

TOOL 9

Making agreements

As outlined in Chapter 4, agreements with indigenous communities can build and sustain mutually beneficial relationships between companies and indigenous communities. However, for this to occur, agreements must be fair, equitable, flexible and mutually agreed upon by both companies and affected communities.

As discussed in Chapter 4, there are no hard and fast rules for companies about what should, and should not, be in an agreement. Therefore, this tool provides a combination of practical steps and guiding principles that companies might consider when negotiating and developing agreements.

STEP 1

Negotiate agreements

Identify who the agreement should be made with

Companies must first identify who the agreement should be made with. They should use their knowledge base, which, following investigations into traditional ownership and customary use rights (see **TOOL 3**), should provide a clear picture of which Indigenous Peoples have rights to land in the mining area.

Establish the overall aims of the agreement

Effective agreements depend on both parties having a thorough understanding of each other's objectives and needs. When establishing agreements, companies must strive to understand the aspirations, concerns and development needs of the community so these can be addressed as appropriately as possible. To better understand these needs and concerns, companies may obtain information and insights from:

- company-developed baseline studies and social impact assessments [see **TOOL 6** and **TOOL 8**]
- community consultations and negotiations undertaken as part of the agreement-making process.

Company staff also need to ensure that indigenous communities fully understand the interests of the company and the potential impact of the project (both positive and negative). To do this, companies should:

- clearly communicate their objectives and plans to indigenous communities
- ensure the proposed agreement is realistic and achievable
- ensure that all risks and opportunities associated with the project are understood by communities.

Taking these steps will ensure that communities better understand the company's interests and the agreement's benefits and limitations, which can help avoid unreasonable and unrealistic community expectations.

An important tip

Establish all long-term objectives at the outset of the project and revisit them continuously through the negotiation process and beyond, to help define strategies for managing the transition to closure. Important issues that should be addressed as part of negotiation processes include the duration and extent of ongoing company support, and institutional arrangements for any remaining assets and finances covered by the agreement.

Box 5 provides a list of key matters companies should consider prior to entering into formal negotiations.

RELEVANT CASE STUDY

Red Dog mine – Accessing royalties and profit-sharing mechanisms (Teck), see page 112.