



Land Access Arrangement for Mineral Exploration

The Land Access Arrangement for Mineral Exploration is a template to assist NSW landholders and mineral exploration companies form access arrangements. This Template, and the accompanying Land Access Arrangement Information, was published in October 2012 by the Department of Trade and Investment, Regional Infrastructure and Services. Every access agreement must be tailored to the individual explorer and landholder. This Guideline provides additional guidance on legislative requirements and conditions but does not constitute legal advice.

Get it Right from the Beginning

Exploration in NSW operates in an environment that is unique due to the close proximity of mineral resources to existing population centres and alternate land uses. The successful coexistence of mining with alternate land uses, such as agriculture, has enormous benefits for NSW, particularly regional NSW.

Effective engagement by explorers with landholders and other stakeholders is a social imperative and also makes good business sense. Explorers lay the foundation for the mining industry's reputation as a responsible citizen in communities.

The vast majority of relationships between explorers and landholders are positive. Courtesy, respect and honesty go far in building relationships between explorers and landholders. 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.

Template to assist Access Negotiations

The *Land Access Arrangement for Mineral Exploration* (Template) was published by the Department of Trade and Investment, Regional Infrastructure and Services under section 141(1A) of the *Mining Act 1992*. The Template was originally published with the concurrence of the NSW Minerals Council and NSW Farmers and followed extensive negotiation. NSW Farmers

withdrew their endorsement of the template in July 2013.

The Template, and the accompanying *Land Access Arrangement Information*, was developed to assist explorers and landholders negotiate a land access arrangement. It 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. Use of the Template is not mandatory. If the Template is used, it is a requirement that the landholder is provided with a copy of the *Land Access Arrangement Information*. These documents may be downloaded from <http://www.resources.nsw.gov.au/landholder-information>.

Legislative Background

The *Mining and Petroleum Legislation Amendment (Land Access) Act 2010* introduced important changes to access arrangements, including:

- Access arrangements must be written (verbal agreements are no longer lawful)
- Separate agreements may (but need not) be made with each landholder of the land
- Mortgagees must be notified within 14 days of an access arrangement being agreed.

'Landholder' is clearly defined in the *Mining Act 1992* and includes the owner in fee simple, native title holder, holder of a lease or licence under the *Crown Lands Act 1989* or the *Western Lands Act 1901*. Explorers should note that the access agreement must be made between the 'holder of the prospecting title' and the 'landholder'. Explorers should seek legal advice when exploration licences are in joint venture arrangements.

Landholders and explorers have clear legal rights regarding the explorer's access to land for mineral exploration. In particular, the *Mining Act 1992* provides specific landholder protections in respect of dwellings, gardens and significant improvements as well as providing a statutory right to compensation for any 'compensable loss' resulting from exploration activities.

Two Parts to make an Agreement

The Template is comprised of two parts. The 'base agreement' comprises all the key issues for agreement between the landholder and explorer including access, compliance and conditions as well as compensation.

The additional Deed of Entry (Annexure F) necessitates negotiation for each exploration activity and access period. Some explorers and landholders may prefer to have a Deed of Entry for each and every program and others may want to negotiate access for multiple exploration activities at the outset. There are clear conditions in the base agreement (Clause 1.3, 4) that ensure that the Deed of Entry and the base agreement are combined to form an 'access arrangement' for the purposes of the *Mining Act 1992* if arbitration is ever required.

Who can Sign and Witness the Agreement?

Companies should seek legal advice on who should sign an access agreement on their behalf, and any requirements for entering into agreements, such as company seals, in accordance with the *Corporations Act 2001*.

The landholder must sign the agreement him/herself. Where the landholder is a corporation, the explorer should ensure that the agreement is signed in accordance with the *Corporations Act 2001*.

The agreement may be witnessed by anyone without an interest in the agreement. This person may be related to the landholder or explorer, but should not be party to the agreement.

Who is entitled to Compensation?

Landholders are entitled to compensation for 'compensable loss' as defined in the *Mining Act 1992* (Section 262, 263). This compensation is payable for loss caused by damage during exploration activities or for deprivation of the use of the land.

How much Compensation should be Paid?

Compensable loss should always be negotiated between the explorer and landholder and be dependent on, amongst other things, the value of the land, improvement of the land, period of land deprivation and the area of land disturbed. Compensable loss should be negotiated on an individual basis but with due consideration of fairness for neighbouring properties. Compensation need not always be monetary in nature – instead a landholder and explorer may agree to upgrade a farm road or fix a farm gate which may be worth more than the actual monetary compensation.

The following table provides indicative ranges for compensation rates based on the exploration activity (see the NSW Minerals Council fact sheets for explanations of each activity). These rates are a guide only.

Guide on Compensation Rates based on Type of Surface Disturbance (exclusive of GST)

Activity	Guide \$	Detail on Activity
Track Construction	\$100	Per kilometre
Disturbed Crop		Calculated through area disturbed Area disturbed (Ha) x crop yield (t/Ha) x commodity price (\$/t)
Drilling	\$100-300	Per diamond drill hole or mud drill hole or bore hole
	\$50-100	Per reverse circulation (RC) drill hole
	\$5-25	Per air core drill hole
	\$5-25	Per rotary air blast (RAB) drill hole
	\$1	Per auger hole
Costeaming	\$1	Per square metre of land surface disturbed
Bulk Sampling	\$1	Per square metre of land surface disturbed
Backhoe Trenching	\$1	Per metre
Ditch-Witch Channelling	\$1	Per metre
Other		

As an example of how these rates are calculated, a diamond drill hole commonly disturbs an area of 250m² which is 1/40 of a hectare. This includes the area of true disturbance (around 3m²), support vehicles, ancillary infrastructure and vehicles moving to and fro to the rig. A diamond drill hole commonly takes a week to complete, so the compensation of \$150 per hole represents the equivalent of \$6,000 per hectare for the use of the land for a week. In most circumstances, this would be a generous rate when compared to the value of the land.

Do we need a Confidentiality Clause?

Explorers and landholders should always negotiate agreements with respect, honesty and transparency. A confidentiality clause has not been included in the Template to promote transparency and increase trust between parties and neighbours.

In some circumstances, however, a confidentiality clause may be needed in an access agreement and the following wording may be used:

19 Confidentiality

19.1 Subject to 19.2, the Licence Holder and The Landholder agree to keep the terms of this Agreement confidential.

19.2 The Landholder or Licence Holder may make any disclosure in relation to this Agreement:

- (a) to any professional adviser, financial adviser, banker, financier, auditor, employee of that party to whom it is reasonably necessary to disclose, on the basis that such persons will keep any disclosed information confidential;
- (b) to any other person to whom it is reasonably necessary to disclose in order for the Landholder or Licence Holder to carry out its business on the basis that such person will keep any disclosed information confidential; and
- (c) to comply with any applicable law, or any requirement of any regulatory body (including any relevant stock exchange) applicable to the party, regardless of whether the obligation to disclose arose as a consequence of the act of the Landholder or Licence Holder.

Further information:

Department of Trade and Investment, Regional Infrastructure and Services - Division of Resources and Energy

<http://www.resources.nsw.gov.au>

NSW Minerals Council 'Mineral Exploration Handbook – Towards Environmental Excellence'

www.nswmin.com.au/Policy-and-Advocacy/Environment/Exploration/Exploration/default.aspx

NSW Minerals Council Fact Sheet 'Mineral Exploration and You'

<http://www.nswmin.com.au/Media-Speeches-and-Info/Fact-Sheets/default.aspx>

NSW Minerals Council Fact Sheets on mineral exploration methods

<http://www.nswmin.com.au/Media-Speeches-and-Info/Fact-Sheets/default.aspx>

Disclaimer: This guideline is intended to provide summary information only. It does not intend to be comprehensive or to provide specific legal advice. Given 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 guideline. All information in this fact sheet is provided "as is" with no guarantee of completeness or accuracy and without warranty of any kind, express or implied. In no event will New South Wales Minerals Council Limited, 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 paper or for any consequential damages.