

**PECC Minerals Conference  
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***“Legal Issues: Community  
Integration in Mining”***

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# Role of Lawyers

- Experts in:
  - Major projects
  - Partnering and alliancing
  - Clear and precise drafting of agreements
- Ensure compliance with statutory regimes and best practice
- Document the negotiation process and the agreement
- Select and co-ordinate the team through our network
- Assist in negotiation of the agreement and resolution of any disputes





# Transactions and relationships

- Seller and Supplier
- Partner
  - Relationship contracting
  - Two or more interdependent partners to agreement
  - Partner features
  - Partner requirements



# Risks on Major Projects

- Big wins require big risks
- Relationship misalignment is the biggest risk
- Community integration is one of those risks





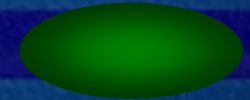
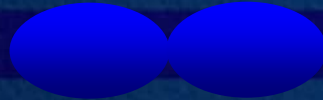
# Risk Strategies



Risk Transfer  
(Traditional)

(Partnering)

Risk Embrace  
(Alliancing)



Self-serving

Co-operating

Collaborating

Coalescing

Source: Alan McLennan – Alan McLennan Strategic Services Pty Ltd (2003)

# Documenting community integration

- As a major risk, community integration is essential for success of a project
- Need to document community integration in an “agreement”
- Community integration may be required by law (e.g. *Native Title Act 1993 (Cth)*; *Oil & Gas Act 1998 (PNG)*); or
- If not required by law, essential for project and documented in contract
- Agreement between multi-stakeholders (project proponent, various tiers of government and community representative groups (e.g. land council))





# Types of Agreements

- Agreement may be binding (a contract) or not binding (heads of agreement)
- Agreement is an outcome of the negotiation process
- Agreement can take many forms and names:
  - Impact and Benefit Agreement (Canada)
  - Indigenous Land Use Agreement (Australia)
  - Development Agreement (Australia, PNG)
  - Contract of Work (Indonesia)
  - Good Neighbour Agreement (USA, New Caledonia)
  - Multi-sector partnership (UK Oil & Gas, World Bank)

# Key Characteristics

- All agreements should have the following fundamental characteristics:
  - Alignment of objectives and incentives of all stakeholders
  - All stakeholders must have interest in the success of the project (win/win)
  - A true “multi-stakeholder partnership”
  - Long term agreements require changes / review mechanisms (e.g. 5 year review)
  - Clear and precise undertakings / obligations
  - Precise and accountable payment mechanism (e.g. precise distribution of royalties, audit rights)
  - Governance procedures including coordinating committee, communications procedures
  - Non-adversarial dispute resolution procedures
  - Compliance with any legislative regime



# 5 Stage Methodology

- Stage 1: Identification and Initial assessment:
  - Identify stakeholders
  - Assess community needs
  - Data collection
  - Development forum
- Stage 2: Design and Documentation
  - Agreed negotiation process (i.e. structured and documented)
  - Negotiate in good faith
  - Invent options for mutual gain (win/win)
  - Memorandum of understanding
  - Draft agreement



# 5 Stage Methodology (Cont'd)

- Stage 3: Appraisal and Agreement
  - Project design as documented is assessed
  - Benchmarking / costing of initiatives
  - Stakeholder approval to proceed
  - Execution of agreement
- Stage 4: Implementation
  - Project management
  - Monitor achievement of objectives
  - Conduct agreed reviews (e.g. 5 yearly)
- Stage 5: Completion and Evaluation
  - Evaluate achievement of objectives



# Key Initiatives

- Initiatives ultimately depend on needs of community, legislative requirements and the objectives and funding of the project proponent
- Key initiatives can include:
  - Royalties / compensation
  - Recognition of entitlements of traditional owners (e.g. native title rights)
  - Employment, education and training
  - Local business development (e.g. microfinance)
  - Environmental management (e.g. waste and water disposal, mine rehabilitation)
  - Infrastructure development (e.g. roads, schools)
  - Cultural awareness and training



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