own costs, the costs of the arbitrator/s and the 'reasonable costs' of the landholder in participating in mediation and arbitration only as determined by the arbitrator. As for negotiation, these costs will 'have regard to' the time spent participating in the mediation and arbitration, legal costs, and expert costs, as well as whether or not the landholder acted 'unreasonably'. Payment of the costs is not required unless documentary evidence is provided by the landholder (Clause 39F, Mining Regulation). The maximum amount of reasonable costs for mediation and/or arbitration may be set out by order published in the Gazette (but to date has not been set).
- Further information on arbitration including the Arbitration Procedures is available from Government and in the *Land Access Arbitration Procedure*⁵. Note that this document prescribes how notices under the Act must be delivered to the landholder.
- Further review of the determination may be sought from the **Land and Environment Court** by 'any party who is aggrieved by an arbitrator's final determination' (section 155(1)). The explorer must pay the 'reasonable costs' of the landholder in a review in the Land and Environment Court (section 155(8)).

⁴ <https://meg.resourcesregulator.nsw.gov.au/mining-and-exploration/applying-to-explore-and-mine-nsw/mining-act-1992-forms>

⁵ <https://meg.resourcesregulator.nsw.gov.au/mining-and-exploration/land-access/mediation-and-arbitration>

REFERENCES

Legislation - <https://www.legislation.nsw.gov.au/>

AMEC NSW Toolkit - <https://amec.org.au/jurisdiction/nsw/>

NSW Government information - <https://www.resourcesandgeoscience.nsw.gov.au/>

NSW Government on land access (includes information, fact sheets, information on mediation and arbitration, template agreement, airborne surveys) - <https://meg.resourcesregulator.nsw.gov.au/mining-and-exploration/land-access>

NSW Government land access template – <https://meg.resourcesregulator.nsw.gov.au/mining-and-exploration/land-access>

NSW Government *Land access arbitration procedure* - <https://meg.resourcesregulator.nsw.gov.au/sites/default/files/2022-11/land-access-arbitration-procedure.pdf>

ANNEXURE A: NATIVE TITLE, ABORIGINAL CULTURE AND HERITAGE EXPLAINED

NATIVE TITLE, ABORIGINAL CULTURE AND HERITAGE AND ABORIGINAL LANDS

Native title is the recognition in Australian law that some Aboriginal and Torres Strait Islander people hold rights to their lands and waters which come from their traditional laws and customs. Native title is protected by the Commonwealth legislation *Native Title Act 1993* and associated legislation in Australia⁶. Further information on native title is available at <http://www.nntt.gov.au/furtherinformation/Pages/Mining-and-Exploration.aspx>

Native title may exist in areas including:

- vacant (or unallocated) Crown land
- State Forests and National Parks
- parks and public reserves
- beaches
- some leases (such as non-exclusive pastoral leases)
- land held by government agencies.
- some land held for Aboriginal and Torres Strait Islander communities, and
- oceans, seas, reefs, lakes, rivers, creeks, and other waters that are not privately owned.

Under the legislation, the grant of property and other interests in land by the Government can be inconsistent with native title, therefore 'extinguishing' native title. The most common extinguishing acts in NSW are previous exclusive possession acts. This includes certain, valid acts that took place on or before 23 December 1996 and can include:

- the grant of a freehold estate
- the granting of a 'lease in perpetuity' under section 23(A) of Western Lands Act 1901 (NSW) for grazing purposes
- the construction or establishment of a public work, or
- a "Scheduled Interest" for New South Wales as listed in Schedule 1 of the *Native Title Act 1993*.

Further guidance and information on extinguishment and the right to negotiate is available at <https://www.resourcesregulator.nsw.gov.au/meg.site/mining-and-exploration/native-title>

Aboriginal culture and heritage refer to the sites, places, objects, and stories that relate to Aboriginal life both past and present and in NSW is regulated by the *National Parks and Wildlife Act 1974* (currently under review). Land, objects, or sites may be of cultural value regardless of whether native title exists or whether the land is freehold, Crown land or otherwise.

In NSW regulation for Aboriginal culture and heritage, offences for unlawfully impacting Aboriginal objects, whether or not the person knows it is an Aboriginal object, have significant financial and gaol penalties for both individuals and companies. The general *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*⁷ or the industry specific *NSW Minerals Industry Due Diligence Code of Practice for the Protection of Aboriginal Objects*⁸ provide guidance and a due diligence procedure to satisfy the requirements of this Act.

Note that due diligence, as detailed in the Code of Practice, should be exercised prior to any activity that may disturb the surface.

Aboriginal land is land that has been vested in an Aboriginal Land Council through the process detailed in the *Aboriginal Land Rights Act 1983*. Some Aboriginal Land Councils have significant landholdings.

⁶ <http://www.nntt.gov.au/Information%20Publications/Native%20Title%20an%20overview.pdf>

⁷ <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Aboriginal-cultural-heritage/due-diligence-code-of-practice-aboriginal-objects-protection-100798.pdf>

⁸ <https://assets-us-01.kc-usercontent.com/b1c065f0-3877-009c-39ba-a9df6fc06e39/56ed6185-f3a8-4c86-9c20-49b66e166a0c/1009%20NSWMC%20Due%20Diligence%20Code%20of%20Practice%20FINAL%20Sep2010.pdf>

ANNEXURE B: ACCESS TO 'THE STATE OF NSW' LAND

'THE STATE OF NSW' LAND MAY INCLUDE CROWN LAND, STATE FORESTS ETC

If the Land Title Deed notes the owner of the land as 'The State of NSW', the land is owned by NSW Government and known as Crown land. Access to Government owned land for mineral exploration is generally a two-stage process:

- **Stage 1 - Negotiate access** - Contact Crown Land, Forestry Corporation etc as appropriate to seek access, just as you would for a private landholder where they are a 'landholder' for the purpose of the *Mining Act 1992*.
- **Stage 2 - Obtain 'Minister's Consent' (if required)** - Required before exploration activities can be undertaken in State Conservation Areas that is within an 'exempted area' or land in other 'exempted areas' unless an access arrangement applies to the land.
- **Stage 3 – Consider Native title** - If native title has not been extinguished in the Crown land, the Right to Negotiate may need to be completed.

Note that the stages of negotiating access, native title and seeking Minister's Consent may be undertaken simultaneously to reduce time before exploration may commence. The stages are described below but professional advice may be needed.

STAGE 1 – ACCESS AGREEMENT

For exploration, access to Crown land requires agreement with the landholder. For 'The State of NSW' land, this means that the explorer may need to negotiate access with lease or licence holders of Crown land, Forestry Corporation, other Government agencies as well as native title holders.

'Landholder' is clearly defined in the *Mining Act 1992* and in relation to an exempted area, is the controlling body for that land. In relation to other land, includes owners in fee simple, native title holders as well as holders of a lease, licence, or continued tenure (within the meaning of Schedule 1) under the *Crown Land Management Act 2016*. 'Secondary landholders' include a person in any registrar or record kept by the Registrar-General as having an interest in the land other than a mortgagee in possession of the land, lessee as well as a Minister or public authority having an interest in the land under a conservation, natural heritage or biobanking agreement. Land access arrangements are not required to be negotiated with 'secondary landholders' but they are eligible for compensation (*Mining Act 1992* Division 1, section 262-3).

Access to Crown Land

Crown land covers over 40% of NSW and may be leased for farming or other purpose, set aside by the Government as a State Conservation or Forestry area and compliance with native title is required.

If access to Crown land is required for exploration, the company will need to negotiate access arrangements with Crown Land of NSW or relevant land management authority – further information at <https://www.crownland.nsw.gov.au/>. Information on access for exploration or 'prospecting' is available at <https://www.crownland.nsw.gov.au/resources/prospecting>, including detail on the contact regarding access arrangements.

Generally, Crown Land of NSW provides the company with a draft access agreement for consideration. Crown Land of NSW and AMEC continue to consult on an updated template access agreement.

If Crown land is leased for farming with exclusive possession, then the explorer may need to negotiate a land access agreement with the holder of the lease or tenant depending on the detail of the lease or licence. Crown Lands can provide advice on requirements. Compensation may be payable but should only be payable once to either Crown Land of NSW or the lessee.

Access on State Forests

If exploration access in State Forests is required, the company needs to complete access arrangements with Forestry Corporation of NSW - further information at www.forestrycorporation.com.au or through contacting the office local to the exploration.

Generally, the Forestry Corporation provides the company with a draft access agreement for consideration. Forestry Corporation and AMEC continue to consult on a template access agreement.

STAGE 2 – CONSENT FROM THE MINISTER TO EXPLORE ON ‘EXEMPTED AREAS’ (IF REQUIRED)

The Minister’s consent is required before exploration activities can be undertaken in State Conservation Areas within an ‘exempted area’ or land in other in other ‘exempted areas’ unless an access arrangement applies to the land.

Further information on the application process for exempted areas is available at <https://www.resourcesregulator.nsw.gov.au/rehabilitation/exploration/exempted-areas-consent>.

As background, ‘exempted areas’ are defined in the *Mining Act 1992* as an area constituted by land:

- a) reserved, dedicated, appropriated, resumed or acquired for public purposes (except land reserved for a temporary common or a commonage), whether vested in the Crown or in any person as trustee for public purposes, or
- b) held under a lease for water supply by virtue of a special lease or otherwise, or
- c) transferred, granted, or vested in trust by the Crown for the purpose of a racecourse, cricket-ground, recreation reserve, park or permanent common or for any other public purpose, or
- d) prescribed by the regulations for the purposes of this definition.

Note that the terms ‘exempt activities’ and ‘exempt development’ are also used in NSW minerals exploration and refer to different activities.

STAGE 3 – CONSIDER NATIVE TITLE

An explanation of native title, Aboriginal cultural heritage and Aboriginal lands can be found above at

ANNEXURE C: EXAMPLES OF LETTERS FOR LANDHOLDERS

In most cases, if native title is assessed to have not been extinguished in relation to an area of land, then the Right to Negotiate process will likely need to be completed.

Further guidance and information on evidence for extinguishment of native title and the right to negotiate is available at <https://www.resourcesregulator.nsw.gov.au/meg.site/mining-and-exploration/native-title>.

EXAMPLES OF PROCESS

1. An explorer needs to gain access for exploration in a State Forest

- The explorer carried out a Title Search and determined that the land was owned by State of NSW and leased to Forestry Corporation.
- The explorer contacted Forestry Corporation at the regional office local to the exploration site and negotiated an access agreement.
- They also researched the status of the land and discovered native title had been extinguished in the past due to previous freehold ownership (exclusive possession).
- The explorer provided Government with an extinguishment report for the area to demonstrate the extinguishment of native title.

2. An explorer needs to access to Crown land that is leased to a farmer.

- The explorer carried out a Title Search and discovered the land was owned by State of NSW with some mention of a lease.
- They contacted Crown Land to find out more detail about the land, who determined a lease was currently held by a neighbouring farmer.
- They contacted the farmer to negotiate an access agreement.
- They also researched the status of the land and discovered native title had been extinguished in the past due to previous freehold ownership (exclusive possession).
- The explorer provided Government with an extinguishment report for the area to demonstrate the extinguishment of native title.

3. An explorer needs access to a block of Crown land over old mining leases.

- The explorer carried out a Title Search and discovered the land was owned by State of NSW.
- They contacted Crown Land for more information about the land and discovered that the land has always been in the possession of Crown Land.
- They negotiated a land access agreement with Crown Land.
- They also researched the status of the land through Parish maps and discovered native title had not been extinguished in the past as the block had never been sold by the Government, and exclusive possession has not occurred, and so native title has not been extinguished.
- The explorer commenced the Right to Negotiate process through application to Government.

4. An explorer needs access to a road for drilling.

- The explorer carried out a Title Search and discovered the land was owned by State of NSW.
- They contacted Crown Land for more information about the land and discovered that the land has always been in the possession of Crown Land.
- They negotiated a land access agreement with Crown Land.
- They also researched the status of the land through Parish maps and discovered native title had not been extinguished in the past as the block had never been sold by the Government, and exclusive possession has not occurred, and so native title has not been extinguished.
- The explorer commenced the Right to Negotiate process through application to Government.

ANNEXURE C: EXAMPLES OF LETTERS FOR LANDHOLDERS

The following provides some examples of information and wording that could be included in initial letters to landholders for a fictional company, ABC Mining Limited. Information noted as XXX or in the square brackets [...] indicates information that needs to be tailored to your project.

Example 1: Wording for initial introductory letter to landholder prior to/at an initial meeting

Dear Landholder [or preferably name of landholder e.g., Mr and M/s XXX]

INTRODUCTION TO ABC MINING LIMITED AND MINERAL EXPLORATION

ABC Mining Limited has recently been granted a mineral exploration licence (Exploration Licence or EL XXXX) that includes your property at XXX [name and address of property].

Minerals in NSW are generally owned by the Government and excluded from property deeds. Mineral exploration is the scientific process of investigating the mineral potential of an area. Exploration licences are granted by the NSW Government to explore for minerals under strict environmental conditions and hold a substantial security deposit. Mineral exploration does not permit mining and the chances of a discovery are rare – it has been estimated that 1:10,000 areas of interest (or prospects) are ever mined.

ABC Mining is XXX [few words about your company e.g., an exploration company with a ten-year history exploring for gold and copper in Central Western NSW]. Initially, ABC would like to commence mineral exploration on your land with a geologist accessing the areas of interest and possibly collecting small (around one to two kilogram) soil and/or rock chip samples that will be sent to a lab for chemical analysis. Further activities will depend on the results of these assessments but could include geophysical assessments or drilling. Please be assured that ABC operates with courtesy and consideration for the land and landholders and any surface disturbance will be fully rehabilitated, noting that this is also a requirement by Government.

Access arrangements are needed between explorers and landholders prior to any on the ground exploration. The *Mining Act 1992* provides that where access arrangements cannot be reached by agreement, they may be determined by an arbitrator.

I would like to introduce XXX [name of person/s and job titles] who will represent ABC but please do not hesitate to contact me or XXX if you have any queries or concerns.

We look forward to working with you.

Yours sincerely

[signature]

MD/CEO name and details

[on company letterhead with a signature by the CEO/MD]

**Example 2: Wording for a notice to form an access agreement
(officially ‘starts the clock’ for the mediation/arbitration process if needed)**

Dear Landholder [or preferably name of landholder e.g., Mr and M/s XXX]

NOTICE OF INTENTION FOR ABC MINING TO FORM AN ACCESS AGREEMENT FOR MINERAL EXPLORATION IN ACCORDANCE WITH SECTION 142 OF *MINING ACT 1992*

ABC Mining Limited has recently been granted a mineral exploration licence (Exploration Licence or EL XXXX) over your property at XXX [name and address of property].

Minerals in NSW are generally owned by the Government and excluded from property deeds. Mineral exploration is the scientific process of investigating the mineral potential of an area. Exploration licences are granted by the NSW Government to explore for minerals under strict environmental conditions and hold a substantial security deposit. Mineral exploration does not permit mining and the chances of a discovery are rare – it has been estimated that 1:10,000 areas of interest (or prospects) are ever mined.

Access arrangements are needed between explorers and landholders prior to any on the ground exploration. The *Mining Act 1992* provides that where access arrangements cannot be reached by agreement, they may be determined by an arbitrator. The *Mining Act 1992* provides 28 days for negotiation for an access agreement prior to the initiation of the arbitration process.

Our company would like to initiate negotiations to form an access agreement to permit access for exploration on your land. Please accept this letter as a notice of this intention, as required by Section 142 of the *Mining Act 1992*. As part of this notice, please find attached:

- Draft Access Agreement that we can tailored by negotiation.
- Map or plan of the exploration licence and your land to show where access is sought.
- Description of exploration methods noted in the Draft Access Agreement and described in the accompanying fact sheet.

ABC Mining is XXX [few words here about your company e.g., mineral exploration company with ten-years’ experience in exploration in the Central West]. Please be assured that ABC operates with courtesy and consideration for the land and landholders and any surface disturbance will be fully rehabilitated, noting that this is also a requirement by Government.

XXX [name of person/s and job titles] will be in contact in the next two weeks to discuss this matter further and please do not hesitate to contact me or XXX if you have any queries or concerns.

We look forward to working with you.

Yours sincerely

[signature]

MD/CEO name and details

[on company letterhead with a signature by the CEO/MD]

Note that this letter needs to be delivered in accordance with the Mining Act 1992 – sent by Express post in the correct form is one method.

**Example 3: Wording for a notice to agree on the appointment of an arbitrator
(officially commences the mediation/arbitration process if needed)**

Dear Landholder [or preferably name of landholder e.g., Mr and M/s XXX]

NOTICE OF INTENTION FOR ABC MINING TO REQUEST TO AGREE ON THE APPOINTMENT OF AN ARBITRATOR FOR MINERAL EXPLORATION IN ACCORDANCE WITH SECTION 143 OF *MINING ACT 1992*

ABC Mining Limited has recently been granted a mineral exploration licence (Exploration Licence or EL XXXX) over your property at XXX [name and address of property].

Minerals in NSW are generally owned by the Government and excluded from property deeds. Mineral exploration is the scientific process of investigating the mineral potential of an area. Exploration licences are granted by the NSW Government to explore for minerals under strict environmental conditions and hold a substantial security deposit. Mineral exploration does not permit mining and the chances of a discovery are rare – it has been estimated that 1:10,000 areas of interest (or prospects) are ever mined.

Access arrangements are needed between explorers and landholders prior to any on the ground exploration. The *Mining Act 1992* provides that where access arrangements cannot be reached by agreement, they may be determined by an arbitrator. The *Mining Act 1992* provides 28 days for negotiation for an access agreement prior to the initiation of the arbitration process.

Our company sought negotiations to form an access agreement to permit access for exploration on your land, including our XXX (summary of correspondence e.g. letters dated XX as well as emails and phone calls on xxx).

As it has been more than 28 days since our letter dated XX to initiate an agreement in accordance with Section 142 of the *Mining Act 1992*, please accept this letter as a notice of this intention to request your agreement on the appointment of an arbitrator, as required by Section 143 of the *Mining Act 1992*. If we are unable to agree on the appointment of an arbitrator within 28 days, then either of us may apply to the Government to appoint a member of the Arbitration Panel.

As previously, we would prefer to form an agreement through negotiation and so please again find attached:

- Draft Access Agreement that we can tailored by negotiation.
- Map or plan of the exploration licence and your land to show where access is sought.
- Description of exploration methods noted in the Draft Access Agreement and described in the accompanying fact sheet.

ABC Mining is XXX [few words here about your company e.g., mineral exploration company with ten-years' experience in exploration in the Central West]. Please be assured that ABC operates with courtesy and consideration for the land and landholders and any surface disturbance will be fully rehabilitated, noting that this is also a requirement by Government.

XXX [name of person/s and job titles] will be in contact in the next two weeks to discuss this matter further and please do not hesitate to contact me or XXX if you have any queries or concerns.

We look forward to working with you.

Yours sincerely

[signature]

MD/CEO name and details

[on company letterhead with a signature by the CEO/MD]

Note that this letter needs to be delivered in accordance with the Mining Act 1992 – sent by Express post in the correct form is one method.

ANNEXURE D: TEMPLATES FOR CORRESPONDENCE

Every contact (visit, telephone, email, or other written correspondence) with every landholder or their representative by any company representative should be recorded in a correspondence log. This is mandatory under the NSW Government's *Exploration Code of Practice: Community Consultation* and is required in the annual Government reporting.

The following is a template for a Correspondence log that may be adapted tailored for your operations.

All private and sensitive information should be stored securely, only distributed to employees or contractors as required and protected from publication as part of mandatory reporting.

Log for correspondence – LANDHOLDER XXX

PRIVATE AND CONFIDENTIAL

Landholder name: _____

Preferred contact: mobile/home/work/email/fax time: anytime/workdays/workhours/evening only
(Circle as appropriate)

Other key details: _____
(Include ownership, sensitivities, or other details important for the landholder)

Date	Corro (call/email/other)	By (company)	To (landholder)	Outline of communication	Follow-up needed?
eg 3Aug 23	email	Gus	Charlotte Mac	Confirmed new date (20 Aug) for start of RC program in bottom paddock + program will take 2-3 weeks. Charlotte acknowledged email and will be at home at 7am that morning to meet the Chief Geo (Cleo) and the drilling team.	Cleo to call on day prior to start (19 Aug) to confirm

ANNEXURE E: AMEC FACT SHEETS AND ACCESS TEMPLATE

AMEC Fact Sheets provide clear information on land access written in plain English to assist landholders and the wider community understand exploration.

The *AMEC Land Access Arrangement Template for Mineral Exploration* is a clear template agreement that may be used to initiate an access agreement. Access arrangements must always be individually negotiated and tailored to the needs of the landholder, explorer, and the exploration program.

Both the AMEC Fact Sheets and Template Agreement are available as separate documents at <https://amec.org.au/jurisdiction/nsw/> but included in the following pages for completeness:

- AMEC NSW Fact Sheet – Exploration Explained
- AMEC NSW Fact Sheet – Exploration Methods
- AMEC NSW Fact Sheet – Rehabilitation for Exploration
- AMEC NSW Fact Sheet – Compensation Guide
- AMEC NSW Fact Sheet – Regulation for Land Access in NSW
- AMEC NSW Fact Sheet – Frequently Asked Questions
- AMEC NSW Land Access Agreement Template for Mineral Exploration



Clear information and communication between landholders and explorers are needed for every step of an exploration program.

EXPLORATION EXPLAINED

AUGUST 2023

Minerals in NSW are generally owned by the State and excluded from property deeds. Mineral exploration is the scientific process of investigating the mineral potential of an area. Exploration licences are granted by the NSW Government to explore for minerals under strict conditions. Access arrangements are needed between explorers and landholders prior to any exploration on the ground. This fact sheet provides an overview of exploration and land access in NSW.

This fact sheet is based on current NSW legislative requirements and common practice only and is not applicable in other States or Territories. This fact sheet provides AMEC members with information to assist them to develop land access arrangements, each of which must be tailored to accommodate the individual needs of the landholder and explorer. This guide provides general information but does not constitute legal advice and the information should always be confirmed for currency.

WHAT IS EXPLORATION? IS IT MINING?

Exploration is the scientific process of investigating the mineral potential of the ground. Exploration is not mining, nor a guarantee that mining will ever occur.

Exploration is highly speculative, with estimates that only one in 10,000 areas of interest (prospects) will ever be mined.

Minerals in NSW, such as gold and silver, are generally owned by the State and excluded from property deeds. Exploration is led by geologists who gather information through a range of scientific methods to assess the economic potential of minerals.

Each stage of exploration is dependent on the results from the previous stage. New thinking and techniques as well as changing commodity prices can mean that old areas of interest (or prospects) can be of interest to new explorers.



Early exploration often involves a geologist walking the ground observing the rocks.

EXPLORATION LICENCES ARE GRANTED BY NSW GOVERNMENT TO EXPLORE ONLY

Exploration licences are granted by the NSW Government to explore for a group of minerals generally for a period of up to six years initially and may cover hundreds of square kilometres.

Exploration licences have strict conditions and requirements that align with legislative requirements of the *Mining Act 1992* and other associated legislation. Specific conditions in exploration licences protect the community and environment, such as the requirements to rehabilitate all exploration sites and to engage with the community prior to any activity.

Before an Exploration Licence is granted, the applicant needs to demonstrate financial capability and technical competence in addition to a plan of work. A detailed report on the completed work must be submitted to the NSW Government at every anniversary (or year) of a licence. Further assessment and approval of proposed activities are required by the NSW Government before any ground-disturbing activities can be undertaken.

The explorer also provides the NSW Government with a substantial security deposit (minimum of \$10,000) prior to the grant of the exploration licence. The amount of the security deposit is re-considered with every exploration activity assessment by the Government, with additional security often provided prior to activity approval. The security deposit is only returned to the explorer following successful completion of the requirements of the licence, including full rehabilitation of any disturbance of the surface of the land.



Diamond drilling (similar to water bore drilling) is one of the most advanced forms of exploration.

EXPLORATION IS INVESTIGATION, NOT MINING

Exploration licences only allow the licence holder to explore for minerals.

Exploration does not permit mining, nor does it guarantee that mining will ever be approved.

Economically recoverable mineral resources are rarely discovered. If there is the potential for a mine to be developed, the proposal undergoes rigorous assessment through multiple levels and sectors of Government that involves a series of stages. The period between finding a deposit and starting a mine normally takes many years. The last new mine in NSW opened more than ten years after the mineral discovery.

EXPLORATION IS GENERALLY SHORT TERM AND LOW IMPACT

Exploration is a scientific process that is initially conducted over large areas and becomes more focused and intense where potential mineral resources are identified. Each stage of exploration is dependent on the results of the previous stage. Exploration may include:

Early stage or reconnaissance exploration: Following detailed analysis of previous exploration reports and available data, early exploration may include low impact on the ground and/or airborne surveys. Early work on the ground generally involves a geologist walking the ground to look at rock outcrops and make notes and a map of the geology. This may involve vehicle access to a property, taking and recording measurements and walking across the areas, as well as the collection of small samples from rock outcrops, soil, or stream sediments (around one kilogram per sample) for chemical analysis. Early exploration can also include airborne surveys involving low flying helicopters or light aircraft fitted with instruments flying in a grid pattern.

Follow-up investigations: Areas of interest identified in the early exploration may require follow-up investigation. This may involve collecting soil or rock samples in a survey grid, geophysical surveys using (usually hand-held) electronic instruments or more detailed airborne surveys.

Drilling: The next stage of exploration would usually involve drilling. Exploration drilling may be shallow to bring up rock chips for chemical analysis or deeper to bring up a core of rock. Depending on the type of drilling, drill rigs may be mounted on a ute or larger rigs similar to water bore drill rigs.



Soil sampling is a common follow-up exploration technique.

EXPLORERS NEED TO FORM AN AGREEMENT PRIOR TO ACCESSING THE LAND

Explorers must enter into a land access agreement with the landholder before exploring on their land. Landholders may not veto exploration although certain areas are protected including principal residences and significant improvements such as dams. Access arrangements must be negotiated and in place before exploration can commence. Legal and expert advice may be sought to assist in the negotiation process with mediation and arbitration available if an agreement cannot be reached by negotiation. Reasonable costs of the landholder in participating in negotiating the access arrangement are payable by the explorer.

The land access agreement details the conditions on which an explorer will access the land and any compensation payable. All access arrangements should be based on the understanding that explorers are 'guests' on private land and an appreciation by landholders of the needs and rights of mineral explorers.

Courtesy, honesty, and respect go far to build trust and effective working relationships between explorers and landholders.

To assist landholders and explorers to understand their rights and negotiate a land access agreement, the template *AMEC NSW Land Access Arrangement for Mineral Exploration* is a streamlined, user-friendly version of the NSW Government template that was updated in 2021. AMEC has sought to update this template to ensure it aligns with the current legislative requirements as well as provide additional guidance to assist explorers and landholders reach an agreement. The AMEC template and the accompanying information are written in plain English and outline practical conditions, with options, to allow the agreement to reflect the individual needs of both the landholder and explorer.



Explorers need to form an agreement prior to accessing land.

COMPENSATION MAY BE PAYABLE TO THE LANDHOLDER

Landholders are entitled to compensation for 'compensable loss' as defined in the *Mining Act 1992*. This compensation is payable for loss caused by damage, severance or deprivation of the land from exploration activities. Compensable loss should always be negotiated between the explorer and landholder using 'just and fair' principles. The compensable loss is dependent on, amongst other things, the value of the land, improvement of the land, time of land deprivation, and the area of land disturbed. Compensation may be monetary but may also be in kind, for example, repair of a fence or a track.

RIGHTS AND RESPONSIBILITIES OF EXPLORERS

Explorers have important rights and responsibilities in the exploration process including:

- Explore for minerals.
- Undertake the proposed program of exploration detailed in the exploration licence.
- Ensure that access arrangements, including compensation, are negotiated in good faith with the landholder before exploration can commence.
- Advise the landholder of changes to the onsite management or any proposed activity in the exploration program.
- Minimise damage to the landholder's property and promptly rehabilitate the land after exploration activities are completed.
- Respect landholders and liaise with them with fairness and in good faith.

RIGHTS AND RESPONSIBILITIES OF LANDHOLDERS

Landholders have important rights and responsibilities in the exploration process including:

- Negotiate an agreement for access before exploration commences in good faith.
- Advise the exploration licence holder of a change in land ownership or management.
- Work with the explorers and liaise with fairness and in good faith.

REFERENCES

Legislation - <https://www.legislation.nsw.gov.au/>

NSW Government information - <https://www.resourcesregulator.nsw.gov.au/meg.site>

AMEC NSW Toolkit - <https://amec.org.au/jurisdiction/nsw/>

Images courtesy of AMEC members.

Prepared by Association of Mining and Exploration Companies Inc (AMEC)

AMEC is a leading national minerals industry body representing over 500 member companies across Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses and services working in and for the minerals industry. AMEC represents a growing number of companies exploring, mining, and investing in NSW.

Disclaimer: This guidance is intended to provide summary information only. It does not intend to be comprehensive or to provide specific legal advice. In consideration of the changing nature of legislation, regulations, program rules and guidelines, there is a potential for inherent inaccuracies and potential omissions in information contained in this document. All information in this document is provided "as is" with no guarantee of completeness or accuracy and without warranty of any kind, express or implied. In no event will the Association of Mining and Exploration Companies Inc, any related members, consultants or employees thereof be liable to anyone for any decision made or action taken in reliance on the information in this document or for any consequential damages.

EXPLORATION METHODS EXPLAINED

AUGUST 2023

Mineral exploration is a scientific process, with each step dependent on the results of the previous activities. This fact sheet provides a description of the common exploration techniques in plain English to explain these scientific activities for the wider community.

This fact sheet is based on current NSW legislative requirements and common practice only and is not applicable in other States or Territories. This fact sheet provides AMEC members with information to assist them develop land access arrangements, each of which must be tailored to accommodate the individual needs of the landholder and explorer. This guide provides general information but does not constitute legal advice and the information should always be confirmed for currency.



Exploration is a scientific process of investigating the mineral potential of the ground.

MINERAL EXPLORATION IS A SCIENTIFIC PROCESS, WITH EACH STAGE DEPENDENT ON THE RESULTS OF THE PREVIOUS STAGE

There are a range of activities that may be undertaken as part of an exploration program. These activities are dependent on a number of factors, including the nature of the mineral being sought and the geology of the area. Exploration generally progresses from low impact activities before progressing to more intense and costly activities like drilling.

AMEC has produced a video to show some of these exploration activities – available at <https://amec.org.au/jurisdiction/nsw/>

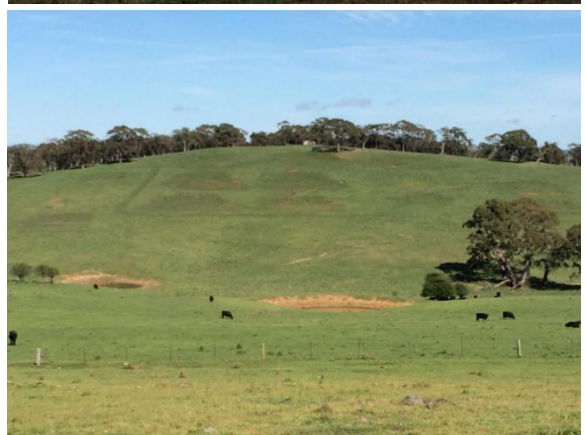
SECURITY DEPOSITS, GOVERNMENT APPROVAL, AND FULL REHABILITATION IS REQUIRED FOR ALL SURFACE DISTURBING ACTIVITIES

The NSW Government holds a substantial security deposit (minimum of \$10,000) over every exploration licence.

Exploration activities that disturb the surface of the ground (apart from very low impact activities such as walking the ground) require separate application and approval by the NSW Government.

Strict conditions are applied to all activity approvals. Full rehabilitation is an important requirement for all surface disturbing activities. As part of the assessment for all surface disturbing activities in exploration, the security deposit for the exploration licence is assessed and adjusted to ensure that the Government holds the full cost of rehabilitation for each activity. Before the security deposit is released, the Government must determine that full rehabilitation has been completed.

The Government security deposit is only returned to the explorer following successful completion of the requirements of the exploration licence including full rehabilitation of any disturbance of the surface of the land and approval by the landholder.



Before and after - full rehabilitation is a requirement for all exploration activities that disturb the surface.

EXPLANATION OF COMMON EXPLORATION TECHNIQUES

– LOW IMPACT

Low impact exploration activities may include, but are not limited to:

GEOLOGICAL MAPPING

Geological mapping is typically undertaken by a geologist walking over the ground of interest. Geologists observe the location, orientation, and characteristics of the rocks or sediments exposed at the land's surface. This information can then be used to prepare a geological map of the exploration area, recording the rock types and structures.



Geological mapping is a common form of initial on the ground exploration.

GEOCHEMICAL SURVEYS

Geochemical surveys are undertaken to target areas for further exploration. The surveys usually involve the collection of samples of soils, rock and/or sediments. These samples are sent for laboratory analysis to identify areas of potential mineralisation.

The geochemical surveys could include:

Soil sampling – is undertaken usually using hand-held tools such as shovels, picks, and hand augers to collect samples of soil and subsoil. Samples are typically collected on a regular grid pattern and involve collection of small (approximately one kilogram) samples of soil. Power augers, either hand-operated or vehicle-mounted, may also be used. Holes excavated during the program are typically backfilled and vegetation replaced immediately following sampling.

Stream sediment sampling – involves the collection of approximately two-kilogram samples of sediment within drainage lines. Three samples are usually taken at the junction of two creeks: one downstream of the junction and two upstream of the junction (in each of the merging drainage lines). Samples are typically extracted using hand tools and may be sieved during collection.

Rock chip sampling – typically involves collecting up to a few kilograms of rock material using hand-held tools. Rock chip samples may be collected during geological mapping programs.



Soil sampling involves collection of approximately 1kg samples and is usually undertaken using handheld tools. Over a grid that is measured using a handheld GPS, a shovel is used to dig a shallow hole, then soil is checked with a handheld XRF. A small (1kg) sample is then collected and sent for laboratory analysis.

EXPLANATION OF COMMON EXPLORATION TECHNIQUES

– MEDIUM/HIGHER IMPACT

GEOPHYSICAL SURVEYS

Geophysical surveys assist in identifying different rock types and can help identify resources. Geophysical surveys aim to detect various physical properties such as the magnetism below the surface of the Earth, or its response to electricity, vibration, or magnetism in different forms. Different geophysical surveys measure various physical properties of the Earth and any mineral deposits using various applications and equipment. Geophysical surveys can be conducted from the air, on the ground, or down drill holes.

Airborne surveys

Airborne geophysical surveys – may comprise magnetic, radiometric, gravity, or electromagnetic surveys. These surveys provide general geological information over an area and are often used in the initial stages of exploration. These surveys can be undertaken using drones, low flying helicopters, or light aircraft which fly in a grid pattern. The instruments may be either mounted inside the aircraft or towed underneath. Depending on the type of survey, the aircraft may fly between 25 and 60 metres above the ground, with flight lines spaced between 25 and 200 metres apart. Landholders are notified when the survey will be taking place by advertisement in a local newspaper or similar.



Airborne geophysical surveys may be used to identify different rock types.

Ground-based surveys



Ground based geophysical surveys may be undertaken with hand-held instruments.

Seismic surveys - measure variation in reflected ground vibration as it passes through the Earth. The surveys use an energy source to create the high frequency vibrations, which can be truck-mounted vibrating weights or a simple hammer hit depending on the scale of the survey. Small sensors are linked by cables and spread on either side of the source to detect and relay the vibrations as they return to the surface. Seismic surveys provide information about rocks down to depths of several kilometres and are particularly suited to flat-lying sedimentary basins.

Induced Polarisation (IP) surveys – use any electric field in the ground and measures the chargeability and resistivity of the subsurface. The technique can identify differences in resistivity from aquifers, metallic minerals, and stratigraphy. Readings are taken by a small crew who shift a ground array of transmission and receiver cables. They are most often used in metallic mineral exploration.

Radiometric surveys - measure gamma rays that are naturally emitted from the Earth by the natural decomposition of some

common radiogenic minerals. The surveys focus on recording the isotopes of potassium, thorium, and uranium. Generally, most gamma rays emanate from the top 30 centimetres of rock or soil and can be detected by airborne surveys or on surface rocks using a hand-held spectrometer. They are most often used in metallic and industrial mineral exploration.

Magnetic surveys - measure the variations of the Earth's magnetic field due to the presence of magnetic minerals. Subtle variations in the abundance of magnetic minerals are used to interpret rock types and can assist in identifying mineral resources. These surveys are typically undertaken by a geophysical technician on foot carrying a magnetometer and a sensor on a pole. They are most often used in metallic mineral exploration.

Gravity surveys - the gravity field is measured with a gravimeter to determine variations in rock density in the Earth's crust. Ground gravity surveys require a geophysical technician to take gravity measurements at set intervals and record the precise height at each location. The recording sites can be accessed by vehicle or helicopter, depending upon remoteness. They are used in mineral and energy exploration.

Electromagnetic (EM) surveys - induce an electromagnetic field and measure the three-dimensional variations in conductivity within the near-surface soil and rock. Conductive rock units can be studied to locate metallic minerals and to understand groundwater and salinity. Ground readings are taken by a small crew who shift a ground array of transmission and receiver cables.

Downhole geophysical surveys - utilise completed or partially completed drill holes to allow access for geophysical tools. These tools may be used to detect variations in the magnetic, radiometric, or electrical character of the rocks adjacent to the drill hole. The surveys may also be used to determine the exact path of the drill hole. They typically require a small truck and a range of downhole tools. Occasionally tools with a small radiometric source may be used and a detailed risk assessment is required to ensure that the tool is not lost down the hole.

DRILLING



Induced polarisation surveys can be used to identify aquifers and metallic minerals.

Drilling is often conducted as part of an exploration program to obtain detailed information about the rock and any mineral deposits below the ground surface. The drilling method and size of the drilling rig used depend on the type of rock and information sought. The degree of disturbance around the hole varies with each method, however, strict environmental safeguards ensure all drill sites are rehabilitated after the completion of drilling.

Shallow drilling

Auger Drilling - uses either a hand-held power auger or one mounted on a small vehicle. It is similar to a post-hole digger used by farmers when fencing.

Air Drilling - there are two main shallow air drilling methods, air core (AC) and rotary air blast (RAB). These methods usually involve a utility or small truck-mounted rig with an air compressor carried onboard or towed separately.

This type of drilling creates rock fragments (chips). These are removed from the drill hole by compressed air, which is forced down the hole and lifts the rock chips to the surface. This type of drilling requires minimal site preparation.



Air Drilling may use a truck-mounted rig to collect rock chips and be completed quickly.

Deeper Drilling

Air Drilling - the main types of air drilling used to drill deeper holes is reverse circulation (RC). This drilling technique involves the use of compressed air to drive a slowly rotating percussion drill bit, which operates similarly to a jackhammer. The drill bit is typically fitted with numerous hardened protrusions that crush the rock at the bottom of the hole. It produces rock chips that are lifted to the surface by compressed air. This drilling method is relatively fast, can penetrate hard rock, and is capable of drilling holes over 250 metres deep. These methods do not necessarily require significant site preparation and rehabilitation. They usually involve truck-mounted rigs with one or two support vehicles to carry drill rods and air compressor capacity.



Diamond drilling uses similar equipment to a water bore.

Diamond Drilling – uses a truck-mounted rig with support vehicles to extract a continuous cylinder of rock. It involves the use of a rapidly rotating drill bit that utilises water and drilling fluids, contained in either in-ground sumps or above-ground tanks, to cool and lubricate the drill bit. As the drill rods advance, the cylinder of the remaining rock gradually becomes enveloped by the drill rods. Ground-up rock material is transported to the surface by the returning drilling fluids and is separated from the fluids, typically in drill sumps. This drilling method is the costliest and is capable of drilling holes many kilometres in depth. Depending on the duration of the drilling program, additional equipment such as portable shelters, storage containers, and portable lighting plants may be required. This method requires significant site preparation and rehabilitation. Most advanced exploration for coal and minerals uses a combination of diamond and reverse circulation drilling.



Diamond drilling can bring cores of rock to the surface so that geologists can analyse the minerals – many call it the 'truth machine' for exploration.

Rotary Mud Drilling - is most often used for deep drilling through the layers of the Earth or stratigraphy. This method produces fine rock fragments and uses water and drilling fluids to lubricate the drill bit and return the rock fragments to the surface. The drilling fluids are contained in either in-ground sumps or above-ground tanks. The drilling rigs are usually larger than for other methods and require more support vehicles and site preparation.

Backhoe trench or pit sampling – involves digging a costean or trench using a backhoe or similar equipment. The costean or trench may range from 20cm wide to more than a metre, and from a few centimetres deep (where hard rock is near the surface) to metres deep. The edges of the trench are typically mapped geologically, and channel samples collected prior to the trench being filled in and fully rehabilitated.



Costeaning or trenching allows a geologist to collect sub-surface samples.

Channel sampling – involves collection of a series of samples of soil or rock along a line. This may be a road cutting, the face of an open-cut or underground mine, a costean or similar.

BULK SAMPLING

Prior to making a decision to apply to develop a mine, an explorer may extract a bulk sample of the material to be mined to allow further testing and refinement of the proposed mining and mineral processing procedures. Extraction of a bulk sample may typically involve excavation of a large pit or small open cut, or development of a small underground operation. The nature of disturbance associated with a bulk sample will vary depending on the nature and location of the mineralisation to be sampled. Extraction of a bulk sample in NSW requires approval from Government, and applications for such approvals are typically supported by a Review of Environmental Factors (REF) or similar document. Large samples may also require further approval from the NSW Government.

These descriptions are primarily provided for those who may not be familiar with exploration operations. As a result, they are, by their nature, general. These descriptions are referenced from the Land Access Arrangement Information for Mineral Exploration, published by NSW Government (2013).

REFERENCES

Legislation - <https://www.legislation.nsw.gov.au/>

NSW Government information - <https://www.resourcesregulator.nsw.gov.au/meg.site>

AMEC NSW Toolkit - <https://amec.org.au/jurisdiction/nsw/>

Images courtesy of AMEC members.

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REHABILITATION FOR EXPLORATION

AUGUST 2023

Rehabilitation is required for all surface disturbing activities in mineral exploration. The NSW Government holds a security deposit for every exploration licence and this deposit is only returned if rehabilitation is completed satisfactorily. This fact sheet provides information on the rehabilitation requirements for exploration.

This fact sheet is based on current NSW legislative requirements and common practice only and is not applicable in other States or Territories. This fact sheet provides AMEC members with information to assist them develop land access arrangements, each of which must be tailored to accommodate the individual needs of the landholder and explorer. This guide provides general information but does not constitute legal advice and the information should always be confirmed for currency.

FULL REHABILITATION IS REQUIRED FOR ALL EXPLORATION

Exploration licences are granted by the NSW Government to explore for a group of minerals generally for a period of up to six years initially and may cover hundreds of square kilometres. Exploration licences have strict conditions and requirements that align with legislative requirements of the *Mining Act 1992* and other associated legislation. Specific conditions in exploration licences protect the community and environment, such as the requirements to rehabilitate all exploration sites and to engage with the community prior to any activity. In the past, rehabilitation requirements were not as strict as they are today.

SECURITY DEPOSITS ARE HELD BY NSW GOVERNMENT

The NSW Government holds a substantial security deposit (minimum of \$10,000) over every exploration licence. The amount of the security deposit is re-considered with every exploration activity assessment by the Government, with additional security often provided prior to activity approval. The security deposit is only returned to the explorer following successful completion of the requirements of the licence, including full rehabilitation of any disturbance of the surface of the land.



Before, during and after exploration program - full rehabilitation is a requirement for all exploration activities that disturb the surface in NSW.

ADDITIONAL APPROVAL REQUIRED FOR SURFACE DISTURBING ACTIVITIES

Exploration activities that disturb the surface of the ground (apart from very low impact activities such as walking the ground, soil sampling, mapping) require separate application and approval by the NSW Government.

Strict conditions are applied to all activity approvals. Full rehabilitation is an important requirement for all surface disturbing activities. As part of the assessment for all surface disturbing activities in exploration, the security deposit for the exploration licence is assessed and adjusted to ensure that the Government holds the full cost of rehabilitation for each activity.

Before the security deposit is released, the Government must determine that full rehabilitation has been completed.

The Government security deposit is only returned to the explorer following successful completion of the requirements of the exploration licence including full rehabilitation of any disturbance of the surface of the land and approval by the landholder.

REFERENCES

Legislation - <https://www.legislation.nsw.gov.au/>

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GUIDE TO COMPENSATION FOR NSW LAND ACCESS

AUGUST 2023

NSW has great mineral potential as well as many alternative land users and private landholdings, so it is critical for explorers to get land access right. To accompany AMEC information on land access for mineral exploration in NSW, this fact sheet provides further detail on compensation for land access in NSW.

This fact sheet is based on current NSW legislative requirements and common practice only and is not applicable in other States or Territories. This fact sheet provides AMEC members with information to assist them to develop land access arrangements, each of which must be tailored to accommodate the individual needs of the landholder and explorer. This guide provides general information but does not constitute legal advice and the information should always be confirmed for currency.

REQUIREMENTS FOR COMPENSATION FOR LAND ACCESS IN NSW

In NSW, the state legislation details clear rights and responsibilities for both mineral explorers and landholders regarding compensation for access to land. In short, this includes:

- Requirement for access arrangements to be in place prior to any onsite exploration activity.
- Requirement for all access arrangements between landholders and explorers to be written, not verbal.
- Requirement for explorers to pay 'reasonable costs' of the landholders to negotiate an access arrangement and 'compensable loss' following exploration activity.

The NSW *Mining Act 1992* details the requirements for mineral explorers to seek access on private land, with significant changes made to the Act through the *Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill* that was passed in October 2015. One section that is important for all parties to remember is:

'The holder of the prospecting title and the landholder of the land concerned must negotiate on an access arrangement in good faith.'

Mining Act 1992, section 142 (2G)

The following outlines the key requirements under the legislation regarding access for mineral exploration (see *Mining Act 1992* sections 138 - 58, 262 - 3, 272, Dictionary as noted below):

- Costs payable by the explorer to the landholder (sections 142 (2A) – (2G), 262 - 3), including:
- 'Reasonable costs of the landholder... in participating in negotiating the access arrangement' - The maximum amount of reasonable costs was set out by the Minister by order published in the NSW Gazette on 1 December 2016 as \$1,500 (ex. GST) for exempt or low impact prospecting operations and \$2,500 (ex. GST) for assessable prospecting operations. These costs 'have regard for' the time spent negotiating the access arrangement, legal costs, and costs of engaging experts as part of the negotiation process. Nothing prevents the explorer from paying other amounts.
- 'Compensable loss suffered, or likely to be suffered, by the landholder as a result of exercising the rights conferred by the licence or an access arrangement'.
- Agreement on compensation must be in writing (section 263(2)).



Compensation should be negotiated by each explorer and landholder. Often compensation is not simply monetary but may include in-kind activities such as the upgrade or grading of a track, installing a gate or fixing a fence.

GUIDE ON 'COMPENSABLE LOSS' PAYABLE

Compensation must be based on 'compensable losses as defined by the *Mining Act 1992* as follows (section 262):

"Compensable loss means loss caused, or likely to be caused, by:

- (a) damage to the surface of land, to crops, trees, grasses, or other vegetation (including fruit and vegetables) or to buildings, structures or works, being damage, which has been caused by or which may arise from prospecting or mining operations, or
- (b) deprivation of the possession or of the use of the surface of land or any part of the surface, or
- (c) severance of land from other land of the landholder, or
- (d) surface rights of way and easements, or
- (e) destruction or loss of, or injury to, disturbance of or interference with, stock, or
- (f) damage consequential on any matter referred to in paragraph (a)–(e)".

Note should also be made regarding (section 272(1)(c)):

"The assessment of compensation payable under this Part...must not exceed in amount the market value (for other than ancillary mining activities) of the land and the buildings, structures and works situated on the land."

Compensation should be negotiated by each explorer and landholder as appropriate, but also with consideration for equity for neighbouring landholders. Often compensation is not simply monetary but may include in-kind activities such as upgrading or grading of a track, installing a gate or fixing a fence. Generally, compensable loss is paid per exploration activity, but may be paid as a daily per diem or another agreed rate.

The following table is a guide to compensation rates. This provides indicative ranges for compensation rates based on industry feedback from NSW exploration programs. Note that these rates are a guide only and not mandatory.

Activity	Guide rate (\$)	Detail on Activity
Drilling	\$100 - \$300	per diamond drill hole or mud drill hole or bore hole
	\$50 - \$150	per reverse circulation (RC) or percussion drill hole
	\$10 - \$50	per rotary air blast (RAB) or air core drill hole
	\$5 - \$10	per auger hole
Track construction	\$100 - \$125	per kilometre of track, where constructed with earthmoving equipment
Trench, pit or bulk sampling	\$1	per square metre of land surface disturbed
Disturbed crop		calculated through area disturbed. (Area disturbed (ha) x crop yield (t/ha) x commodity price (\$/t))
Negotiation of access arrangement		maximum amount is capped at \$1,500 (ex GST) for exempt or low impact exploration operations and \$2,500 (ex GST) for assessable exploration operations (by Order, NSW Gazette)
Other		

To demonstrate how the guide rates relate to land value and that in most circumstances these rates would be generous when compared to the cost of the value of the land:

- An auger hole disturbs up to 1m² or 1/10,000 of a hectare for around one hour, so the compensation of \$5 per hole represents the equivalent of \$50,000 per hectare for the use of the land for one hour.
- A diamond drill hole on average disturbs an area of 250m² or 1/40 of a hectare. This includes the area of true disturbance of around 3m² at the site of the hole as well as support vehicles, additional infrastructure and vehicles moving to and from the rig. A diamond drill hole commonly takes less than a week to

complete, so compensation of \$200 per hole represents the equivalent of \$8,000 per hectare for the use of the land for a week.

- All disturbance must be fully rehabilitated by the explorer as part of the tenure requirements.

REFERENCES

Legislation - <https://www.legislation.nsw.gov.au/>

NSW Government information - <https://www.resourcesregulator.nsw.gov.au/meg.site>

AMEC NSW Toolkit - <https://amec.org.au/jurisdiction/nsw/>

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REGULATION EXPLAINED FOR NSW LAND ACCESS

AUGUST 2023

Land access for mineral exploration in NSW is governed by legislative and regulatory requirements that are different from other States or Territories. This fact sheet provides an overview of these requirements in plain English for mineral exploration and land access in NSW.

This fact sheet is based on current NSW legislative requirements and common practice only and is not applicable in other States or Territories. This fact sheet provides AMEC members with information to assist them develop land access arrangements, each of which must be tailored to accommodate the individual needs of the landholder and explorer. This guide provides general information but does not constitute legal advice and the information should always be confirmed for currency.

REGULATORY REQUIREMENTS FOR LAND ACCESS IN NSW

In NSW, requirements, and guidance for access to land for exploration are detailed in:

- *NSW Mining Act 1992 and Mining Regulation 2016*
- *Industry Guideline for Mineral Explorers*, published by NSW Government
- *Exploration Code of Practice: Community Consultation*, published by NSW Government - as noted in exploration licence conditions (pre-2016 mineral licences do not have this condition).
- *Exploration Code of practice: Rehabilitation*, published by NSW Government
- *Native Title Act 1993*
- Related NSW Government policy and guidance documents.

The NSW legislation details clear rights and responsibilities for both mineral explorers and landholders regarding access to land. In short, this includes:

- Requirement for an access arrangement to be in place prior to any onsite exploration.
- Requirement for all access arrangements between landholders and explorers to be in writing, not verbal.
- Details on the process, procedure, and requirements for explorers to seek land access including the specific requirements for any land access arrangement.
- Details on dispute resolution mechanisms for forming an access arrangement where negotiation breaks down including mediation, arbitration, and Court where costs for both the explorer and landholder are payable by the explorer (generally only costs directly related to the mediation or arbitration, not client to lawyer matters outside the mediation or arbitration).
- Requirement for explorers to pay landholders to negotiate an access arrangement and 'compensable losses'.
- Areas where exploration may not occur without the written permission of the landholder including 200m from a dwelling house, 50m from a garden, or areas affected by 'significant improvement'.

The NSW *Mining Act 1992* details the requirements for mineral explorers to seek access on private and public land, with significant changes made to the Act through the *Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill* that was passed in October 2015. One section that is important for all parties to remember is

'The holder of the prospecting title and the landholder of the land concerned must negotiate on an access arrangement in good faith.'

Mining Act 1992, section 142 (2G)

DEFINITION OF LANDHOLDER AND SECONDARY LANDHOLDER

'Landholder' is clearly defined in the *Mining Act 1992* and may include owners in fee simple and native title holders as well as holder of a lease, licence, or continued tenure (within the meaning of Schedule 1) under the *Crown Land Management Act 2016* (full detail of the definition of 'landholder' in *Mining Act 1992, Dictionary*).

Note that 'secondary landholders' include a person in any registrar or record kept by the Registrar-General as having an interest in the land other than a mortgagee, lessee as well as a Minister or public authority having an interest in the land under a conservation, natural heritage or biobanking agreement. Land access arrangements are not required to be negotiated with 'secondary landholders' but they may be eligible for compensation (*Mining Act 1992* sections 262 - 3).

KEY REQUIREMENTS UNDER LEGISLATION EXPLAINED

The following outlines the key requirements under the legislation regarding access for mineral exploration (see *Mining Act 1992* sections 138 - 158, 262 - 3, Dictionary as noted below):

- **Access arrangements between an explorer and landholder must be in writing** - verbal agreements, even for reconnaissance exploration activities, are no longer valid following legislative changes in 2015 (section 140(1)(a)).
- **Separate arrangements** may (but need not) be agreed or determined with different landholders to preserve the confidentiality of all or part of the agreement (section 140(2)).
- Access arrangements may make provisions (section 141(1)) for the following:
 - a) Periods of time for permitted access.
 - b) Parts of the land permitted for access.
 - c) Kinds of prospecting or exploration activities that may be undertaken.
 - d) Conditions to be observed by the explorer.
 - e) Compensation to be paid.
 - f) Manner of varying the arrangement and resolving disputes
 - g) Notification to the explorer of any changes in land ownership.
- **To initiate an access arrangement, the explorer may by written notice** (section 142(1)) give intention to seek an access arrangement. This notice must (section 142(2)):
 - a) State the explorer's intention.
 - b) Contain a plan and description of the area over which the access is sought sufficient to enable the ready identification of that area.
 - c) Include a description of the prospecting methods and be delivered in accordance with the Act.
- Costs payable by the explorer to the landholder (sections 142 (2A) – (2G), 262 - 3) include:
 - a) 'Reasonable costs of the landholder...in participating in negotiating the access arrangement' - The maximum amount of reasonable costs was set out by the Minister by order published in the NSW Gazette on 1 December 2016 as \$1,500 (ex. GST) for exempt or low impact prospecting operations and \$2,500 (ex. GST) for assessable prospecting operations. These costs 'have regard for' the time spent negotiating the access arrangement, legal costs, and costs of engaging experts as part of the negotiation process. Nothing prevents the explorer from paying other amounts.
 - b) 'Compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights' - See separate [AMEC NSW Fact Sheet - Compensation](#) for more information.
- **Mortgagees must be notified** within 14 days of an access arrangement being agreed or signed (section 142A (1)).

If the parties are not able to negotiate an access arrangement, then mediation/arbitration/review by the Land and Environment Court (sections 139, 143 - 58) may be sought as follows:

- If by the end of 28 days after the explorer serves notice in writing on each landholder of the intention to seek access (as above and in section 142) and the parties have been unable to agree, the explorer may, by further notice in writing, request them to agree on the appointment of an arbitrator (section 143).
- If by the end of 28 days after this notice the parties cannot agree on the appointment of a mutually acceptable arbitrator, then either party may apply to the Secretary (Executive position in Government) to appoint a member of the Arbitration Panel as an arbitrator using the Government form AD1.
- The arbitrator is then appointed by agreement or from the Arbitration Panel who fixes a time and date for first conducting **mediation** where their best endeavours are used to bring the parties to settlement. This may include direct or virtual meetings and possibly a visit to site.
- If the parties are unable to agree in mediation, then **arbitration** follows with either the same arbitrator (if agreed by both parties) or another appointment from the Arbitration Panel. The arbitrator must then conduct the arbitration. As soon as possible after the arbitration, the arbitrator must make an interim determination and draft an access arrangement. The interim determination and access arrangement are taken as final if no application is made by either party for reconsideration or variation within 14 days. If a reconsideration or variation is sought, then the arbitrator must continue the hearing and make a final determination. A copy of the final access arrangement determined by an arbitrator must be provided to the Secretary by the explorer.
- A site inspection may be conducted during mediation/arbitration.
- Representation at mediation/arbitration may be by agent or legal practitioner.

- Costs for mediation and arbitration costs are borne by the explorer. This includes their own costs, the costs of the arbitrator/s, and the 'reasonable costs' of the landholder in participating in mediation and arbitration as determined by the arbitrator. As for negotiation, these costs will 'have regard to' the time spent participating in the mediation and arbitration, legal costs, and expert costs, as well as whether the landholder acted 'unreasonably'. Payment of the costs is not required unless documentary evidence is provided by the landholder (Clause 39F, Mining Regulation). The maximum amount of reasonable costs may be set out by order published in the Gazette (but to date, has not been set).
- Further information on arbitration including the Arbitration Procedures is available *Land Access Arbitration Procedure*¹. Note that this document prescribes how notices under the Act must be delivered to the landholder.
- Further review may be sought from the Land and Environment Court by 'any party aggrieved by an arbitrator's final determination' (section 155(1)). The explorer must pay the 'reasonable costs' of the landholder in a review in the Land and Environment Court (section 155(8)).

Access arrangements may be varied in accordance with the terms of the arrangement or by an arbitrator (where each party bears their own costs).

Exploration may not be undertaken 'over the surface of the land' without written permission (section 31) of the owner/occupier:

- 200m from a dwelling-house that is the principal place of residence, or
- 50m from a garden, or
- Land 'on which is situated any **significant improvement**' (as defined in *Mining Act 1992, Dictionary*)

This does not apply to a seismic survey on a road (within the meaning of the *Road Transport Act 2013*), but only if the holder of the licence has given written notice of at least 21 days of the carrying out of the seismic survey to the owner of the dwelling-house, garden or significant improvement (section 31(7)).

If a dispute on the application of these provisions arises, any party may apply to the Land and Environment Court for determination. The costs in these proceedings are borne by the explorer.

Note that this requirement may relate to a house or garden or 'significant improvement' that may be on a neighbouring property to the proposed exploration activity (but within the distances noted above from the proposed exploration activity).

REFERENCES

Legislation - <https://www.legislation.nsw.gov.au/>

NSW Government information - <https://www.resourcesregulator.nsw.gov.au/meg.site>

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¹ <https://meg.resourcesregulator.nsw.gov.au/mining-and-exploration/land-access/mediation-and-arbitration>

FREQUENTLY ASKED QUESTIONS ON NSW LAND ACCESS

AUGUST 2023

Land access for mineral exploration in NSW is governed by legislative and regulatory requirements that are different from other States or Territories. This fact sheet provides answers to frequently asked questions in plain English for mineral exploration and land access in NSW.

This fact sheet is based on current NSW legislative requirements and common practice only and is not applicable in other States or Territories. This fact sheet provides AMEC members with information to assist them develop land access arrangements, each of which must be tailored to accommodate the individual needs of the landholder and explorer. This guide provides general information but does not constitute legal advice and the information should always be confirmed for currency.

What is exploration?

Exploration is the scientific process of investigating the mineral potential of the ground. Exploration is led by geologists who gather information through a range of scientific methods to assess the economic potential of minerals. Each stage of exploration is dependent on the results from the previous stage.

Who is 'landholder' in NSW?

'Landholder' is clearly defined in the Mining Act 1992 and includes owners in fee simple and native title holders as well as the holder of a lease, licence, or continued tenure (within the meaning of Schedule 1) under the Crown Land Management Act 2016 (full detail of the definition of 'landholder' in *Mining Act 1992, Dictionary*).

Note that 'secondary landholders' include a person in any registrar or record kept by the Registrar-General as having an interest in the land including a mortgagee, lessee as well as a Minister or public authority having an interest in the land under a conservation, natural heritage or biobanking agreement. Land access arrangements are not required to be negotiated with 'secondary landholders' but they may be eligible for compensation (*Mining Act 1992* sections 262 - 3).

Who owns the minerals in NSW?

Minerals in NSW, such as gold and silver, are generally owned by the State and excluded from property deeds.

Why would an explorer want to explore on private land?

Exploration is the scientific process of investigating the mineral potential of the ground. Minerals in NSW, such as gold and silver, are generally owned by the State and excluded from property deeds. Exploration licences are granted by the NSW Government to explore for a group of minerals generally for a period of up to six years initially and may cover hundreds of square kilometres. The holder of an exploration licence has a requirement to explore for the minerals that are generally owned by the Government.

Who can be granted an exploration licence in NSW?

Before an exploration licence is granted, the applicant needs to demonstrate financial capability and technical competence in addition to a plan of work. A detailed report on the completed work must be submitted to the NSW Government at every anniversary (or year) of a licence. Further assessment of proposed activities is required by the NSW Government before any ground-disturbing activities can be undertaken.

The explorer also provides the NSW Government with a substantial security deposit (minimum of \$10,000) prior to the grant of the licence. The amount of the security deposit is re-considered with every exploration activity assessment by the Government, with additional security often provided prior to activity approval. The security deposit is only returned to the explorer following successful completion of the requirements of the licence, including full rehabilitation of any disturbance of the surface of the land and approval by the landholder.

We have had different explorers come to our property for years – why do they keep coming back?

New thinking and techniques as well as changing commodity prices and changing interest in different minerals can mean that old areas of interest (or prospects) can be of interest to new explorers.

Is exploration the same as mining?

Exploration licences only allow the licence holder to explore for minerals. Exploration does not permit mining, nor does it guarantee that mining will ever be approved.

Does exploration mean that mining will start soon?

Economically recoverable mineral resources are rarely discovered. If there is the potential for a mine to be developed, the proposal undergoes rigorous assessment through multiple levels and sectors of Government that involves a series of stages.

The period between finding a deposit and starting a mine normally takes many years. The last new mine in NSW opened more than ten years after the mineral discovery.

Will explorers leave a mess on my property?

Exploration licences have strict conditions and requirements with specific conditions to protect the community and environment, including requirements to rehabilitate all exploration sites and to engage with the community prior to any activity. The NSW Government holds a substantial security deposit (minimum of \$10,000) over every exploration licence.

Exploration activities that disturb the surface of the ground (apart from very low impact activities such as walking the ground, soil sampling, mapping) require separate application and approval by the NSW Government.

Strict conditions are applied to all activity approvals. Full rehabilitation is an important requirement for all surface disturbing activities. As part of the assessment for all surface disturbing activities in exploration, the security deposit for the exploration licence is assessed and adjusted to ensure that the Government holds the full cost of rehabilitation for each activity.

The Government security deposit is only returned to the explorer following successful completion of the requirements of the exploration licence including full rehabilitation of any disturbance of the surface of the land and approval by the landholder.

What will they do to rehabilitate? Can they cement the drill holes and so damage the aquifers?

Strict conditions are applied to all activity approvals. Full rehabilitation is an important requirement for all surface disturbing activities. Cementing drill holes is not commonly undertaken in NSW.

As part of the assessment for all surface disturbing activities in exploration, rehabilitation needs to be considered and approved by Government. Approval from the landholder is part of the sign off required before the security deposit held by Government is returned to the company following each program.

Do explorers need a written agreement to explore in NSW?

In NSW, explorers must enter into a written land access agreement or arrangement with the landholder before exploring on their land. Access arrangements must be negotiated and in place before exploration can commence. Access arrangements between an explorer and landholder must be written - verbal agreements, even for reconnaissance exploration activities, are not valid following legislative changes in 2015.

How long do access agreements last?

Access agreements are generally for the term of the exploration licence, or a shorter term as agreed by the landholder and explorer.

What permissions or agreements are needed for exploration on public or Crown land?

If the Land Title Deed notes the owner of the land as 'The State of NSW', the land is owned by NSW Government and known as Crown land. Access to Government owned land for mineral exploration is generally a multi-stage process – negotiate access (with Crown land, Forestry Corporation etc as appropriate) and obtain 'Minister's consent' (required) and consider native title.

Do explorers need to obtain landholder permission for drone or aerial surveys?

Airborne surveys have minimal environmental impact and are classified as exempt prospecting operations (Clause 2.13(2), *State Environment Planning Policy (Resources and Energy) 2021*) so a written access agreement is not required unless access is needed for ground support such as launching, landing, refuelling or maintenance.

However, aerial surveys can impact livestock, especially horses and during lambing season etc and are often of interest and potential concern for landholders and the wider communities. For these reasons, it is good practice for explorers to inform the community of upcoming aerial surveys including clear information on the survey area, purpose, dates, and contact information for any queries. The area should consider the turnaround area and path from launch and to touchdown. Informing the community could include letterbox drops, ads in the local newspapers, shops, local radio, or social media community groups. As always, providing information to communities upfront supports community understanding and goes far to ease any community concerns or misinformation.

Can a landholder say 'no' to an explorer?

Landholders may not veto exploration although certain areas are protected including principal residences, gardens and significant improvements such as dams. Access arrangements must be negotiated and in place before exploration can commence. Legal and expert advice may be sought to assist in the negotiation process and a mediation and arbitration process is available if agreement cannot be reached. Reasonable costs of the landholder in participating in negotiating the access arrangement are payable by the explorer.

What if the landholder and explorer cannot agree?

Access arrangements must be negotiated and in place before exploration can commence. It is a requirement of the *Mining Act 1992* (section 142 (2G)) that *'the holder of the prospecting title and the landholder of the land concerned must negotiate on an access arrangement in good faith.'*

Legal and expert advice may be sought to assist in the negotiation process and a mediation and arbitration process is available if agreement cannot be reached, with Land and Environment Court for appeals. Reasonable costs of the landholder in participating in negotiating the access arrangement are payable by the explorer.

How much compensation is paid by an explorer to a landholder?

Costs payable by the explorer to the landholder (sections 142 (2A) – (2G), 262 - 3) include:

- a) 'Reasonable costs of the landholder...in participating in negotiating the access arrangement' - The maximum amount of reasonable costs was set out by the Minister by order published in the NSW Gazette on 1 December 2016 as \$1,500 (ex. GST) for exempt or low impact prospecting operations and \$2,500 (ex. GST) for assessable prospecting operations. These costs 'have regard for' the time

spent negotiating the access arrangement, legal costs, and costs of engaging experts as part of the negotiation process. Nothing prevents the explorer paying other amounts.

- b) 'Compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights' - See separate [AMEC NSW Fact Sheet - Compensation](#) for more information.

Do explorers need to have agreements with tenants as well as landowners?

If tenants or other lease holders are identified in any register or record kept by the Registrar-General as a person having an interest in the land, then they would generally define as 'secondary landholders' in the *Mining Act 1992*. Land access arrangements are not required to be negotiated with 'secondary landholders' but they may be eligible for compensation (*Mining Act 1992* sections 262 - 3).

Do explorers need to rehabilitate after the exploration program?

Exploration licences have strict conditions and requirements that align with legislative requirements of the *Mining Act 1992* and other associated legislation. Strict conditions are applied to all activity approvals. Full rehabilitation is an important requirement for all surface disturbing activities. As part of the assessment for all surface disturbing activities in exploration, the security deposit for the exploration licence (minimum \$10,000 held for each exploration licence by the NSW Government) is assessed and adjusted to ensure that the Government holds the full cost of rehabilitation for each activity. Before the security deposit is released, the Government must determine that full rehabilitation has been completed.

Why do we have to tell the bank (who holds the landholder's mortgage) about an access agreement?

It is a requirement of the *Mining Act 1992* that mortgagees must be notified within 14 days of an access arrangement being agreed or signed (section 142A(1)).

REFERENCES

Legislation - <https://www.legislation.nsw.gov.au/>

NSW Government information - <https://www.resourcesregulator.nsw.gov.au/meg.site>

AMEC NSW Toolkit - <https://amec.org.au/jurisdiction/nsw/>

Prepared by Association of Mining and Exploration Companies Inc (AMEC)

AMEC is a leading national minerals industry body representing over 500 member companies across Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses and services working in and for the minerals industry. AMEC represents a growing number of companies exploring, mining, and investing in NSW.

Disclaimer: This guidance is intended to provide summary information only. It does not intend to be comprehensive or to provide specific legal advice. In consideration of the changing nature of legislation, regulations, program rules and guidelines, there is a potential for inherent inaccuracies and potential omissions in information contained in this document. All information in this document is provided "as is" with no guarantee of completeness or accuracy and without warranty of any kind, express or implied. In no event will the Association of Mining and Exploration Companies Inc, any related members, consultants, or employees thereof be liable to anyone for any decision made or action taken in reliance on the information in this document or for any consequential damages.

LAND ACCESS AGREEMENT FOR MINERAL EXPLORATION IN NSW

AUGUST 2023

UNDERSTANDING EXPLORATION

Exploration is the scientific process of investigating the mineral potential of the ground. Minerals are generally owned by the State and are excluded from property deeds.

Exploration licences are granted by the NSW Government to explore for a specific group of minerals generally for a period of up to six years and may cover hundreds of square kilometres. Exploration licences have strict conditions and requirements that align with legislative requirements of the *Mining Act 1992* and other associated legislation. Specific conditions in exploration licences protect the community and the environment.

Exploration is led by geologists who gather information through a range of scientific methods to assess the economic potential of minerals in the ground. Exploration is highly speculative, with estimates that only one in 10,000 areas of interest (prospects) will ever be mined.

Exploration does not permit mining, nor does it guarantee that mining will ever be approved.

Each stage of exploration is dependent on the results from the previous stage. New thinking and techniques as well as changing commodity prices can mean that old prospects can be of interest to new explorers.

EXPLORERS NEED TO FORM AN AGREEMENT WITH THE LANDHOLDER

Explorers must form a land access arrangement with a landholder before exploring on their land. Landholders may not veto exploration; however, access arrangements must be negotiated and in place before exploration can commence. Legal advice may be sought to assist in the negotiation process and a mediation and arbitration process is available if an agreement cannot be reached through negotiation.

The land access arrangement details the conditions on which an explorer will access the land and any compensation payable. All access arrangements should be based on the understanding that explorers are 'guests' on the land and an appreciation by landholders of the needs and rights of mineral explorers. Courtesy, honesty, and respect go far to build trust and an effective working relationship between explorers and landholders.

THIS AGREEMENT TEMPLATE AND HOW TO USE IT

The Association of Mining and Exploration Companies (AMEC) provides this template to assist landholders and explorers in NSW understand their rights and negotiate a land access agreement. This template is based on the *Land Access Arrangement for Mineral Exploration* template published by the NSW Government in 2021 and has been streamlined and made more user friendly. AMEC has also developed guidance on land access as fact sheets, a video, and a comprehensive industry guide to assist explorers and landholders in developing an agreement. (AMEC NSW Toolkit available at - <https://amec.org.au/jurisdiction/nsw/>).

There are two options for the use of this template. Either

1. Standard agreement – This allows the landholder and explorer to agree on access arrangements and activities once, saving the need for subsequent negotiations. Complete the agreement and remove Annexure D.

OR

2. Staged agreement – This allows the landholder and explorer to agree on the core parts of the agreement and then negotiate the conditions for each separate exploration program with the Deed of Entry (Annexure D). Complete the agreement AND Annexure D for separate projects, activities, or stages.

Prepared by Association of Mining and Exploration Companies Inc (AMEC)

AMEC is a leading national minerals industry body representing over 500 member companies across Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses and services working in and for the minerals industry. AMEC represents a growing number of companies exploring, mining, and investing in NSW.

This template and the accompanying information are written in plain English and outline practical conditions, with options, to allow the agreement to reflect the individual needs of the landholder and explorer.

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LAND ACCESS AGREEMENT FOR MINERAL EXPLORATION IN NSW

This arrangement ("**Agreement**") is an access arrangement for the purposes of the *Mining Act 1992* (NSW), between the Landholder ("**Landholder**") and the Exploration licence holder ("**Explorer**").

LAND AND LANDHOLDER			
Owner on Land Title:			
Name and address of Land:			
Lot and DP of Land:	See Annexure A		
Primary contact person/s:			
Address of primary contact:			
Contact details:	Mobile:	Other phone:	Email:
Secondary contact person/s:			
Address of secondary contact:			
Contact details:	Mobile:	Other phone:	Email:
EXPLORATION LICENCE AND EXPLORER			
Exploration Licence Number/s:			
Exploration Licence Holder:			
Address of Explorer:			
Project Manager/s:			
Role of Project Manager:			
Contact details:	Mobile:	Other phone:	Email:
Secondary contact person/s:			
Role of contact:			
Contact details:	Mobile:	Other phone:	Email:
Public Liability Insurance:	Insurer:	Policy No.:	Liability Limit:
EXPLORATION DETAILS (OPTIONAL – COMPLETE HERE OR IN THE SEPARATE DEED OF ENTRY AT ANNEXURE D)			
Exploration methods: - please tick as appropriate for the exploration methods that may be undertaken in this Agreement - methods explained in Fact Sheet - additional space for other activities if required	Low impact exploration techniques		Medium/high exploration techniques
	geological mapping		geophysical survey
	soil and rock chip sampling		drilling (please specify if applicable)
	environmental assessments		diamond / RC / RAB
			Trench or pit sampling
			bulk sampling
Exploration area:	See map at Annexure A		
Special conditions:	See details at Annexure B		
Compensation:	See details at Annexure C		
Paths of Entry:	All gates/main gates/ Other (please specify): (see Annexure A for map)		
Period of permitted access	7am to dusk/Other (please specify): Any day of the week/Other (please specify)		
AGREEMENT DETAILS			
Term of Agreement	From:	To: End of Licence / Other (please specify)	
Signatures for Agreement	See end of Annexure C		

TERMS OF AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 Where the following terms appear in this Agreement they have the meaning provided below:

- (a) **Agreement:** means this Land Access Agreement and includes the Annexures to it.
- (b) **Contact Person/s:** the person/s described on page 1 of this Agreement who is nominated by the Landholder or Explorer as the most appropriate person for liaison on access issues.
- (c) **Contractor:** any contractor, employee or agent who is retained, employed or directed by the Explorer.
- (d) **Deed of Entry:** means Annexure D.
- (e) **Exploration Licence:** an exploration licence, or an assessment lease issued under the *Mining Act 1992* as described on page 1 of this Agreement, including as renewed or varied.
- (f) **Exploration:** has the same meaning as 'Prospecting' in the *Mining Act 1992* (NSW) or as amended.
- (g) **Exploration Area:** the area of the Land specified on page 1 or marked on the map at Annexure A.
- (h) **Exploration Licence:** the exploration licence(s) identified on page 1 of this Agreement.
- (i) **Exploration Method:** those Exploration operations authorised by this Agreement.
- (j) **Explorer:** the holder of the Exploration Licence.
- (k) **Land:** the land identified on page 1 of this Agreement.
- (l) **Landholder:** the person specified as the Landholder on page 1 of this Agreement.
- (m) **Mining Act:** the *Mining Act 1992* (NSW) or as amended.
- (n) **Paths of Entry:** the gates, farm roads and tracks specified on page 1 of this Agreement or marked on the map at Annexure A.
- (o) **Project Manager:** the field supervisor whose name and contact details are set out on page 1 of this Agreement or as otherwise advised to the Landholder.

1.2 In this Agreement unless the contrary intention appears or the context otherwise permits or requires:

- (a) a word importing the singular includes the plural and vice versa;
- (b) a word importing a gender includes each other gender; and
- (c) a reference to a person includes an individual firm or body corporate.

1.3 This document and its annexures comprise the entire Agreement and supersedes all previous agreements. This Agreement may only be varied by agreement between the parties in accordance with Clause 15.

1.4 This Agreement is governed by the laws of New South Wales and each party submits to the jurisdiction of the Courts of New South Wales.

ACCESS FOR EXPLORATION

1.5 By signing this Agreement, the Landholder grants the Explorer the right to enter the Exploration Area (as defined by the Agreement) for the term and purpose of this Agreement only.

1.6 The Explorer must use all reasonable endeavours to ensure that the Landholder is given at least 24 hours' notice on each occasion or period of time it intends to access the Exploration Area, unless otherwise agreed between the parties.

1.7 The Explorer, and any Contractor, employee or agent who is retained, employed or directed by the Explorer, may access the Paths of Entry and carry out the Exploration Method/s in the Exploration Area in accordance with the terms and conditions of this Agreement.

1.8 At the Landholder's request, the Explorer upon first accessing the Exploration Area and Paths of Entry pursuant to this Agreement must meet with the Landholder for up to one hour to assess and agree on the condition of roads and tracks and receive a briefing on potential hazards specific to the Exploration Area and Paths of Entry.

1.9 The Explorer will, during such period as the Explorer utilises the agreed Paths of Entry, maintain and keep in repair the Paths of Entry having regard to their condition agreed under Clause 2.4.

1.10 The Explorer must not carry out Exploration in any areas not permitted under legislation or this Agreement or marked on the map at Annexure A.

2. THE PROJECT MANAGER OVERSEES THE EXPLORATION PROJECT

2.1 Prior to the commencement of Exploration, the Explorer must appoint a Project Manager to oversee the exploration program.

2.2 The Project Manager must liaise with the Landholder at all reasonable times.

2.3 The Explorer will notify the Landholder Contact Person if there is a change of person appointed as Project Manager.

3. REQUIREMENTS OF THE EXPLORER

3.1 The Explorer must comply with all requirements imposed by the Mining Act, including the conditions of the Exploration Licence.

3.2 The Explorer shall carry out Exploration in a manner so as to:

- (a) minimise any damage to:
 - (i) the surface of the land comprised in the Exploration Area and Paths of Entry;
 - (ii) crops, trees, pastures, grasses or other vegetation on the Exploration Area and Paths of Entry;
 - (iii) buildings and improvements on the Exploration Area and Paths of Entry;
- (b) minimise disturbance or interference to stock on the Land;
- (c) refrain from entering the Exploration Area and Paths of Entry in wet conditions without prior permission from the landholder and on terms that may be agreed from time to time;
- (d) ensure that no dogs or firearms are brought onto the Exploration Area and Paths of Entry;
- (e) not cut fences without the consent of the Landholder and promptly repair any fences or other improvements damaged in the course of non ground disturbing mineral exploration activity; and
- (f) leave all gates as found, whether open or shut.

3.3 The Explorer must not use water from a farm dam or bore located on the Exploration Area and Paths of Entry without the permission of the Landholder.

3.4 The Explorer must not fell trees, strip bark or cut timber without the consent of the Landholder and in accordance with any applicable legislative requirements.

3.5 At the request of the Landholder, the Explorer must provide the Landholder with a copy of their Emergency Response Management Procedure (including fire management) for the Exploration Area.

3.6 The Explorer will manage garbage, hydrocarbons, waste and refuse in accordance with the terms of the Exploration Licence and is to place any garbage, waste or empty containers in suitable receptacles and remove them from the Exploration Area and Paths of Entry each day or as soon as practicable.

3.7 Before any entry on to the Exploration Area and Paths of Entry, vehicles, boots and equipment are to be cleaned of all superficial accumulation of dirt or vegetable matter in accordance with the Landholder's protocols under Clause 4.8.

3.8 The Explorer is to abide by any further protocols to prevent the spread of weeds and disease as outlined in Annexure B of this Agreement.

3.9 The Explorer must consult with the Landholder on each occasion before accessing agricultural airstrips.

3.10 At the request of the Landholder, the Explorer must provide the Landholder with a copy of the current Exploration Licence document, and copies of any environmental assessment produced for the purpose of obtaining planning approval in respect of the Exploration Area.

3.11 Further conditions agreed to by the parties and listed on Annexure B to this Agreement form part of this Agreement and must be complied with by the Explorer and Landholder.

4. AGREEMENT WITH THE LANDHOLDER

4.1 The Landholder agrees to the Explorer accessing the Land for the purposes of Exploration on the terms and conditions set out in this Agreement and the Landholder and any other invited occupier of the Land:

- (a) will not impede, restrict or interfere with the carrying out of Exploration by the Explorer, and
- (b) will not enter or grant an access arrangement (including the Mining Act or the *Petroleum (Onshore) Act 1991*) to a person over the Exploration Area that is inconsistent with the Explorer's rights under this Agreement.

4.2 The Landholder agrees to notify the Explorer at least 6 weeks prior to any change that would result in the creation of a new Landholder under the Mining Act in respect of all or part of the Exploration Area or which would be inconsistent with the Explorer's rights under this Agreement.

5. RECORDS TO BE KEPT BY THE EXPLORER

5.1 At the Landholder's request, the Explorer must keep a record of all equipment, vehicles, chemicals and material that is brought onto or leaves the Exploration Area and Paths of Entry. These records must be available for viewing and/or audit by the Landholder and/or Contact Person at any time during the currency of this Agreement.

5.2 At the Landholder's request, the Explorer must keep a daily record of each person entering and exiting the Exploration Area and Paths of Entry including the name of the person, the person's position and the time entered and exited. These records must be available for viewing and/or audit by the Landholder and/or Contact Person at any time during the currency of this Agreement.

6. INSURANCE AND INDEMNITY MUST BE HELD BY THE EXPLORER AND PROTOCOLS FOLLOWED

6.1 The Explorer will effect and maintain a public liability insurance policy in respect of Exploration at all times, as detailed on Page 1 of this Agreement.

6.2 At the request of the Landholder, the Explorer must verify its public liability insurance in respect of Exploration to the Landholder at any time during the currency of this Agreement.

6.3 The Explorer, except to the extent provided elsewhere in this Agreement, agrees to indemnify the Landholder against all loss or damage arising from its actions on the Exploration Area and

Paths of Entry in accordance with section 383C of the Mining Act.

6.4 The Explorer and Landholder must comply with their obligations under Work, Health and Safety legislation.

6.5 The Explorer is to abide by any further protocols as required by the Landholder that are outlined in Annexure B of this Agreement.

6.6 Infrastructure and equipment installed on the Exploration Area by the Explorer, in accordance with the terms of this Agreement, remains the property of the Explorer.

6.7 The Explorer expressly agrees that in the absence of negligence or wilful damage caused by the Landholder, the Landholder will have no responsibility or liability for any loss or damage to personal property of the Explorer.

7. COMPENSATION AND ADVICE

7.1 The Explorer will provide payment for the reasonable costs of the Landholder of the Land concerned in negotiating the access arrangement as set out in Annexure C of this Agreement as soon as possible following the completion of the Agreement.

7.2 The Explorer will pay the Landholder the compensation as set out in Annexure C of this Agreement as soon as possible following the completion of the activity.

7.3 The Landholder may serve notice on the Explorer setting out compensation due in accordance with Annexure C.

7.4 The Explorer must pay all compensation within 45 days of the receipt of a notice under Clause 8.3.

7.5 The Explorer will pay all stamp duty and GST required in respect of this Agreement.

8. GROUND DISTURBANCE FOR DRILLING

8.1 If drilling is an agreed Exploration Method, the Explorer must ensure that drilling is carried out in accordance with the following provisions:

- (a) all drill holes must be constructed in a manner that will endeavour to prevent erosion and prevent collapse of the surrounding surface;
- (b) drilling fluids and groundwater returned to the surface as part of the drilling process must be contained in a tank or lined sump pending re-use or lawful disposal;
- (c) drilling sumps or pits left open and unattended for more than 24 hours must be managed to limit direct access by livestock and native fauna and so that there is a means for egress;
- (d) to minimise the risks associated with gases or liquids contained within the earth:
 - (i) appropriate controls must be applied to effectively manage these risks until the drill holes are permanently plugged or sealed in accordance with the Exploration Licence conditions;
 - (ii) all drill holes must be constructed so as to minimise contamination, cross-contamination and discharge of aquifers during the drilling of the hole; and
 - (iii) venting or flaring of gases must be conducted in a way that minimises the risk of fire, explosion and pollution.
- (e) groundwater monitoring bores must be licensed in accordance with Government requirements;
- (f) all drill holes which are maintained in an accessible condition must be cased to prevent collapse and fitted with a removable cap to ensure the safety of persons and fauna; and
- (g) prior to abandonment, each drill hole must be sealed in accordance with applicable standards and must be completed so as to prevent contamination, cross-contamination and discharge of aquifers.

9. REHABILITATION MUST BE COMPLETED BY THE EXPLORER

9.1 On completion of Exploration in the Exploration Area, the Explorer will:

- (a) have commenced, or commence as soon as practicable, rehabilitation work;
- (b) remove all equipment;
- (c) repair all damage to the Exploration Area caused by the Explorer as soon as practicable;
- (d) re-contour excavations and earthworks affected on the Exploration Area in such a manner that soil erosion will be minimised as far as practicable;
- (e) carry out rehabilitation works in accordance with any relevant conditions of the Exploration Licence which stipulate requirements for rehabilitation of Exploration operations;
- (f) repair any damage to any Paths of Entry caused by the Explorer;
- (g) replace excavated base material, subsoil and topsoil in the order that they were removed to reconstruct the soil profile;
- (h) reshape all surface disturbance to be consistent with the pre-existing landform (or slightly elevated to allow for soil compaction);
- (i) suitably prepare the land surface for the establishment of vegetation;
- (j) rehabilitate any damage to crops or pastures by reseeding; and
- (k) rehabilitate with native species of local provenance where native vegetation has been cleared.

9.2 If the Explorer does not carry out the rehabilitation which is the responsibility of the Explorer under this Agreement:

- (a) the Landholder may serve written notice upon the Explorer setting out the rehabilitation required to be carried out under this Agreement; and
- (b) if a period of 45 days passes after the Explorer receives the notice under this Clause and the rehabilitation has not been completed the Landholder may carry out the rehabilitation.
- (c) The Explorer must pay the Landholder's reasonable expenses and costs of carrying out the rehabilitation under this Clause.

10. INSPECTION PRIOR TO PROJECT COMPLETION

10.1 At the request of the Landholder, the Explorer must organise a time for the Landholder to inspect the Exploration Area and Paths of Entry when Exploration is finished to discuss any remaining issues under this Agreement.

11. DISPUTE RESOLUTION

11.1 If a dispute arises out of or relates to this Agreement or Deed of Entry, the parties shall endeavour to settle the issues in dispute by negotiation and consultation in good faith. Such discussions may or may not (at the discretion of the parties) involve a third party or parties such as the respective party's legal representatives or other chosen advisers or nominated persons.

11.2 Nothing in this Clause prevents the parties or one or either of the parties pursuing their options under relevant legislation to have the matter resolved (e.g. through the Land and Environment Court).

12. SERIOUS BREACH OF AGREEMENT

12.1 Each of the following events or circumstances is called a serious breach under this Agreement:

- (a) if the compensation payable pursuant to any provision of this Agreement remains unpaid for a period of 45 days after the date the Landholder provides written notice to the Explorer; and

(b) where the Explorer commits any breach or default of this Agreement and the breach or default is not remedied within 45 days after the date the Landholder provides written notice to the Explorer of the breach or default.

13. TERMINATION OF AGREEMENT

13.1 This Agreement shall terminate under whichever is earliest of the following circumstances:

- (a) on the date stated to be the End of Term on page 1 of this Agreement;
- (b) when the Landholder ceases to be the landholder for the purposes of the Mining Act;
- (c) where there is a serious breach of this Agreement under Clause 13.1, on 30 days written notice to the Explorer from the Landholder; or
- (d) on written agreement of the parties.

13.2 Termination of this Agreement does not affect rights and liabilities accrued as at the time of termination.

13.3 Termination of this Agreement will also terminate any Deed of Entry entered pursuant to this Agreement.

14. VARIATION TO AGREEMENT

14.1 This Agreement may be varied:

- (a) in writing and signed by the Explorer and the Landholder; or
- (b) otherwise in accordance with section 157 of the Mining Act.

15. FORCE MAJEURE OR UNFORSEEABLE CIRCUMSTANCES

15.1 The Explorer is not liable for a breach of the conditions of this Agreement to the extent that the breach is caused by circumstances outside the control of the Explorer, its Contractors, employees or agents and for the period those circumstances continue. If the Explorer becomes aware of a breach it must:

- (a) immediately notify the Landholder;
- (b) try to remedy the cause quickly; and
- (c) notify the Landholder when the cause has been remedied.

16. DEED OF ENTRY (OPTIONAL)

4.1 The Landholder and Explorer must negotiate and agree the terms of each Deed of Entry in good faith and the Deed of Entry must be substantially in the form set out in Annexure D.

4.2 The Deed of Entry will not be binding on any party until it has been executed by all parties.

4.3 If, after 14 days of negotiation, the Landholder and Explorer cannot agree on the terms of a Deed of Entry then the parties must seek to resolve the dispute in accordance with Clause 12 of this Agreement.

4.4 Failure by the parties to agree on the terms of a Deed of Entry does not invalidate this Agreement. This Agreement continues to operate unless otherwise terminated in accordance with Clause 14.

4.5 If a proposed Deed of Entry is refused by the Landholder, nothing in this Agreement prevents the Explorer from serving notice on the Landholder under section 142 of the Mining Act of its intention to seek an access arrangement with the Landholder for the carrying out of the prospecting operations the subject of the proposed Deed of Entry and from following the process for obtaining an access arrangement provided under Division 2 of Part 8 of the Mining Act.

ANNEXURE A – LAND TITLE DESCRIPTION, MAP OF EXPLORATION AREA AND PATHS OF ENTRY

Map/s attached should be based on a topographic map or aerial photograph of sufficient resolution to identify relevant features of the Exploration Area and detail:

- 1. Location of the area of interest for Exploration.
- 2. Paths of Entry for Exploration i.e. where the Explorer enters and exits.
- 3. Paths for Exploration – i.e. where the Explorer will travel and Exploration activity will occur.
- 4. The location of the areas where access for Exploration is prohibited under this Agreement (e.g. dwellings, gardens, substantial improvements, airstrips etc).
- 5. The boundary of the Exploration Licence (a second map may be needed to show the full area of the Exploration Licence).

Land Title References (as on Land Title Deeds) for the Land are as listed below:

Lot No:	Deposited Plan:
Lot No:	Deposited Plan:
Lot No:	Deposited Plan:
Lot No:	Deposited Plan:
Lot No:	Deposited Plan:
Lot No:	Deposited Plan:
Lot No:	Deposited Plan:
Lot No:	Deposited Plan:

ANNEXURE B – SPECIAL CONDITIONS AND FARM PROTOCOLS

Any special conditions, farm biosecurity protocols or Work Health and Safety protocols that the Explorer must comply with in accordance with this Agreement should be detailed below.

ANNEXURE C – COMPENSATION

Compensation must be based on 'compensable loss' as defined by the *Mining Act 1992*. Compensation should be negotiated by each explorer and landholder as appropriate, but also with consideration for equity for neighbouring landholders. Often compensation is not simply monetary but may include in-kind activities such as the upgrade or grading of a track, installing a gate or fixing a fence. All disturbance must be fully rehabilitated by the explorer as part of the tenure requirements.

The following table is a guide to compensation rates. This provides indicative ranges for compensation rates based on industry feedback from NSW exploration programs. Note that these rates are a guide only and not mandatory.

Activity	Rate (\$)	Guide rate (\$)	Detail on Activity
Drilling		\$100 - \$300	per diamond drill hole or mud drill hole or bore hole
		\$50 - \$150	per reverse circulation (RC) or percussion drill hole
		\$10 - \$50	per rotary air blast (RAB) or air core drill hole
		\$5 - \$10	per auger hole
Track construction		\$100 - \$125	per kilometre of track constructed with earthmoving equipment
Trench, pit or bulk trenching		\$1	per square metre of land surface disturbed
Disturbed crop			calculated through area disturbed (area disturbed (ha) x crop yield (t/ha) x commodity price (\$/t))
Negotiation of access arrangement			maximum amount is capped at \$1,500 (ex GST) for exempt or low impact exploration operations and \$2,500 (ex GST) for assessable exploration operations (by Order, NSW Gazette)
Other			

SIGNATURES TO EXECUTE THE AGREEMENT

SIGNED FOR LANDHOLDER		
Landholder:	Name:	Signature:
witness for Landholder:	Name:	Signature:
Landholder: (where second signature needed)	Name:	Signature:
witness for Landholder:	Name:	Signature:
Date:		
SIGNED FOR EXPLORER		
Explorer:	Name: Position:	Signature:
witness for Explorer:	Name:	Signature:
Explorer: (where second signature needed)	Name:	Signature:
witness for Explorer:	Name:	Signature:
Date:		

ANNEXURE D – DEED OF ENTRY (OPTIONAL)
–COMPLETE FOR STAGED AGREEMENT OR REMOVE FOR STANDARD AGREEMENT

By completing this deed, the Landholder grants the Explorer the right to enter the Prospecting Area to undertake the agreed Exploration Activities as detailed below.

LAND AND LANDHOLDER				
Owner on Land Title:				
Name and address of Land:				
Lot and DP of Land:	See Annexure A			
EXPLORATION LICENCE AND EXPLORER				
Exploration Licence Number/s:				
Exploration Licence Holder:				
EXPLORATION DETAILS				
Exploration methods: - please tick as appropriate for the exploration methods that may be undertaken in this Agreement - methods explained in Fact Sheet - additional space for other activities if required	Low impact exploration techniques		Medium/high exploration techniques	
	geological mapping		geophysical survey	
	soil and rock chip sampling		drilling <i>(please specify if applicable)</i>	
	environmental assessments		diamond / RC / RAB	
			costeaming or trenching	
			bulk sampling	
Exploration area:	See map at Annexure A			
Special conditions:	See details at Annexure B			
Compensation:	See details at Annexure C			
Paths of Entry:	All gates/main gates/ Other (please specify): (see Annexure A for map)			
Period of permitted access	7am to dusk/Other (please specify): Any day of the week/Other (please specify)			
AGREEMENT DETAILS				
Term of Deed	From:	To: End of Licence / Other (please specify)		

SIGNATURES TO EXECUTE THE DEED

SIGNED FOR LANDHOLDER		
Landholder:	Name:	Signature:
witness for Landholder:	Name:	Signature:
Landholder: (where second signature needed)	Name:	Signature:
witness for Landholder:	Name:	Signature:
Date:		
SIGNED FOR EXPLORER		
Explorer:	Name: Position:	Signature:
witness for Explorer:	Name:	Signature:
Explorer: (where second signature needed)	Name:	Signature:
witness for Explorer:	Name:	Signature:
Date:		