



Environmental  
Defenders Office

# Protecting your land from exploration and mining

November 2023



“The most common way  
people give up their power  
is by thinking they don’t  
have any”

- Maya Angelou



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1. How a company gains access to your land for exploration
2. Restrictions imposed on licence holders
3. Access arrangements
4. Next steps





1. How a company  
can gain access to your  
land for exploration



**You do not own the  
minerals in your  
land**



If your land is the cheese, you own the cheese but not the holes

# Exploration generally

Exploration includes things like:

- Accessing land
- Taking samples
- Seismic surveying
- Core hole drilling
- Trenching
- Clearing land
- Constructing access roads/tracks

In addition to an exploration licence, a company may also need to get an activity approval (under planning law) to authorize the works they plan to do – supported by an environmental assessment.



# EL 9235

- The licence has been issued subject to standard conditions relating to:
  - Works program
  - Native Title
  - Community Consultation
  - Protection of the Environment
  - Security - \$10K
  - Rehabilitation
  - Environmental Incident Reporting
  - Change in control

[https://digs.geoscience.nsw.gov.au/api/download/18ac0f3deb7d8e4373f1a5d87f007a7d/EL9235\\_20210726\\_D1\\_Grant.pdf](https://digs.geoscience.nsw.gov.au/api/download/18ac0f3deb7d8e4373f1a5d87f007a7d/EL9235_20210726_D1_Grant.pdf)



# Work Program

## WP-EL9235-2021-2022

- Exploration must be carried out in accordance with the approved Works Program
- The Works Program will set out what exploration activities are contemplated
  - e.g. seismic surveying
  - 4 core holes
- Very useful information to have as you will get a sense of the scale and intensity of the exploration
- The Works Program is NOT publicly available
- We recommend you put in a GIPA application for the Works Program

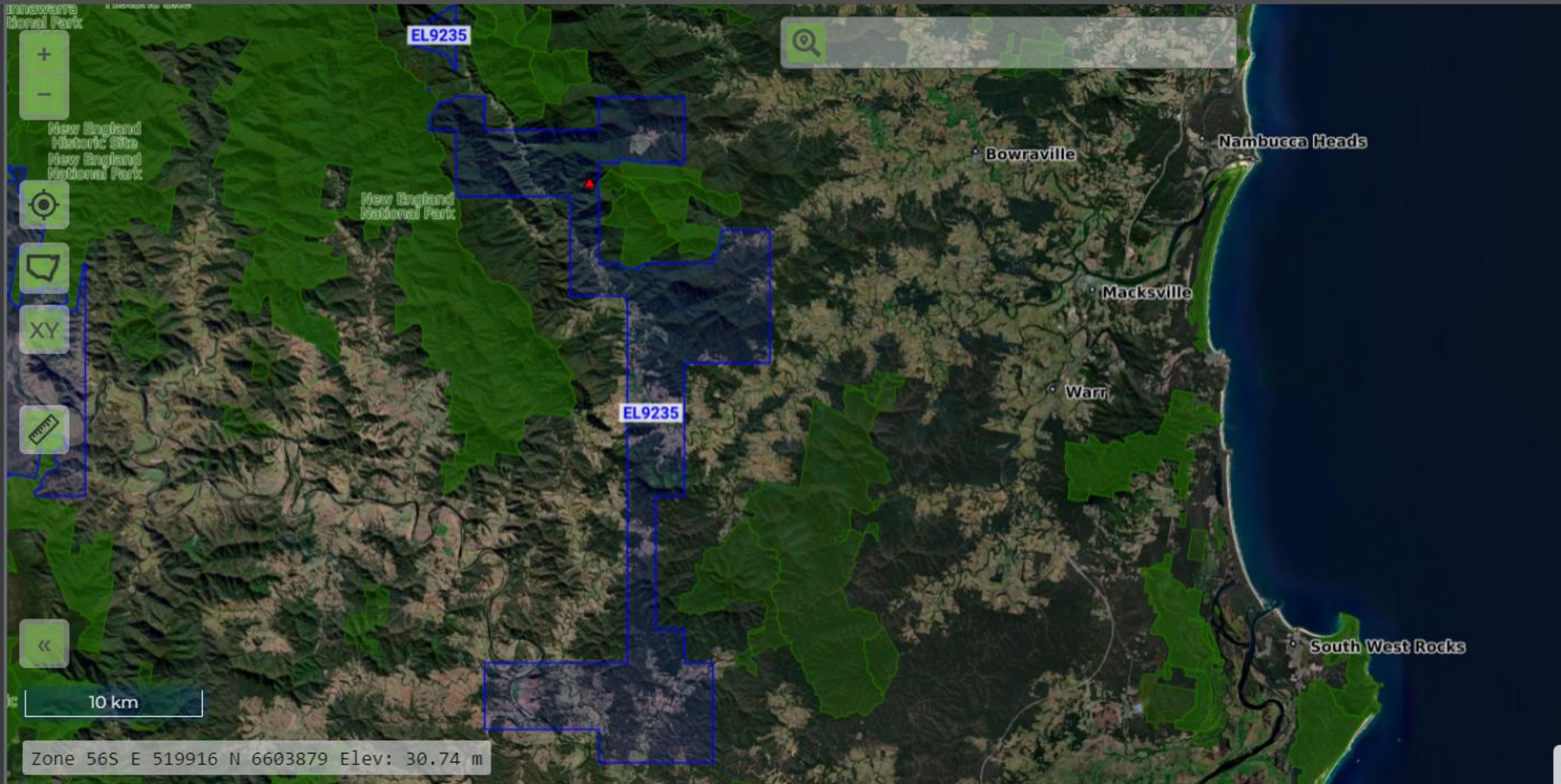


# Consultation Code of Practice

- The code of practice sets out mandatory requirements for community consultation in exploration activities
- The code serves two purposes:
  1. it provides upfront information to the industry and the community
  2. it sets out enforceable mandatory requirements related to community consultation.

<https://www.resourcesregulator.nsw.gov.au/sites/default/files/2023-01/exploration-code-of-practice-community-consultation-2016.pdf>







## 2. Restrictions imposed on license holders



# Where exploration cannot take place by law

Exploration cannot take place:

- Within 200 metres of your primary residence
- Within 50 metres of a garden
- On a significant improvement such as a 'work' or 'structure'

...without landholder consent

DO NOT give consent for exploration to happen within these areas

Be careful what you sign as, once given, consent cannot be taken back.



# Access arrangements can restrict or permit access

- A company cannot enter your land without having an access arrangement in place
  - Sets out the terms upon which the company can enter your land to carry out exploration
- You can further restrict where exploration can happen OR
- You could permit exploration on land that would otherwise not be available – e.g. within the 200m buffer around your house
- You need to be very careful about what you're agreeing to
- You do not have to sign an access arrangement!

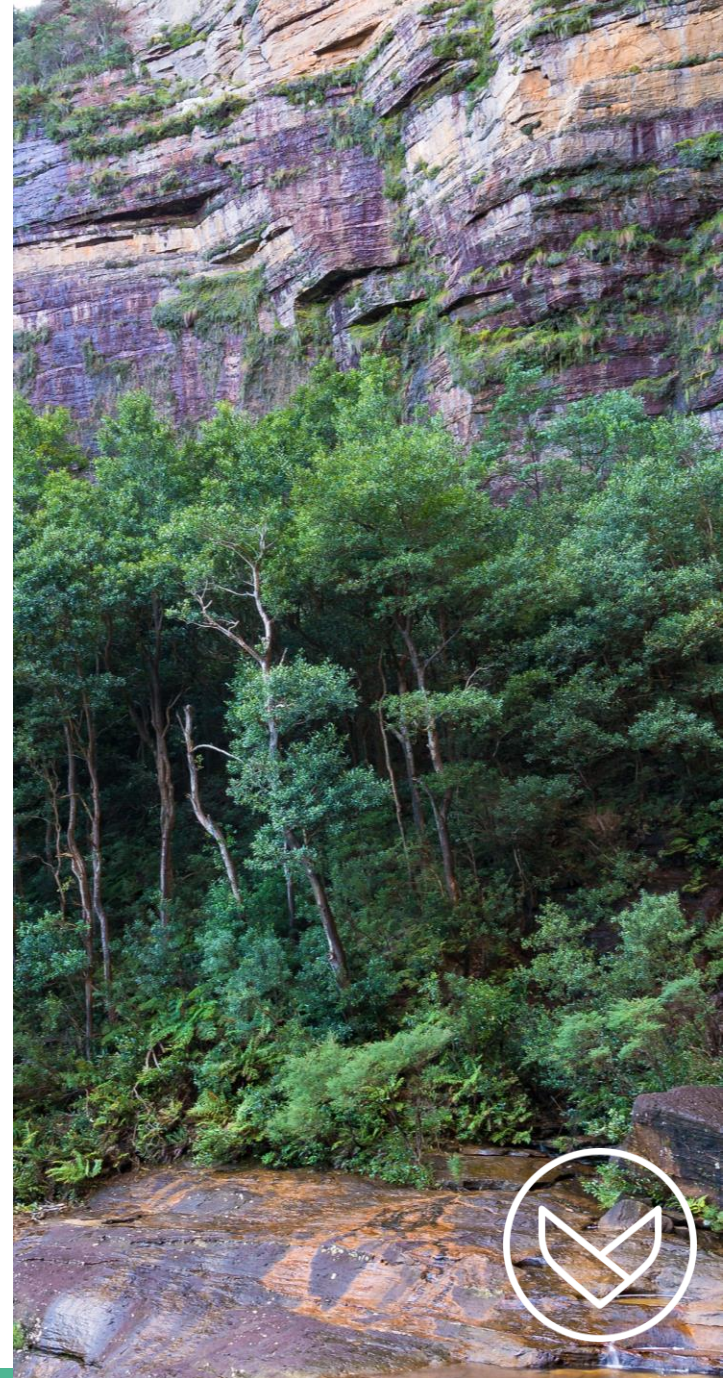


# Exploration cannot happen on significant improvements

If there are significant improvements on your property, you can prevent a licence holder from accessing and/or travelling over these parts of your land or carrying out exploration on them.

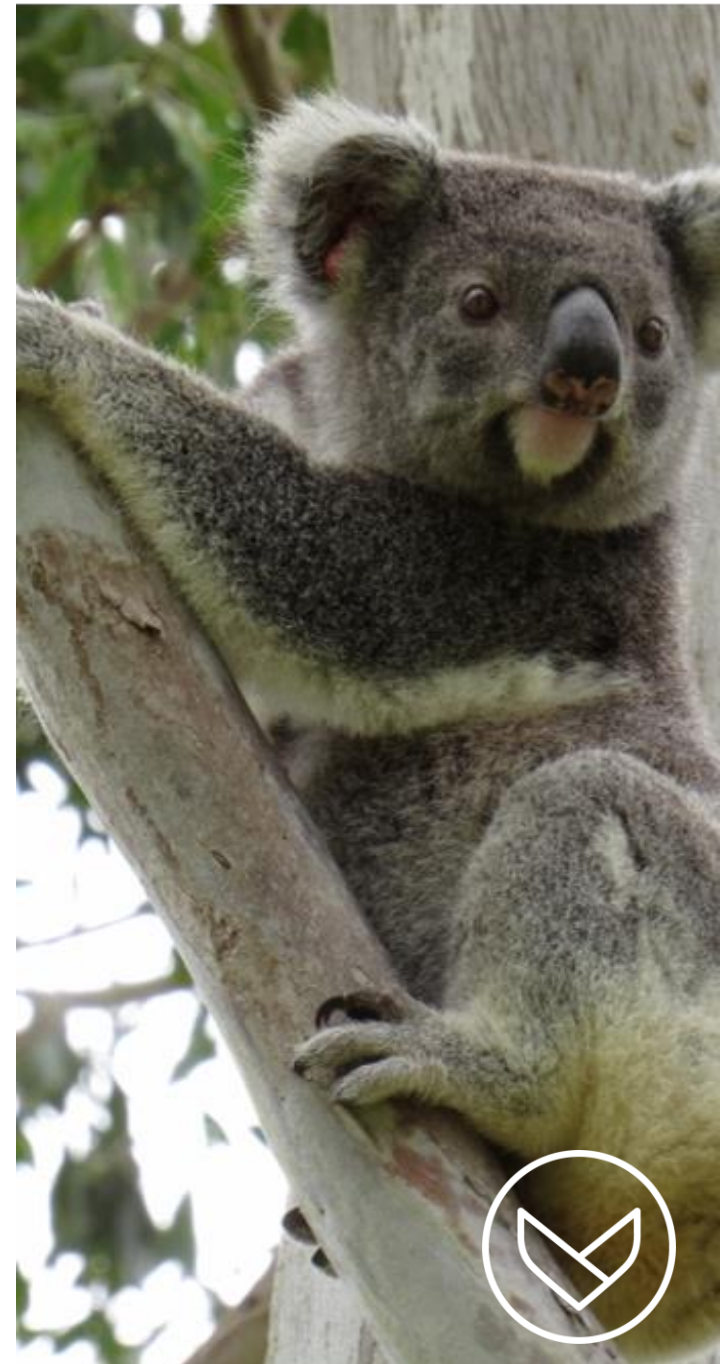
To be considered a significant improvement, a work or structure must be:

- substantial and valuable improvement to the land
- reasonably necessary for the operation of the landholder's lawful business or use of the land
- fit for its purpose (immediately or with minimal repair)
- unable to reasonably co-exist with the exercise of rights under the exploration licence; and
- unable to reasonably be relocated or substituted.



# Examples of 'significant improvements'

- The Land and Environment Court has found the following to be significant improvements:
  - dams
  - contour banks
  - fences
  - stockyards.
- However, cleared land with native, unimproved grasses were not significant improvements.



# ***Martin v Hume Coal Pty Ltd [2016]***

- 7 landholders together took their case to the Land and Environment Court.
- The Land and Environment Court decided that Hume Coal could not access or travel over areas of significant improvements, including:
  - Roads or driveways
  - Improved pastures
  - Lucerne crops
  - Equestrian courses
  - Cattle laneways
  - Irrigation pipes
  - Fences
- Court also found that a significant improvement simply needs to be in place before the mining company proposes to use the land – not at the time the access arrangement is made.
- This means you can expand the significant improvements on your land right up until the explorer proposes to enter.



# In summary...

Example of courts say MAY be considered a significant improvement:

- Paddocks with improved pastures (including lucerne)
- Significant earthworks (including laser-levelled land and levee or contour banks)
- Water systems (including irrigation pipes, water tanks etc)
- Equestrian cross-country event courses
- Cattle laneways
- Formed roads and driveways
- Stockyards
- Fencing
- Dams
- Farm sheds

Your consent is required before these areas of your land can be accessed or explored on.



# Things to think about

- What do you use your land for?
  - Farming, tourism, conservation, subsistence (a combination)? Think broadly.
- What improvements have been made to your land?
  - Map these on your property. Think broadly
- Are the improvements fit for purpose now, or with some repair?
- Why are the improvements valuable?
  - Records of works done, money spent etc
  - Importance of the works/structures to your business or use of the land
- Why can't the improvements be moved?
- Why can't the improvements co-exist with exploration?
  - How are they incompatible with exploration activities?
  - E.g. biosecurity, disturbance of land/stock, disruption of privacy (for tourism etc).



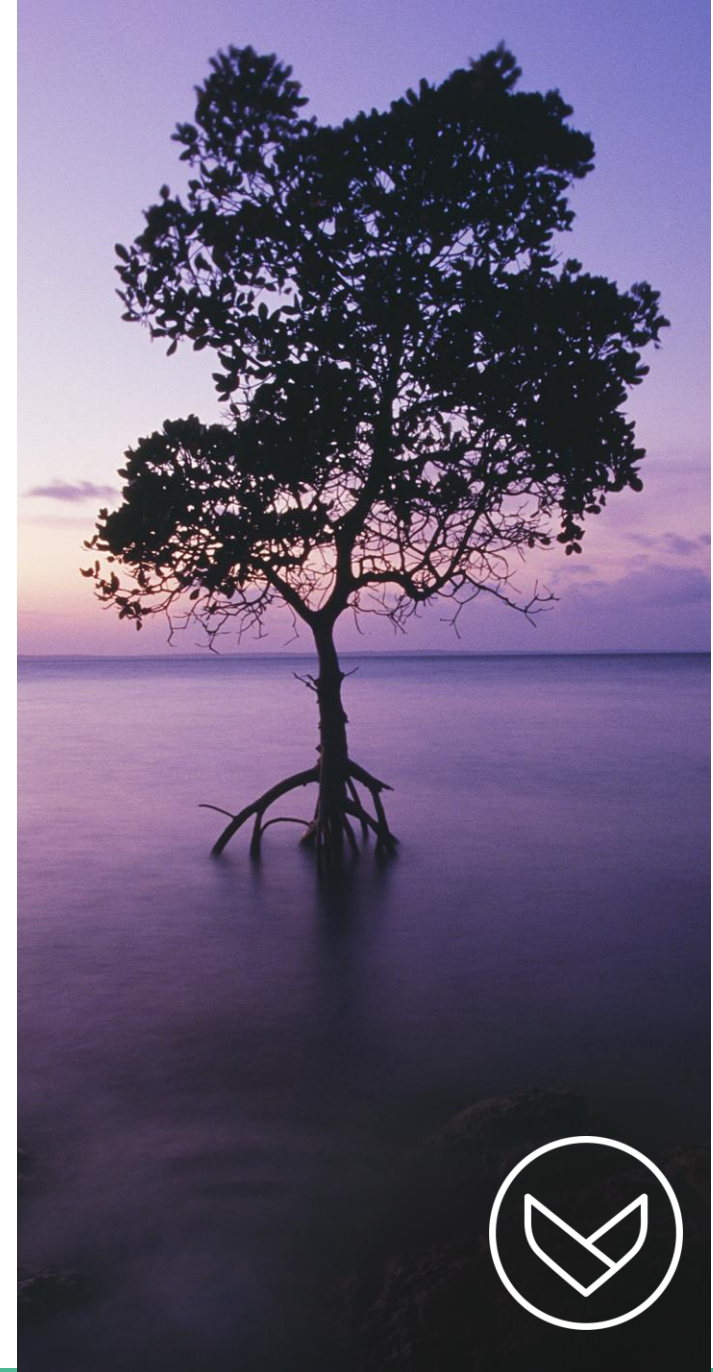
### 3. Access arrangements

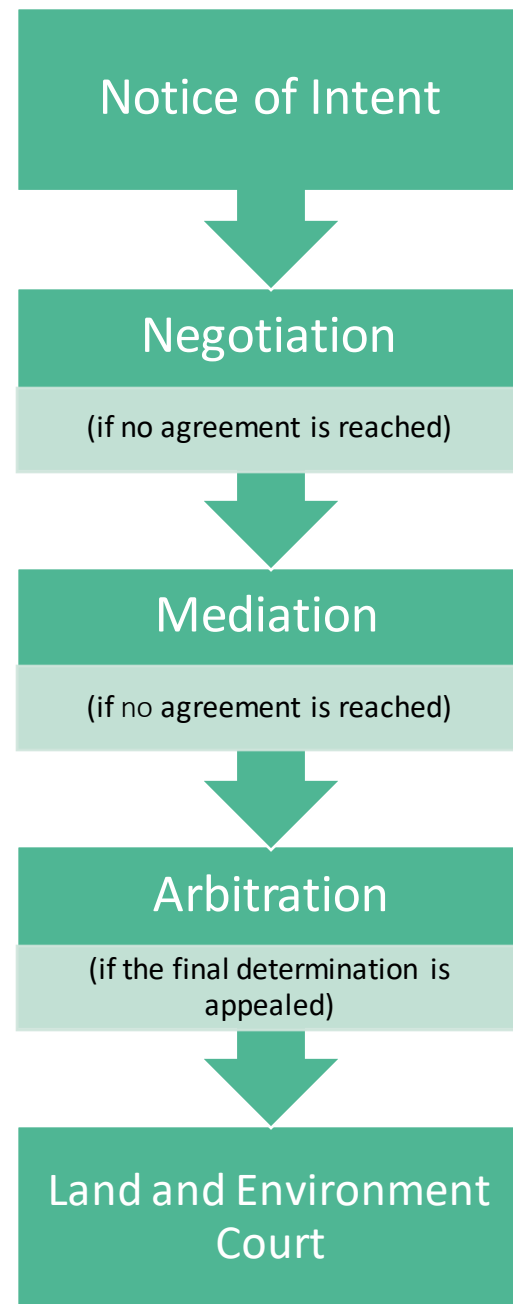


# What is a land access arrangement?

- Written agreement
- Negotiated between the landholder and licence holder
- Contains terms that specify when and where the licence holder can explore on your land
- Terms can be designed to protect your property, your livelihood and your amenity

NOTE: Access arrangements are only required for exploration. If a mining lease is granted, there is no need for an access arrangement. This is your best opportunity to resist future mining!





# Important points

- You should never sign the first access arrangement you are given. This should be viewed as a starting point for negotiations at most.
- You don't need to negotiate or attend mediation
- You should attend arbitration as a decision can be made in your absence.
- There is no guarantee that the license holder will take you to mediation or arbitration if you refuse to negotiate.

## At Arbitration

- You should be prepared to argue why access should not be granted – significant improvements are the strongest reason to deny access but also consider environmental constraints and Aboriginal cultural heritage.
- It is also advisable to consider what terms you would want to see in an access arrangement if one was issued by the arbitrator or the court (fallback position).
- So long as your terms are reasonable, there is no limit to what they can be or what they can cover.
- EDO has a checklist of issues that should be dealt with in an access arrangement to protect landholders.



# Factors to consider

## Costs

- The licence holder must pay the reasonable costs of the landholder – time spent negotiating, costs of attending mediation/ arbitration and costs of court proceedings
- Costs of the arbitrator

## Proof of costs

- Keep records of your costs as the licence holder only has to pay for costs supported by evidence. This includes your time spent negotiating so keep a record of your time.

## Landholder responsibilities

- If you choose to participate in negotiation, mediation, arbitration etc, you should do so in good faith, with honesty and integrity
- If you act unreasonably throughout negotiation, mediation or arbitration, you may not be entitled to your legal costs

## Legal representation

- You have the right to legal advice and representation. - these costs can be recouped as reasonable costs of negotiating an access arrangement (capped at negotiation stage but not thereafter)
- Do not sign anything without getting legal advice first!



# What are the risks?

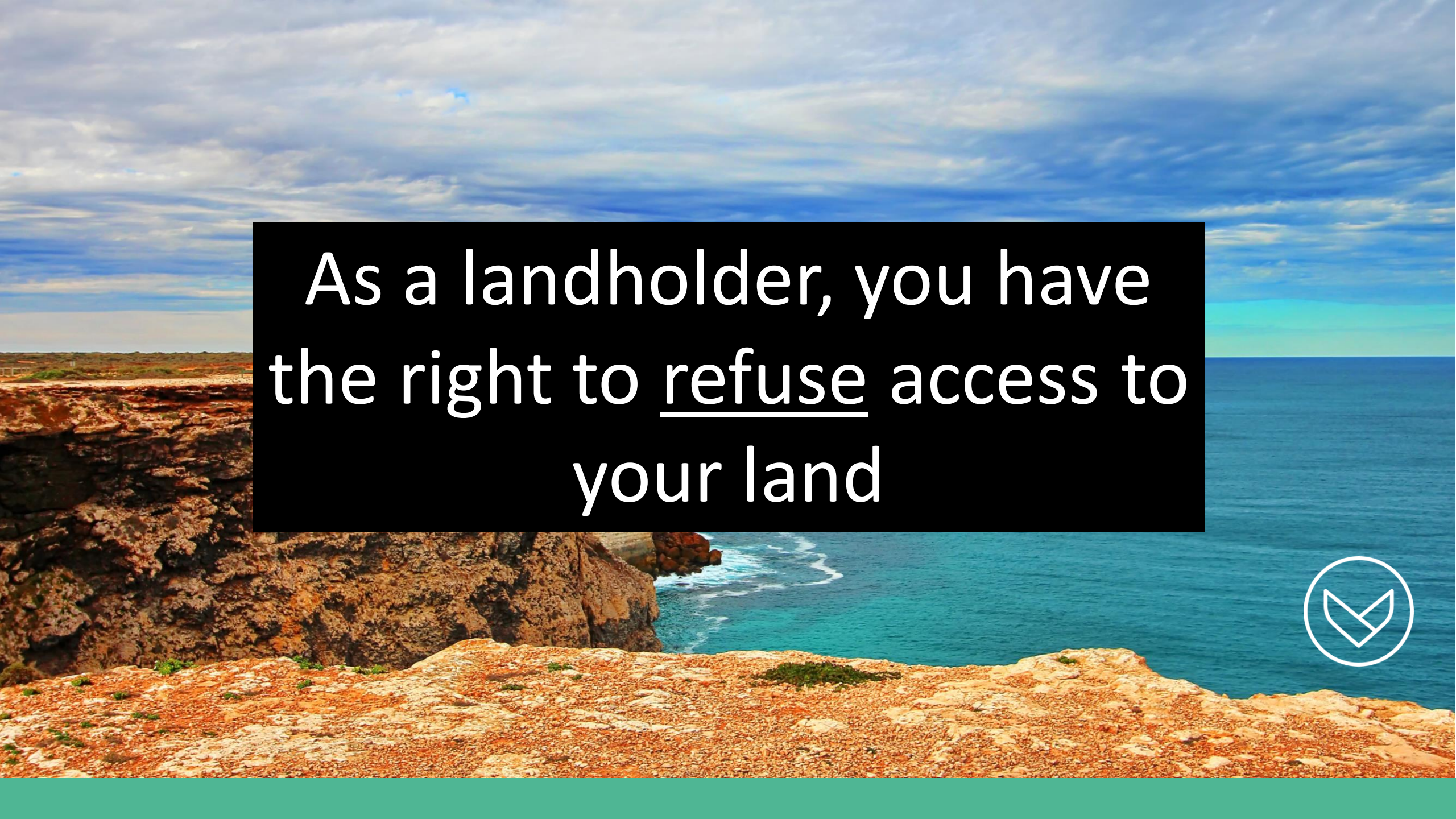
## **Risk of refusing an access arrangement**

- Terms of the access arrangement will be decided for you either by the arbitrator or Land and Environmental Court (but you will get a say about the terms if access is granted so think about this ahead of time)
- Time and potential stress involved in attending mediation, arbitration, Court

## **Risk of agreeing to an access arrangement**

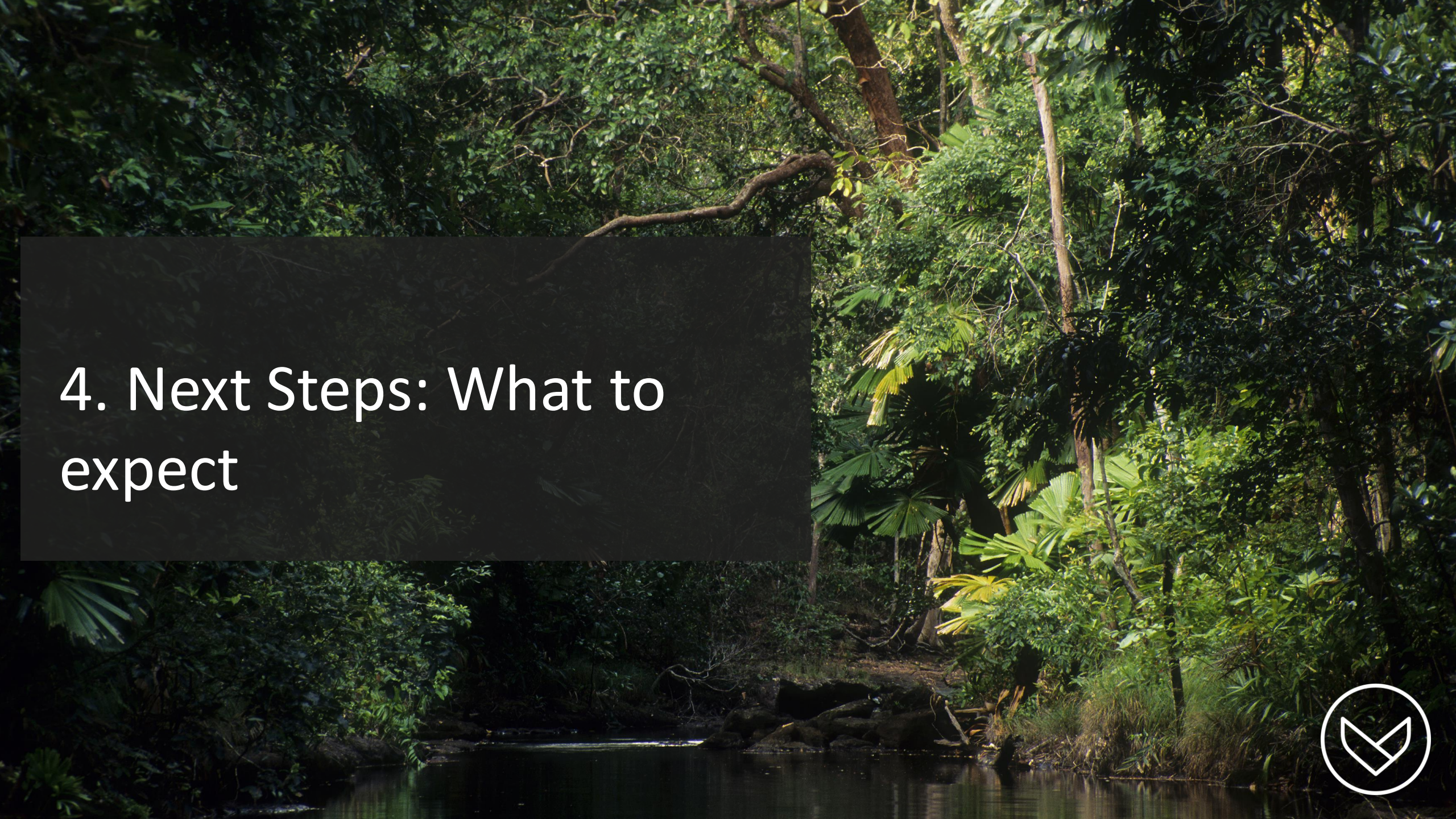
- Allows the licence holder to explore on your land – which can cause damage, and will potentially lead to full scale mining later on (if a mining lease is granted)





As a landholder, you have  
the right to refuse access to  
your land



A lush tropical forest scene with a river and a dark text box. The background is a dense, vibrant green forest with various types of trees and foliage. A river flows through the lower part of the image, reflecting the surrounding greenery. A large, dark, semi-transparent rectangular box is positioned on the left side of the image, containing white text. In the bottom right corner, there is a small white circular icon containing a stylized downward-pointing arrow.

## 4. Next Steps: What to expect



# Mining company strategies

1. Mining companies often use divide and conquer strategies to get landholders to sign agreements

*“We are really interested in your neighbour’s land – we just want to use your land to get access to theirs”*

*“We will explore away from your house down on your boundary with [neighbour]”*

*“All your neighbours have signed with us – you’re the only one holding out”*

2. They may offer you money to sign an access arrangement – this is rarely worthwhile.
3. They may tell you that you’ll get a better deal if you negotiate with them – and a worse deal if you go to arbitration or Court – this is very unlikely
4. They are likely to use locals to try and negotiate access arrangement with you
5. They are likely to use confidentiality agreements to prevent you from talking about what compensation you are offered or other terms of any arrangement.



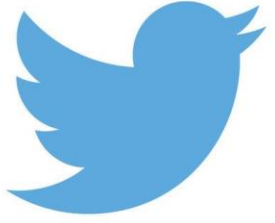
# What should you do if you are approached to sign an access arrangement?

1. Don't sign the agreement!
2. You don't have to negotiate unless you want to. Keep records if you do negotiate.
3. You should attend mediation/arbitration – to argue why access should not be granted.
4. Prepare a list of significant improvements currently on your property and consider expanding the significant improvements on your land.
5. If your property has boundary fences, consider building gardens at all public road gates to restrict access to your land (the fence is a significant improvement and the gate has a garden (and its 50 m buffer)
6. Keep records of all expenditure and work done on significant improvements.
7. Stick together! Keep lines of communication open with your neighbours and encourage them to also deny access.
8. Beware of 'divide and conquer' tactics by the licence holder
9. Ensure all communications with the licence holder are in writing and you communicate clearly that you do not want any exploration of any sort taking place on your property.



# Questions?





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