

# CUSTOMARY LAND AND DEVELOPMENT

THE MINING, LOGGING AND ENVIRONMENTAL  
APPROVAL PROCESS EXPLAINED.

LANDOWNERS' ADVOCACY AND LEGAL SUPPORT UNIT  
(LALSU)

Public Solicitors Office



Solomon Islands Government

This booklet has been developed by William Lee of the UQ Pro-Bono Centre, based on new and existing materials provided by the Landowners Advocacy and Legal Support Unit, Solomon Islands Government, and with the support of Jennifer Corrin and Simon Albert.

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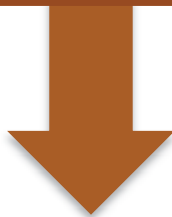
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### IMPORTANT NOTE

All the processes described in this booklet are complex. They can last for a long time and have a big impact on your land. It is very important that you seek legal advice as soon as possible if there is any proposal to do mining or logging in your area, and especially before entering into any written agreement.

# MINING



## What Are Minerals?

Minerals are things like gold, silver, copper and nickel. Minerals are part of the earth and they form naturally in the ground over millions of years. They can be worth a lot of money.

## Who Owns Minerals?

Minerals are owned by the people and the government of Solomon Islands.

## What is Mining?

Mining is a complex process, involving numerous steps

- Looking for mineral rich areas – Reconnaissance ★
- Identifying the prospects for a mine – Prospecting ★
- Extracting the Minerals – Mining ★
- Mine Closure ★

## What is Protected?

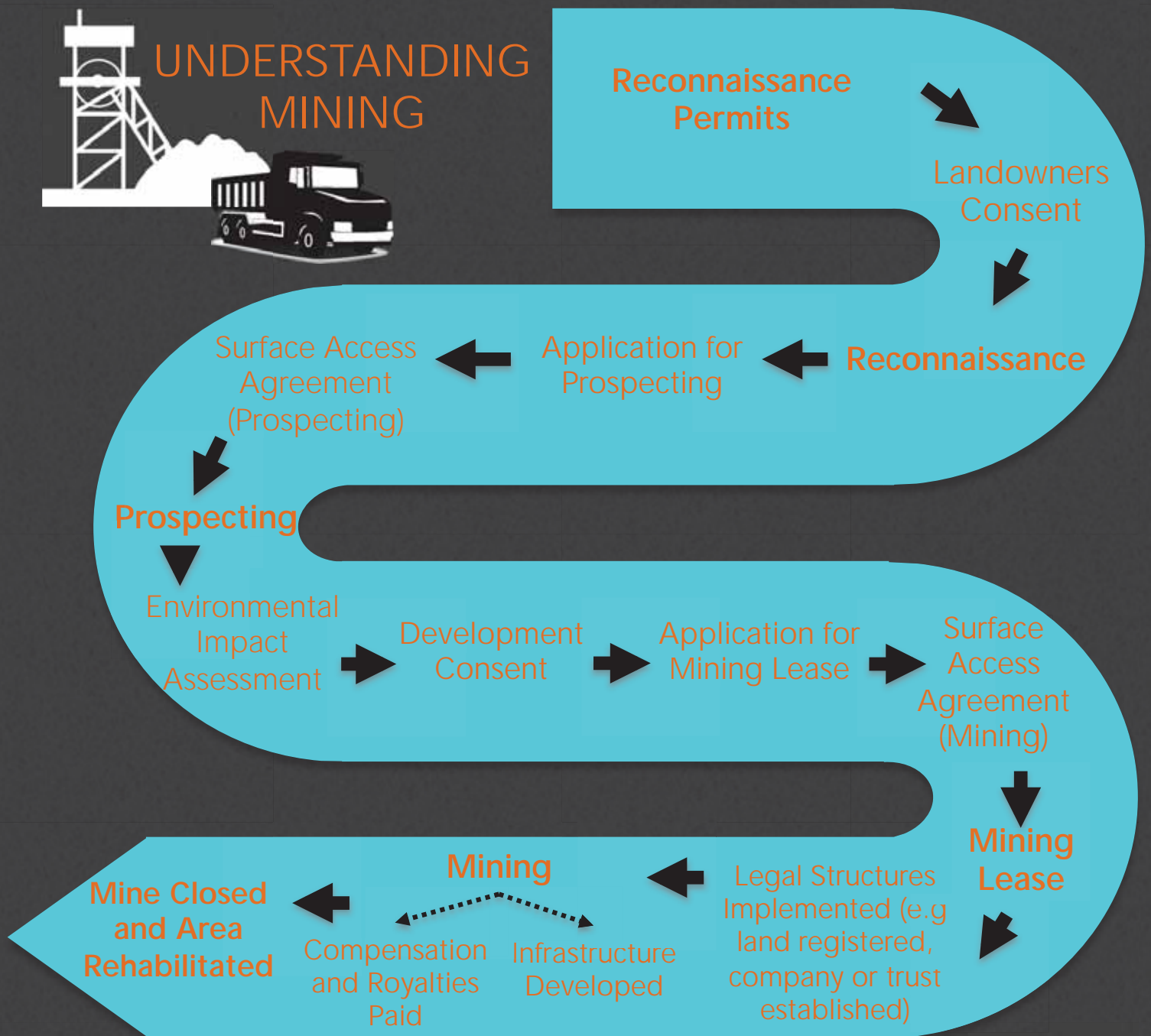
Mining is prohibited on tambu sites, villages, a burial site, house, garden or crops, towns or in state forests unless prior compensation measures are agreed.

## Who is Responsible?

- Mines are operated by Mining Companies, which are companies that have experience in extracting minerals.
- Mining Activities in Solomon Islands are managed by the Ministry of Mines, Energy and Rural Electrification under the Mines and Minerals Act.
- Landowners control access to their land under a 'surface access agreement'.
- The environmental impact of Mining is managed by the Ministry of Environment, Conservation and Meteorology.



# UNDERSTANDING MINING



## What Happens To My Land?

At the beginning of any mining proposal it is important to get legal advice as soon as possible. Mining projects can involve very complex legal arrangements. These arrangements can permanently change your and your community's title to your land and your rights under customary law. Examples include registering land and its owners with the Commissioner of Lands, creating community companies, and creating trust funds.

These sorts of arrangements may become necessary because, for example:

- there are many landowners; or
- the mining company will spend a lot of money developing the land.

It is extremely important that you get in depth legal advice from an independent lawyer before you sign any agreement with the government or a mining company. You should be especially wary of any document that uses the words "company", "trust", "alienation" or "registration". It is critical that you see a lawyer who can explain to you how your rights will be affected. They can also give you advice about ways to protect your rights.



# THE MINING PROCESS



## Key Concept

*Reconnaissance permits cover vast areas of land and allow the mining company to identify the location of minerals. They need a landowners permission to enter property.*



## Key Concept

*Prospecting allows mining companies to check for minerals. The company needs a surface access agreement to access landowners land.*

## Stage 1 – Reconnaissance

Reconnaissance is the first stage in the mining process and requires a Reconnaissance Permit from the government. This is rarely used, and most mining projects will start at the prospecting stage.

If it does occur, a company with a Reconnaissance Permit is only allowed to take photos and small samples from rocks on the surface of the ground. A Reconnaissance Permit does not allow the use of machinery to drill holes or dig in the ground. A Reconnaissance Permit lasts for up to one year and can be renewed for up to one additional year. A company with a Reconnaissance Permit can only enter customary land after landowners have given their consent.

## Stage 2 - Prospecting

Prospecting is the second stage. It occurs when the mining company suspects there are minerals in the area and wants to investigate further before committing to mining, which is Stage 3. If a company wants to do prospecting it must get a Prospecting Licence from the government. It does not, however, always lead to mining, with most projects ending at the prospecting stage.

Prospecting can be more intensive than reconnaissance. A company with a Prospecting Licence is allowed to use machinery to drill holes and dig trenches. Prospecting may involve clearing large areas of vegetation to allow vehicles and drilling rigs onto the land. A Prospecting Licence can cover an area of up to 600 square kilometres, and is valid for up to three years. It can be renewed twice for another two years.

Companies prospect to learn about the amount and type of minerals in the area. If they find what they are looking for they may proceed to the next phase (mining). If they do not find what they are looking for, they are not likely to do any further work.

The government will usually only give a Prospecting Licence to a company after the company and the landowners reach a signed agreement about surface access, called a 'surface access agreement', discussed later. It is unclear whether the Government may compulsorily acquire the land where no surface access agreement has been signed if there is a strong public interest for doing so. However, this has never occurred to date. A separate procedure under the Land and Titles Act would need to be followed in these circumstances.

## Stage 3 - Mining

Mining is the third and most important stage. A company will want to go ahead with mining if the prospecting phase shows that there are enough minerals in the ground to make mining worthwhile. If a company wants to do mining it must get a Mining Lease from the government.

Mining Leases cover a smaller area of land than Reconnaissance Permits and Prospecting Licences, but a company with a Mining Lease is likely to do much more extensive work than during the other phases. This work includes construction of roads and site clearing, extraction of ore from the ground, disposal of unwanted waste rock and soil ('overburden'), processing the ore and disposing of the processing waste ('tailings').

A Mining Lease lasts for up to 25 years, with unlimited additional renewals for up to 10 years at a time.

The government will only give a Mining Lease to a company after the company and the landowners have reached agreement under a 'surface access agreement', or if no agreement has been reached, if the government has possibly taken the land by compulsory acquisition.

## Stage 4 – Closure

When a company finishes prospecting, it must fill up any holes it has made, pull down camps, remove any machinery it has brought in and repair any damage it has caused.

Where a company has built a mine, the last stage of the process is to close down the mine, known as 'mine closure'. Even though the law does not say much about it, mine closure is very important and there should be a clear understanding between the mining company, the government and the landowners about what will happen when the mine closes. Things to think about include how the environment will be rehabilitated, how locals who were working in the mine can find other jobs after the mine is closed, and how any chemicals and physical impacts such as pits will be cleaned up and made safe, among many other things. The landowners, the mining company and the government should reach agreement on all of these things before mining starts.

# THE MINING PROCESS



### Key Concept

*Mining involves the extraction of minerals. It is important that landowners agree a surface access agreement prior to mining commencing.*



### Key Concept

*The responsibilities of a mining company when the mine closes is important to negotiate prior to mining starting and recorded in writing.*

# SURFACE ACCESS AGREEMENTS



## Key Concept

*A surface access agreement is a contract between the landowner(s) and the mining company that specifies what rights the mining company has to the landowners land and what benefits the mining company will provide to the landowner(s) in the form of compensation, employment, training, environmental assistance and other benefits.*

## Getting Legal Advice

*Mining companies can play a major role in communities obtaining legal information and advice. However, it is **EXTREMELY IMPORTANT** that the community chooses a lawyer and ensures that they are independent and appropriately qualified.*

*If the project specifically affects one landowner or community, they should also consider getting their own legal advice separate from the rest of the community.*

*It is the responsibility of landowners to be fully informed of the legal results of their decisions, so trusting what a mining company tells you may not give landowners the full picture of their legal rights.*

## What is a 'Surface Access Agreement'?

Landowners have the right to determine who may access their land. Before any mining company can enter any customary land the mining company and the customary landowners must reach agreement about what things the company must do and must not do, before it is allowed on to that land. This legal agreement is known as a Surface Access Agreement.

## When Is It Required?

After the mining company applies to the government for a Prospecting License or Mining Lease, it must start negotiating with the landowners about surface access under a formal process which leads to the legal document called a 'surface access agreement'. The mining company (with the help of the government) must identify all of the landowners for the area, and make sure they are all involved. Everyone has a responsibility to identify and inform landowners so they are also informed.

## Why Negotiate an Agreement?

A Surface Access Agreement is required before the mining company is allowed to conduct Prospecting or Mining on customary land. Each step requires its own agreement between landowners and the mining company, and may have very different benefits. They are an opportunity for the landowners and the community to get the maximum benefit out of the mining activities that the mining company proposes, particularly where mining will last a long time.

**Therefore**, it is important to negotiate:

- how the mining company will access the land,
- when they will access it,
- what happens if they damage the land, crops or animals,
- what compensation the community will receive,
- if the mining company will make any improvements,
- Any concerns of landowners or the mining company.

It is very important for landowners to keep copies of any agreement with a mining company, and landowners should obtain copies of the mining company's plans for the land so they can keep track of the company's rights and obligations as well as their own.

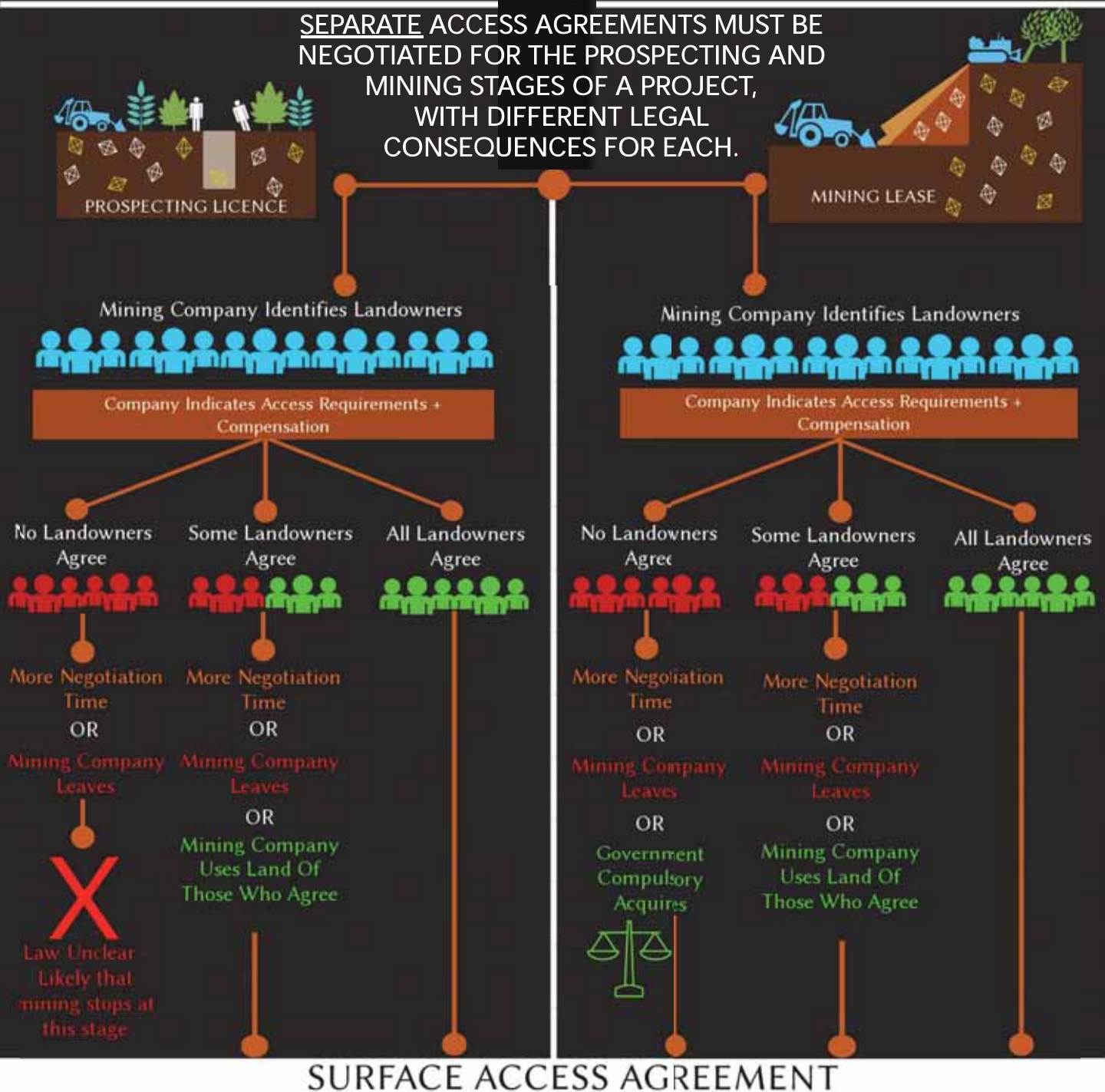
Sometimes, the government may also require the mining company to build public infrastructure for the community. This should also be discussed with the government and the mining company before signing a surface access agreement.

A Prospecting Licence or Mining Lease will only be issued after a written surface access agreement has been made or after compulsory acquisition (unclear) by the Government.



# UNDERSTANDING SURFACE ACCESS AGREEMENTS

SEPARATE ACCESS AGREEMENTS MUST BE NEGOTIATED FOR THE PROSPECTING AND MINING STAGES OF A PROJECT, WITH DIFFERENT LEGAL CONSEQUENCES FOR EACH.



## IDEAS AND SUGGESTIONS TO INCLUDE IN A SURFACE ACCESS AGREEMENT

- Employment opportunities in the project for local people, with minimum percentages or numbers;
- Training courses for local tribes to help them to get skilled jobs;
- Business opportunities for local tribes for building contracts or catering contracts;
- If cash payments are to be made, how these will be distributed within the tribe (eg. will they be paid to a community company, or a charitable trust, or straight to trustees);
- Does the tribe want the land to be registered or for the land to stay as customary land;
- Community projects or a community project fund for things like scholarships, water supply, electricity, and school buildings;
- Protection of tambu sites; and
- Access to information including environmental monitoring.

# SURFACE ACCESS AGREEMENTS



## Key Concept

*Negotiating a surface access agreement is critical to protecting landowners rights during the prospecting and mining processes.*

*A surface access agreement is consented to by all landowners, or can be agreed separately between different landowners and the mining company.*

*It is important to keep safe copies of all documents as these documents protect landowners legal rights.*

# COMPULSORY AQUISITION

## Key Concept

*Where landowners and the mining company cannot agree, the government may possibly take over the land and negotiate directly with the mining company. This is a drastic step for landowners.*

## Negotiating A Surface Access Agreement

During the negotiations the company and the government will tell the landowners what they want to do. The company will tell the landowners how much money they are prepared to pay the landowners to access the land, and what compensation they will pay for the different types of damage they may cause (such as damage to trees, buildings, rivers, and crops, stock or other food or income sources among other things).

It is up to all of the landowners as a group to say whether or not they agree with the company's proposal, or what they would like to change about the proposal.

If the landowners are not happy with the proposal they can tell the company they do not agree. In this case the company can either take more time to negotiate, or walk away. If the company takes more time to negotiate and the landowners still do not agree, the company may still decide to walk away, or the government may decide to take other actions.

If only some of the landowners agree to allow the company to access their land, the company can change its application so that it only covers land owned by people who agree to the company accessing their land under a separate surface access agreement. If this happens, the company cannot access the land owned by the people who did not agree.

If all of the landowners are happy with the proposal, the company and the landowners need to put together a Surface Access Agreement. This is the written agreement with information about each landowner, the payments and other arrangements between the company and the landowners.

A surface access agreement should be for either Prospecting or Mining but never for both at the same time. **It is very hard to change, so it is important that everyone agrees with the agreement prior to signing.**

If a mining company has applied for a mining lease and the company and landowners do not reach an agreement for a surface access agreement, the the government may have the power to take the rights to the land under the *Mining and Minerals Act* and issue the mining licence to the company. This is called 'compulsory acquisition', and it can only be done where a development is important for the whole country.

The government must pay compensation to the landowners if it wishes to take land by compulsory acquisition. However, it is a very drastic step, as it will extinguish the rights of the landowners. **Therefore, It is very important that you get INDEPENDANT legal advice if the government proposes to compulsorily acquire your land as the legal authority for compulsory acquisition is unclear.**

## What are Royalties?

When a Mining Company removes minerals for mining purposes, they are required to pay a percentage of the value of the minerals to the Government, to be shared between the Government and the landowners. This payment is called a Royalty.

### How much are they worth?

The amount of royalty paid by the mining company depends on the mineral they are mining.

- For gold, silver, copper, bauxite, nickel or iron ore, the mining company must pay 3% of the mineral's value to the government.
- For other minerals, the Government sets the appropriate percentage.

This money is paid by the mining company to the Government.

## What are Landowners Entitled to?

Landowners get a percentage of the amount paid to the Government. Again, this depends on the mineral being mined:

- For gold, silver, copper, bauxite, nickel or iron ore, landowners receive 40% of the amount paid to the Government, the Government keeps 50% to benefit the whole community and the Provincial Government receives 10%.
- For other minerals, the Government may pay any amount up to 100% to landowners, and keeps what is left.

The Government pays the Landowners out of a special fund that is protected by law.

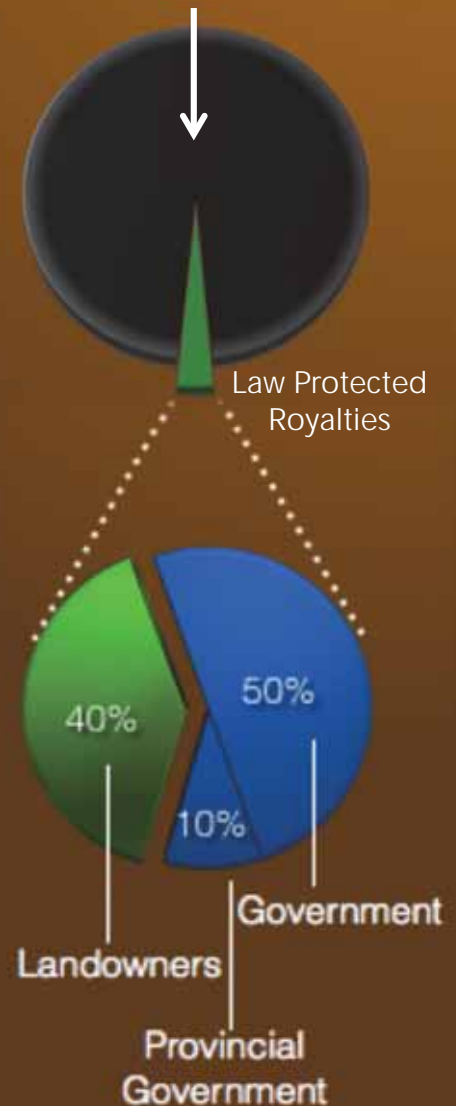
## Are Royalties All Landowners Receive?

No. Royalties form one part of the compensation to landowners. Landowners can also obtain compensation from the mining company as part of the surface access agreement for issues such as land access, noise and damage to property and land.

While the amount of royalty paid to landowners is fixed by the Government, the amounts which can be obtained by under the surface access agreement are up to the mining company and the landowners to agree.

## ROYALTIES

- The Mining Company, its Operating Expenses, and
- (Negotiated) Surface Access Payments



### Key Concept

*Mining companies compensate landowners for mining activities by both royalties protected by law and by under their negotiated surface access agreements. The community, through the Government, is also supported by royalties to further develop the Solomon Islands.*



# LOGGING



## What is Logging?

Logging is when somebody cuts down a tree or takes timber away from any land for the purpose of selling it. It is **illegal** to conduct logging without a licence from the Commissioner of Forest Resources, a government official.

## Who gets a Logging License?

The person with a logging license is called a licensee. This could be anyone, but it is usually someone from Solomon Islands. It **DOES NOT**, however, need to be someone from the local community or a local landowner. They are legally responsible for ensuring that the conditions agreed to are implemented by those doing the logging.

## What are Timber Rights?

Timber Rights are the rights needed to log trees. A licensee may have the right to enter land, take tree samples, plant new trees, chop down trees and sell them, and build roads and other buildings to support their work on the land on which they are licenced to work. These rights exist in conjunction with the rights of customary landowners for as long as the licence is issued by the Commissioner of Forestry, normally 5 years, unless extended.

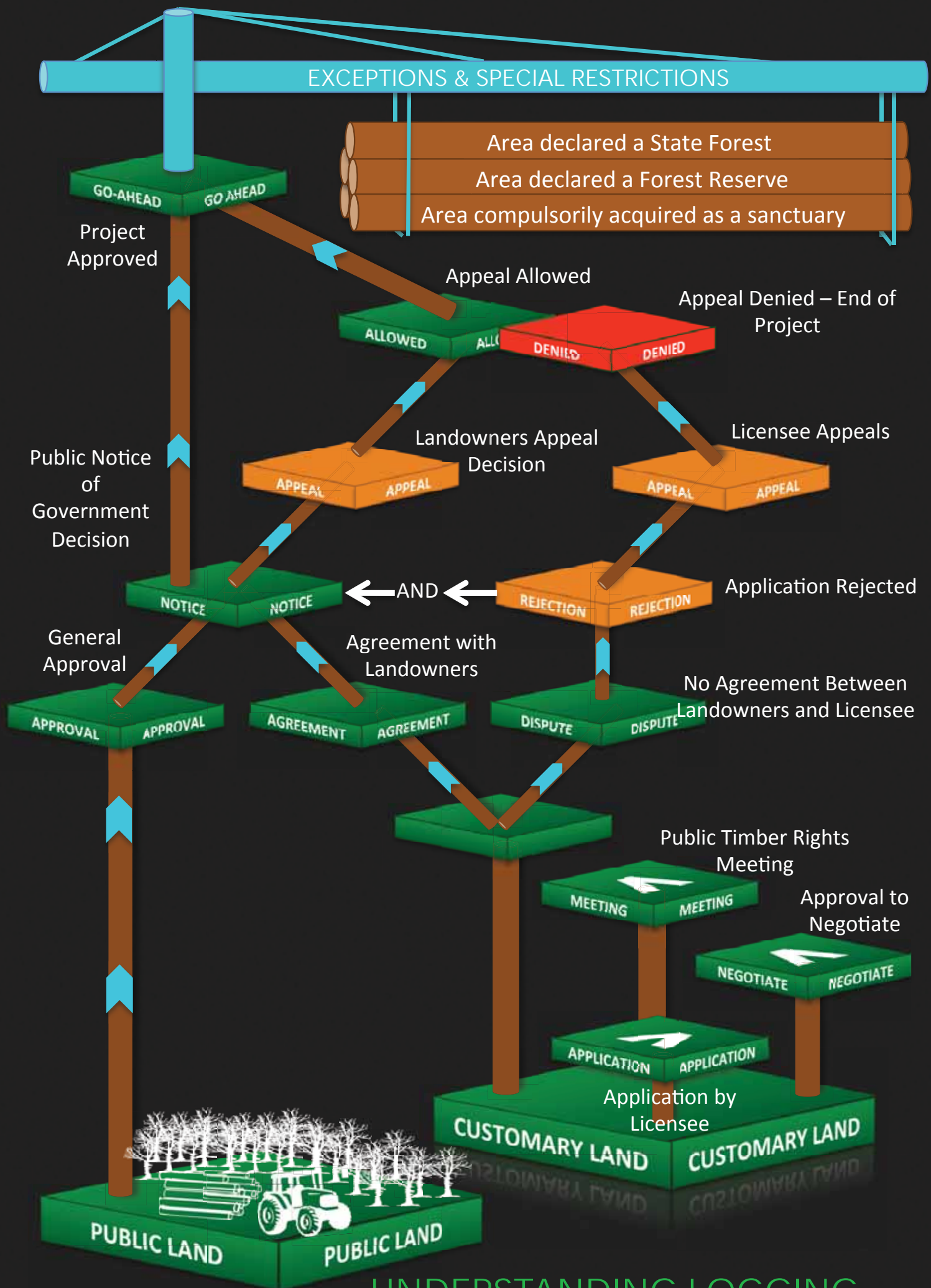
## What is a Logging Company?

A logging company is the company that will actually do the work and chop down the trees. This could be anyone, but it is usually a foreign owned company. A logging company will have an agreement with the licensee to do the work – the licensee is the person ultimately responsible to landowners and the government.

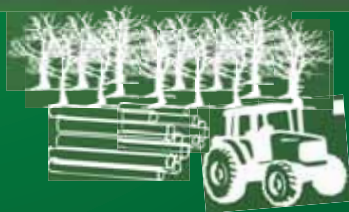
## How Does a Licensee Get Timber Rights?

In order for a licensee to conduct logging either themselves or through a logging company, they must apply to the government for a Logging Licence. There is a process that is required by law in order to have a logging project approved, which includes consulting landowners, having meetings, and looking at environmental impacts. Government approval may be subject to a number of conditions or rules that the licensee and the logging company must follow, or they risk losing their licence.





# THE LOGGING PROCESS



## Key Concept

*There is a difference between Public and Customary Land. Landowners only have their rights protected under the customary land approval process.*

## Key Concept

*Landowners are entitled to receive at least four weeks notice of the Timber Rights Meeting. If the government has not provided notice within the legal timeframe, any agreement will not be legally binding.*

*If landowners have concerns about the location or timing of the meeting, they should obtain legal advice before it occurs.*

## Public or Customary Land?

It is important to note that different rules apply to applications to log on different categories of land. The first category is the Public Land category, which is made up of public land, land owned or leased by the government, land over which the government has a right to fell and remove trees, and land which is next to any of those types of land. The second category is Customary Land. The third is any other land, which would include registered land which is privately owned. An application may be granted in respect of Public Land without consultation with landowners.

IF, however, the Land is Customary Land, a more complex procedure occurs to ensure the protection of landowners rights, as outlined below.

If Customary Land

## Customary Land - Application

The Licensee will first apply to the Commissioner of Forests for consent to negotiate with the provincial government and landowners. They must apply AND be approved to log BEFORE any logging can take place. It is **Illegal** to log without the Commissioner's approval.

## Notice of Meeting

The Provincial Government must organise a meeting, called a Timber Rights Meeting, with landowners and the licensee within one month of receiving the approval from the Commissioner of Forests.

After receipt of approval, this meeting must happen between **two** and **three** months. This means that landowners will have at least **four weeks** and up to twelve weeks notice of the meeting, **which must be held in the local community.** (this does not include flying delegates to Honiara – the meeting should be within the Province to enable the whole community to access it)

It is very important that all landowners are aware of the meeting – for the meeting provides the only formal opportunity for them to participate and have their opinion heard.

Application received  
by Government



## Meeting

On the day of the meeting between the licensee, the provincial government and landowners, the following should be discussed:

- Whether the landowners present are authorised to sign an agreement with the licensee over the timber rights on customary land;
- The timber rights that the licensee seeks to obtain, including what trees they wish to log, the timeframe for logging, and the level of access they need over landowners properties;
- How any profits in the timber venture will be shared and how the landowners will be compensated; and
- To what extent the Government is involved in the project, and the role the Government will have.

It is important to fully understand the area that the licensee intends to log. While a map is recommended and will usually be provided, a map is not mandatory, and the area may be described in words. **Landowners are responsible for understanding what part of their land will be affected in what way.**

If you have any questions about what is being discussed, landowners should raise them at the meeting. There is **NO** opportunity afterwards to ask questions about how rights will be affected.

If an agreement is reached in the meeting– it must be written down, and landowners should obtain a copy. It should be checked to make sure it is what was agreed at the meeting. This agreement will govern the logging operation and landowners rights during logging – and is very important.

**If no agreement** is reached at the meeting, then the logging application **MUST** be rejected by the government.

### SUGGESTIONS

1. Attend the meeting – the more landowners attend, the better the likely outcomes for everyone involved.
2. Check that the agreement being presented is in the Government form, and contains everything landowners have agreed to with the logging interests.
3. Ensure that the licence holder, not just the logging company, signs that agreement
4. Work to compromise – every landowner may not get everything they wish for – its about making the logging work for everyone.
5. Seek legal advice before the meeting to ensure everyone understands what will occur and what is being proposed. Good communication between everyone involved avoids disputes and costs later. Good relationships build success.

## THE LOGGING PROCESS



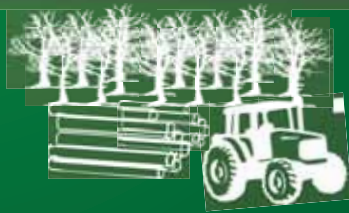
### Key Concept

*The Timber Rights Meeting is the opportunity for landowners to express their views about the proposed logging. It is very important that anything discussed or agreed to is written down at the meeting, and that landowners understand how their land will be impacted.*

*If an agreement is reached, it will be binding. If no agreement is found, then the government must not grant a logging license.*



# THE LOGGING PROCESS



## Key Concept

*Appeals can be started by a landowner or the licensee, with the decision of the court binding for everyone. Legal advice is recommended if a landowner seeks to start an appeal.*

## Post Meeting

After the Timber rights meeting any agreement reached needs to be written down by the provincial government and passed to the Commissioner to make a determination. If no agreement was reached, the Commissioner is advised of this as well. If there was an agreement made, the Commissioner will decide whether to grant the licensee a licence, and what conditions to place on the licence. The Commissioner also has the discretion to reject the agreement.

If, however, there was no agreement then the Commissioner **MUST** reject the licence application and **NO** logging can occur.

Once the Commissioner has made a decision, the provincial government must advise the community and landowners of this through a public notice.

## Appeals

If a landowner or the licensee is unhappy with the decision of the Commissioner, either with the terms of the licence, or the Commissioner's rejection of the licence application, then they may, within **one** month of the decision being published, appeal the decision to the regional customary land appeal court. An order from the court may also stop any logging occurring even if it has already been approved.

The court has the final say for the determination of the licence. If landowners are involved or wish to raise arguments during the appeal, legal advice is recommended.

## Logging Begins

Once any appeals have been heard, or if there was no appeal, the appropriate government forms must be completed and signed by the licensee, the government and landowners. This paperwork should reflect the agreement made at the Timber Rights Meeting or what the Court decided. If it is different, landowners should seek legal advice before signing.

Before logging commences, the impact on the environment must also be considered, and an environmental impact assessment approved by the Minister for Environment, a process outlined separately. The Commissioner will then issue a logging licence to the licensee. While holding a logging licence does not mean that logging must happen, usually a licensee will get a logging company involved to start work. This agreement between the licensee and the logging company is called a Technology and Management Agreement.

Once work starts, any payments to landowners agreed under the agreement will start to be paid.



# LANDOWNERS DURING LOGGING



## Key Concept

*The Agreement between landowners and the licensee forms a legal contract between them. The rights of landowners to receive payment or only have logging done on agreed areas of their land are therefore protected.*

*Royalties are payable under the licence agreement and can include a percentage of a tree's value, its type, and whether trees are being wasted.*

## Word of Caution

Some landowners may be tempted to take advance payments of their royalties. However, there is no guarantee that they will make the necessary profits for landowners to rightfully claim those amounts at the end of the year. This can leave landowners with large debts to the logging company. Landowners are therefore advised **NOT** to accept advance payments without legal advice.

If the logging company mistakenly pays someone else, landowners are advised to get legal advice **immediately** in order to recover that money.

## How Are Landowner's Rights Protected?

During the logging process, the rights of landowners are protected in a variety of ways. These include:

- The agreement between landowners and the licensee, including royalties due;
- The conditions on the Logging Licence issued by the Government; and
- The Code of Logging Practice, a statutory instrument.

## The Agreement

The agreement between the licensee, the landowners and the provincial government represents a contract between them. Any promises made under the agreement are legally binding. This may include any profits promised to landowners, any areas that were promised not to be logged, or any conditions landowners placed on a licensee's timber rights to log in certain areas. The Government has a standard form agreement, which should be used as it best protects landowners, and licensee and logging companies.

If the licensee does not follow the agreement, then landowners may take legal action to force the licensee to comply. The agreement includes, by law, requirements for royalties to be paid to landowners, depending on the profits being made by the logging company and the types of trees logged. Payments may also be due to landowners, up to twice a tree's value, if it is chopped down and left on the ground for more than 3 months and wasted or if the logging company leaves lots of high stumps and broken branches. Landowners should not, however, accept advance payments without legal advice, as this may create a risk of them owing money.

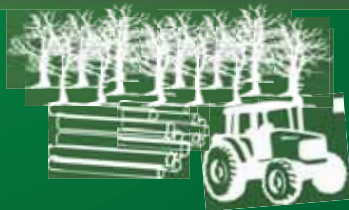
Landowners must also uphold their side of the agreement, and permit any activities agreed to on their land and provide the licensee access to the land. A failure to do so may mean that landowners cannot complain when the licensee does not follow their side of the bargain, and may result in legal action to force the landowners to comply with the agreement. The government may also take legal action under the agreement to enforce it.

## The Logging Licence

The logging licence is the legal document from the government that allows the licensee to log trees. Without it, it would be illegal to log. Any conditions that are attached to the licence by the government are legally enforceable. If a licensee conducts logging outside what they are permitted to do, for example by logging protected trees, they commit an offence.

The government, under the Forest Resources and Timber Utilisation Act, can enter customary land to inspect a licensee's work and investigate potential breaches.

# LANDOWNERS DURING LOGGING



## Key Concept

*The Code of Logging Practice provides some minimum rules for logging companies and licensee's in order to protect villages, tambu sites and the environment.*

*Landowners are entitled to receive regular reports from the licensee, not to have logging close to their community, and not be left with a big mess at the end.*

*The rules, while protecting landowners, are enforced by the government.*

## Code of Logging Practice

The Code of Logging Practice is a statutory instrument that outlines the approved ways in which logging can be conducted on land. This is an important document for landowners as it provides some pre-existing protections during the logging process.

## What Protections Exist?

The Code has a number of basic protections for landowners, including:

- A licensee must provide an annual plan of logging activities to landowners;
  - Must provide a map of areas to be logged that year, what infrastructure will be build on whose land, how many logs will be removed and the expected impact on local villages, among other requirements.
  - It must be approved by the provincial government before the logging commences.
- A licensee must provide detailed plans when they seek to log a new area to landowners;
  - This is called a 'Coupe' Plan – it provides further details about a proposed logging site, including the impact on the environment, detailed maps and plans for the local area.
  - This must be approved by the provincial government before the logging commences.
- Minimum buffer zones where logging cannot occur around Tambu areas, gardens and villages;
  - A minimum 30 metres circle around Tambu areas and gardens, and 200 metres around villages is required, however, this may be altered with the consent of the community.
  - **No trees can be logged if they would fall inside this zone, even if the tree is outside it.**
- The location of any roads required for logging, and their impact on the land;
- Rules on the damming of rivers; and
- What a licensee must do to the land after they have finished logging.

## How are the rights enforced?

The Code is enforced by the Provincial Government and the Solomon Islands Government, not landowners. However, if landowners become aware that their rights under the code have been breached, they should contact the Government to make them aware. If the Government does not do anything to stop the action from happening, then landowners should get legal advice.



# ENVIRONMENTAL IMPACT ASSESSMENT

## What Are Environmental Impact Assessments?

Environmental impact assessments are used to assess the damage a particular project will have on the environment. This could be the impact on the soil, animals, water flows and rivers, or the culture and economy of a particular area. It is an assessment of the likely condition of the environment in the future once the development occurs, or after it is finished.

## When are they Required?

They are required every time a development project is proposed, **BEFORE** they are approved. This most common encounters for landowners are mining or logging in their community.

## What do they look at?

The process looks at the project and tries to understand the impact that it will cause, the damage to animals, villages, communities, trees and other environmental factors. It is a complex process to work out the potential damage that the project will have, however, it is necessary for the environment.

## What is an EIA Report?

These estimates are compiled into a report, called an EIA report, which is submitted to the government to assess against the economic value of the project before it grants its approval for the project to start.

## Who is Responsible?

- For mining projects, the mining company is responsible for the development of the EIA; for logging projects it is the logging company & for all other proposals it is usually the company or group who is putting forward the proposal's responsibility. They are called a developer.
- It is important for landowners to work together with the developer during their investigations to identify areas which may suffer environmentally by the project – for example birds, crocodiles, animals, or cultural sites. In that sense, it is also the landowner's responsibility to share their knowledge of the local area to the developer.



# THE ASSESSMENT P R O C E S S



## What Should You Do?

*At this stage, landowners should cooperate with the developer and highlight any environmental or cultural concerns they have in the area that may affect the project. This might be local birds, animals, waterways they rely on, or cultural sites in need of protection*

## What Should You Do?

*At this stage, as soon as the meeting is announced and the EIA Report available, landowners should:*

- Ask for a copy;
- Read the EIA Report;
- Prepare their own thoughts for the public meeting; and
- Prepare and send a letter to the Environment Ministry if they have concerns.

## What Should You Do?

*At the meeting landowners should write down what is said at the meeting. If a landowner has concerns with the EIA Report, raise them at the meeting – as this may be the ONLY opportunity.*

## Stage 1 - Application

The developer (for example, a logging or mining company) must apply to the Ministry of Environment, Conservation and Disaster Management for approval to start a project. This is required by law, and is required to be made BEFORE any mining or logging commences. It is **illegal** to start work without environmental approval.



## Stage 2 – EIA Report



The developer must prepare an EIA report and include this in the Application to the Director. When they are making the EIA report, they should go to the place where they want to do logging or mining, and look at the environment and talk to the community. Landowners can assist the developer by highlighting any environmental concerns they might have, animal habitats they know about or cultural sites in need of protection.



## Stage 3 – Notice of Meeting

The Government must advertise that an EIA report has been prepared and provide a copy of the report to the communities that are likely to be affected by the development. Landowners have 30 days from the government advertisement to lodge any concerns. These concerns can be lodged with the Ministry of Environment.



The Ministry will advise when a public meeting is to be held to hear the concerns of landowners, and advertise this meeting date.



## Stage 4 – The Meeting & Submissions



The Government must organise a public meeting, ideally in the communities who will be affected by the project, to discuss the EIA report and any objections by landowners or the community to the project. This meeting occurs at this stage. You may also make a submission in writing within 30 days of the government advertisement if you cannot attend.



## Stage 5 – Government Decision

After the meeting and submission process, the Government will make a decision about the environmental impacts of a project and whether it can go ahead. As soon as the government makes its decision they should give public notice of it in the newspaper and also inform the community or communities directly.



## Stage 6 – Landowner Disagrees



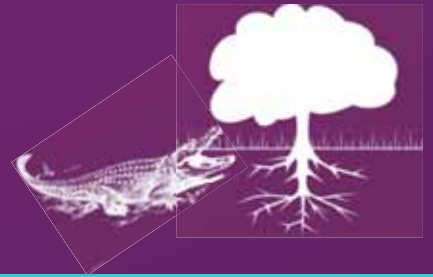
If a landowner is not happy with the Government's decision to grant development consent, landowners can appeal to the Environment Advisory Committee (EAC) at the Environment Ministry within 30 days.



## Stage 7 – Appeal to the Minister

If a landowner is not happy with the Environmental Advisory Committee's (EAC's) decision to their complaint, landowners can also complain to the Government Minister responsible for the environment directly. They make the final decision for the Government.

## THE ASSESSMENT PROCESS



### What Should You Do?

*If a landowner decides to appeal the government's decision, they will need to explain why it was wrong. It will also cost money to appeal the decision. See if others also disagree and work together to put forward the best case, focusing on the impact the project will have on the environment, its plants, animals and culture in and around the community.*

*Legal Advice would also be of assistance to the case.*

## DEVELOPMENT CONSENT

It is very important to note that all projects, whether they be mining or logging, require development consent from the Director of Environment as outlined.

Under the Environment Act, it is a **criminal offence** to do logging or mining without a development consent from the Ministry of Environment. Any logging or mining company that does not have consent from the Ministry of Environment before they start logging or mining is operating **illegally**.

If you are aware of any logging or mining that is happening in your area without approval from the Ministry of Environment, you should **seek legal advice**. You may be able to challenge them in Court to stop the project from continuing without community consultation and government approval.

### Key Concept

*If you are aware of mining or logging in your area AND not aware of any community consultation, an EIA report or the government giving its development consent, seek legal advice, as the actions of the mining or logging company may be illegal and harming the environment.*

# A CHECKLIST OF YOUR LEGAL RIGHTS



## MINING PROJECTS

## LOGGING PROJECTS



- ☒ Are separate Surface Access Agreements negotiated? ☒
- ☒ Are you entirely happy with the Agreement before signing? ☒
- ☒ Are you fully aware of the costs of mining to the community? ☒
- ☒ Do you know where the mining will take place & for how long? ☒
- ☒ Has the mining company got a Mining Lease over your land? ☒
- ☒ Are you aware you can get your own legal advice separate from the mining company? ☒

- ☒ Is the land on which logging is to occur customary land? ☒
- ☒ Were you told about the Timber Rights Meeting beforehand? ☒
- ☒ Did you or a representative attend the meeting? ☒
- ☒ Was an agreement reached at the Timber Rights Meeting? ☒
- ☒ Were you given proper notice of the Government's decision? ☒
- ☒ If NO agreement was reached, were you aware of an appeal and the courts decision? ☒

## ENVIRONMENTAL IMPACT ASSESSMENT

- ☒ Has the Logging or mining company made an EIA Report? ☒ ☒
- ☒ Did a Public Meeting take place discussing the EIA Report? ☒ ☒
- ☒ Were you told about the EIA meeting before it happened? ☒ ☒
- ☒ Were you given an opportunity to voice your concerns? ☒
- ☒ Were you given notice about the Director's decision? ☒
- ☒ Does the logging or mining project have development consent from the Environment Ministry? ☒

## LAND TITLE ARRANGEMENTS

Does the developer require your land, or part of it, to be registered?



If YES, are you aware who it will be registered to?

If YES, are you fully aware of the LEGAL effects of registration?

The Project is legally approved, and the community should be ready to work with the mining or logging company over the life of the project to ensure a successful collaboration.

If you have selected 'X' to ANY question, YOU SHOULD seek INDEPENDENT legal advice. If you do not, you may lose your right to your land, or miss out on benefits otherwise due to your community.

## CONTACT US

### Head Office (Honiara)

P.O.Box 553, Honiara

Phone: +677 28406

Fax: +677 28409

Email: [lalsu@pso.gov.sb](mailto:lalsu@pso.gov.sb); [mmanaka@pso.gov.sb](mailto:mmanaka@pso.gov.sb)

Location: 1<sup>st</sup> floor, Lili Building,  
opposite Main Market

### Western Province (Gizo)

P.O.Box 84, Gizo

Phone: +677 60682

Fax: +677 60684

Email: [lalsu@pso.gov.sb](mailto:lalsu@pso.gov.sb); [mmanaka@pso.gov.sb](mailto:mmanaka@pso.gov.sb)

### Malaita Province (Auki)

P.O.Box 44, Auki

Phone: +677 40229

Email: [lalsu@pso.gov.sb](mailto:lalsu@pso.gov.sb);  
[mmanaka@pso.gov.sb](mailto:mmanaka@pso.gov.sb)

