

# Overview of Mining Exploration Access

## ISSUE

NSW FARMERS' ASSOCIATION (the 'Association') has prepared three documents to replace the outdated 1997 standard form titled "Rural Land Access Agreement for Mineral Exploration" and the related "Mineral Exploration – A Code of Conduct for Landholders and Mineral Explorers". These documents are as follows:

- *Overview of Mining Exploration Access (this document)*
- *Developing Land Access Guidelines*
- *Clauses for Consideration in a Land Access Agreement*

Mineral exploration varies greatly in its scale, technology used and potential impacts. The Association no longer believes that a standard form document is appropriate and encourages farmers to consider the Clauses for Consideration in a Land Access Agreement with a view to selecting sections and clauses that are relevant to the specific exploration proposal applying to their land. Factors to consider include the technology being used, the intensity and duration of exploration, and the degree of risk (the vulnerability of the farming system, and land and water resources to disturbance).

The Association recommends that farmers obtain independent legal advice prior to using any of the terms contained in the Clauses for Consideration in a Land Access Agreement. This is of particular relevance if the exploration activities are anticipated to be significant.

## KEY POINTS

- Mineral Explorers cannot commence exploration until the terms of access have been resolved. This is the only stage of the process where farmers have the legal right to negotiate terms of access. If terms cannot be agreed by negotiation the matter will be resolved by arbitration. The Association encourages farmers to seek only those terms that are reasonable given the nature of the exploration activity and the exploration site.
- The purpose of the Access Guidelines are to ensure that the explorer conducts activities with minimal possible disturbance and with due regard to risk.
- There is no scope for landholders to claim royalties under Land Access Agreements. The limited compensation available is only to cover farmers' costs arising from the exploration process.

## BACKGROUND

### The NSW Minerals Industry

The minerals industry includes a range of commercial operations based on the discovery, development, management and utilisation of mineral resources. It includes exploration (mineral and petroleum), mining, and value added processing (smelting and refining). Minerals, such as coal, copper and gold, belong to the people of NSW (the Crown). Companies and/or individuals can apply to the Government for an exploration licence that allows them a right to explore for the minerals, upon an agreement of access with the landholder.

NSW is a low cost supplier of coal, gold, base metals, mineral sands and gemstones to world export markets. This has led to a significant increase in applications for exploration licences, with the number received in 2006-07 more than double that of 2004-05.

Generally the exploration company is separate to the mining company, although in some circumstances they may be the same party. Commonly the exploration company will sell the mineral information to the mining company and the mining company will seek a mining licence from the Government. The Crown charges a price (ie: Royalty) for the transfer of the right to extract mineral resources and this price is prescribed in legislation.

It is important that farmers understand their rights during negotiations and the rights of the explorer holding the exploration licence applying to your property. Negotiation on the terms of access is a critical stage in the process for farmers.

### Note (Opal Mining):

The Mining Act separates many aspects of opal exploration, prospecting and mining from that of other mining and exploratory activities. The Association is dealing with opal mining as a separate issue and therefore please contact the Association phone 1300 794 000 if you have an issue with opal mining.

## What should you do when approached by a Mineral Explorer?

- Remain calm! Many farmers have been through this process before.
- The mineral explorer cannot begin exploration until agreement on the terms of access has occurred. This is the only stage of the process where landholders have the legal right to negotiate on the exploration and terms of access.
- As a first step you should advise the mineral explorer that you are seeking to negotiate a formal written access agreement.
- Be careful not to agree to access conditions verbally.
- Seek to meet first in a neutral location (ie: solicitor's office) to discuss the explorer's intentions and the next steps in how you would like to proceed in negotiating an access agreement.
- Set a meeting date which allows you ample time to undertake background research.
- Consider the Association's documents titled *Developing Land Access Guidelines* and *Clauses for Consideration in a Land Access Agreement*.
- Ask your neighbours and/or local Association District Council if they know who has been through the process before.
- If exploration activities are suspected to be significant, contact your solicitor and provide them with the documents titled *Developing Land Access Guidelines* and *Clauses for Consideration in a Land Access Agreement* and ensure that they liaise with solicitors who have been through the process before.
- If more than one property owner is affected by the exploration, it may be advantageous for you to work together.

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## DEVELOPING LAND ACCESS AGREEMENTS

### Step 1:

Read the document titled *Developing Land Access Guidelines* which provides an overview and step-by-step guide on:

- What is an exploration licence?
- What are your rights regarding land access?
- What the Mining Act states can be included in an access agreement?
- What you should do when approached by an exploration licence holder?
- What you should aim to include in the access agreement?
- What happens if an agreement cannot be reached?
- What happens if an arbitrator cannot be agreed to?
- What happens if the mining company breaches the access agreement?

### Step 2:

Read the *Clauses for Consideration in a Land Access Agreement*, with a view to selecting sections/clauses which are of relevance to your business and property.

#### Note:

The *Clauses for Consideration in a Land Access Agreement* should be viewed as a guide only which landholders should adapt to meet their specific needs. The Association also notes that the compensation amounts in the document are indicative only, and amounts may vary depending on type of exploration, duration of exploration, the potential damage to land and resources, and the time you may have to invest in supervising the process.

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## KEY POINTS

- Work together with your neighbours. Think carefully before signing any confidentiality agreement with an explorer that might prevent you sharing information with your neighbours.
- The exploration may have only minor impacts or the impacts could be quite large. You don't know the level of impact until the explorer has documented exactly what actions they intend to undertake. You have the right to request detailed information.
- Talk with other farmers who have been through this process (eg: the Caroon Coal Action Group).
- Consult the NSW Department of Primary Industries and other relevant Government departments. If you think the exploration activities may affect water resources consult the NSW Department of Water and Energy.

## GOVERNMENT DEPARTMENT CONTACT DETAILS

### NSW Department of Primary Industries

Question and Answer document on the exploration and mining process from the [http://www.dpi.nsw.gov.au/minerals/titles/landholders-rights/common\\_questions](http://www.dpi.nsw.gov.au/minerals/titles/landholders-rights/common_questions)

T: 1300 736 122

email: [minres.webcoordinator@dpi.nsw.gov.au](mailto:minres.webcoordinator@dpi.nsw.gov.au)

### NSW Department of Water and Energy

Water management issues, including water sharing arrangements, bores, water flow (surface and groundwater)

T: (02) 8281 7777

email: [information@dwe.nsw.gov.au](mailto:information@dwe.nsw.gov.au)

### NSW Department of Environment and Climate Change

Water quality issues

T: (02) 9995 5000

email: [info@environment.nsw.gov.au](mailto:info@environment.nsw.gov.au)