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**Submission to  
Economic Regulation Authority**

***Inquiry into Water Resource Management and  
Planning Charges: Draft Report***

**12 March 2010**

## 1. Background: Rio Tinto Iron Ore and water

Rio Tinto is the second largest producer supplying the global seaborne iron ore trade. Our most significant iron ore resource base is located in the Pilbara in Western Australia, with operations in Canada and development projects in Guinea, west Africa and Orissa, India. Our corporate iron ore headquarters are located in Perth, Western Australia.

In the Pilbara, we operate a network of 11 iron ore mines, three shipping terminals and the largest privately owned heavy freight railway in Australia. These operations have grown to an annual capacity of 220 million tonnes of iron ore. It is anticipated that a further three mines<sup>1</sup> will open during the next 12 months.

Rio Tinto's iron ore business is a significant contributor to the economic health of Australia and Western Australia and is one of the largest employers in Western Australia.

Rio Tinto recognises the need to carefully balance economic, social and environmental considerations to ensure our ongoing success. Our aim is to deliver more value from our business with less impact on the environment and the community. This commitment to sustainable development is formalised within a corporate governance framework that is underpinned by Rio Tinto's statement of business practice, *The Way We Work*.

Rio Tinto is both a water user for its Pilbara operations and, through Hamersley Iron Pty Ltd, is also a licensed water service provider under the *Water Services Licensing Act 1995*, providing potable water and wastewater services to Dampier, Tom Price and Paraburdoo.

Hamersley Iron is classified by the ERA as a small potable water provider.<sup>2</sup> Potable water for Paraburdoo and Tom Price is sourced from groundwater bores, while the potable water supply for Dampier is sourced from the West Pilbara Water Supply Scheme, which is operated by the Water Corporation.

In the case of water supply to Rio Tinto's port operations at Dampier and Cape Lambert, the water is also sourced from the West Pilbara Water Supply Scheme.

Rio Tinto's mining operations in the Pilbara draw their water needs from ground water resources for self-supply to mining operations and mining camps and villages at operations such as Brockman, Yandicoogina, West Angelas and Hope Downs in accordance with s5C water licences under the *Rights in Water and Irrigation Act 1914*. At some operations, s5C abstraction licences are also obtained for dewatering purposes to enable below water table mining.

Rio Tinto holds and complies with s5C water licences for all its water abstraction activities in the Pilbara.

Rio Tinto's approach to managing its water resources across its iron ore operations is guided and informed by the *Rio Tinto Iron Ore (WA) Water Strategy*. A key element of the Water Strategy is to engage in the broader policy debate and the water reform process.

Rio Tinto therefore welcomes the opportunity to provide comments on the *Inquiry into Water Resource Management and Planning Charges: Draft Report* and submits the following comments to the Economic Regulation Authority for consideration and action.

<sup>1</sup> At Mesa A, Western Turner Syncline and Brockman 4.

<sup>2</sup> Economic Regulation Authority *Water, Wastewater and Irrigation Performance Report 2007* p27



## 2. Comments on Draft Report recommendations

Rio Tinto has raised and discussed its views on the concepts, principles and issues raised in the Authority's *Issues Paper* and *Discussion Paper*, including the public good characteristics of many of the services offered by the Department of Water, and the need to appropriately weigh up the costs and benefits of sophisticated charging regimes for certain services offered by the Department. We do not intend to fully repeat these comments in response to the *Draft Report*, and request that references to previous submissions be considered by the Authority for this stage of the consultation process.

The following comments refer directly to the recommendations in the *Draft Report* that are of interest to Rio Tinto iron ore. Some additional comments are also made about commentary within the *Draft Report*.

### 2.1 ***Principles for the recovery of water resource management and planning costs [recommendation 1] and the Allocation of costs between private and public users [recommendation 2]***

Rio Tinto has provided substantial comment on the issue of principles and the need to reflect the public good nature of many of the services performed by the Department of Water (DoW) in the allocation of costs between private and public users. Rio Tinto broadly agrees with the principles as outlined in recommendation 1 a) to g). They reflect many of the comments Rio Tinto made about principles at previous consultation stages.

Rio Tinto supports the ERA's recognition of the public good aspect of many of the services performed by the DoW and the need to recover these costs from the public via the public purse. In the Rio Tinto submission to the *Issues Paper*, an attempt was made to identify which of those services displayed some characteristics of public goods. The ERA *Discussion Paper* and *Draft Report* have sought to give greater definition to the public goods aspects of these services.

Whilst supporting the ERA's intent to identify those services which display public good characteristics, Rio Tinto is not in total agreement as to which services these are. There are a number of services highlighted in other sections of this submission that suggest reasons for considering these services to have significantly greater public good characteristics than recognised within the text of the *Draft Report* (such as public drinking water supply planning and attribution of corporate overheads).

The recognition of areas of uncertainty is critical to the acceptance of any new charging regime. For example, there will inevitably be areas of uncertainty with regard to the extent to which a service can be attributed to a private beneficiary. Rio Tinto therefore supports the ERA proposition that where beneficiaries cannot be clearly identified, costs for that service need to be recovered from public funds. This is consistent with the notion of public goods.

In addition, if the charging regime is to be built around the principle of beneficiary pays, it is reasonable to expect that costs would not be levied until proven that services are being provided efficiently – in other words, only subsequent to the ERA review of service efficiency and only in relation to those services that are judged by the ERA as being performed efficiently. It is possible that the ERA review of service efficiency will find that some services are indeed not being performed efficiently, and may make recommendations in that regard. It is only reasonable that beneficiaries be expected to pay for such services once these



recommendations have been fully implemented, and not before. Rio Tinto would like to see this issue better reflected within the recommendations.

Whilst Rio Tinto has indicated its broad agreement with the principles for the recovery of water resource management and planning costs put forward by the ERA, it reserves its unqualified agreement with the final recommendations until the full financial details (including impact assessments and consideration of administrative costs) are released as part of the second *Draft Report*.

## **2.2 Framework for guiding allocation of costs between private and public users [box 1]**

The *Framework for guiding allocation of costs between private and public users* (p9) notes that if standards applied to water use activities change, the costs of meeting the new standards should be borne by those required to comply with them.

Rio Tinto is concerned that this could be at odds with a key principle underpinning the NWI's risk assignment framework, which would see responsibility for incurring the costs of policy change fall to the Government rather than to users. The ERA needs to ensure that its recommendations regarding the costs of meeting new standards are consistent with the NWI's risk assignment framework.

## **2.3 Regional variations in charges to licence holders to reflect regional variations in costs [recommendation 5]**

This recommendation reflects a suggestion made in the Rio Tinto submission to the *Issues Paper*, to recognise certain regional (or even catchment specific) characteristics that would reflect some of the water planning and management challenges and public benefit impacts specific to that region.

The extent to which Rio Tinto manages its water resources and undertakes (at its own cost) services that would be otherwise provided by the DoW has been discussed at length in previous Rio Tinto submissions to this Inquiry. There is a concern that while Rio Tinto manages its water resources efficiently and makes a substantial contribution to the water planning and management effort in the Pilbara, that even a regional delineation of water resource management and planning costs to be shared across users in the region might lead to substantial cross-subsidisation of other users (mining and non-mining).

Rio Tinto considers that this approach would only apply where the beneficiary pays principle becomes unworkable for particular services.

## **2.4 Recognising contributions to water resource management and planning activities [recommendation 6]**

Rio Tinto strongly endorses recommendation 6. Like many other mining companies, Rio Tinto already contributes significantly to the identification, development and management of the water resources it uses, for example in exploration and resource definition, improved resource modelling, metering and monitoring. This is in addition to the substantial investment it makes in infrastructure to obtain the water. This was clearly acknowledged by both the Water Reform Implementation Committee in the *Blueprint on Water Reform in*



Western Australia<sup>3</sup> and in Western Australia's Implementation Plan for the National Water Initiative<sup>4</sup>, and is also highlighted in the ERA's Issues Paper<sup>5</sup>.

This recommendation is a key corollary of the principle of beneficiary pays – the latter should not be introduced in the absence of the former. Where Rio Tinto already funds and undertakes many of these services with regard to the water resources it uses, it is unreasonable that it should bear the costs of the same services undertaken by the Government elsewhere in the State. It is reasonable to expect that Rio Tinto should only bear its share of those costs associated with the services undertaken by the Government in relation to the better management of the water resources it does use.

Page 13 suggests a proposal for a reimbursement mechanism to keep administration simple and low cost. These sentiments are endorsed and are consistent with the Rio Tinto's recommendation in its submission to *Issues Paper* of the need to ensure the benefits outweigh the costs in terms of the administration of the charging regime. Nevertheless, it will be necessary to road test any proposed system with the key stakeholders most likely to be using it - to ensure that it is workable, responsive and does not unduly shift administration costs on to users.

The suggestion that existing licensees could seek reimbursement direct from future licensees is both unacceptable and unworkable, especially in the context of remote mining developments in the inland Pilbara. The alternative favoured by the ERA would be much more appropriate and much easier to administer. Rio Tinto would be happy to consider options for reimbursement arrangements and to work with the ERA or DoW to help develop a workable solution.

The proposal outlined on p14 regarding the possibility of the DoW expanding the scope of work beyond what is required of the licensee to include investigations that would be for the public benefit, or the broader benefit of future water users in the catchment/region, recognises that some costs savings might potentially be made by undertaking this work at the same time. It is not likely to have application to Rio Tinto in the inland Pilbara, where the development of water allocation plans (or future statutory water management plans) is unlikely due to the low level of competition for the groundwater resource and the low potential of the relevant resources reaching full allocation. If it were to have relevance, the proposal might lead to some significant delays, which could be unacceptable to the proponent in the context of their expansion/development timetables.

## 2.5 **Ability to pay for different users [recommendation 8]**

Rio Tinto strongly expressed its opposition to the issue of cross-subsidisation of water resource management and planning costs between industries. As noted in our response to the ERA's *Discussion Paper*, the concept of cross-subsidisation between industries is a concept that seems at odds with the principles of transparency that underpin matters to which the Authority should have regard under s26 of the *Economic Regulation Authority Act 2003*.

As suggested in that submission, the subsidisation of any user groups which may claim an inability to pay is essentially a political decision. Rio Tinto agrees with recommendation 8 of the *Draft Report* that subsidies should not be provided

<sup>3</sup> Water Reform Implementation Committee "Blueprint on Water Reform in Western Australia" 2006: p43

<sup>4</sup> Government of Western Australia "Western Australia's Implementation Plan for the National Water Initiative" 2007: p55

<sup>5</sup> Economic Regulation Authority "Inquiry into Water Resource Management and Planning Charges: Issues Paper" 2009: p10



through the design of the charging regime, but rather be clearly and transparently provided via grants.

It is also noted that recommendation 8 needs to recognise that, in the case of water being used for stock and domestic purposes, an express statutory right to take water in these circumstances exists under s9(1) of the *Rights in Water and Irrigation Act 1914* ("riparian right defined"), which means that a s5C licence is not required in these circumstances. It follows that a charge would therefore not apply.

## 2.6 ***Water resource management and planning activities with high priorities for cost recovery [table 3.1]***

Table 3.1 of the *Draft Report* outlines the DoW's views on high priorities for cost recovery (as cited in their Submission to the *Issues Paper*). Rio Tinto considers that this list of priorities does not properly consider a number of attributes of these services that would limit the ability to fully pass on the costs of provision to licensees.

Indeed, only one of these categories of services does not exhibit either:

- significant public good characteristics that would diminish the ability for costs to be fully passed on to the licensee; or
- regionally attributable characteristics that would enable costs to be more reflective of the costs specific to the management and planning activities necessary for the respective catchment – avoiding licensees in areas requiring low levels of management and planning having to cross-subsidise licensees in areas requiring high levels of management and planning.

It is suggested that consideration of categories of services for cost recovery deserve a more sophisticated analysis than that which underpins Table 3.1. Rio Tinto urges the next *Draft Report* to enter into a level of analysis that attempts to identify the extent of the above attributes and how they may be reflected in both the design and quantum of water resource management and planning charges.

## 2.7 ***Water source protection [recommendation 9]***

Statements in relation to water source protection on page (ii) of the *Draft Report* [Executive Summary] appears contradictory. Initially the discussion says costs for water source protection plans are to be recovered from suppliers, and then subsequently says costs to be recovered from users. Recommendation on 9 suggests it will be incurred by suppliers.

Rio Tinto does not agree that costs of water resource management and planning activities directly associated with the protection of public drinking water supplies should be recovered from licensed water service providers. Rio Tinto considers that these services clearly qualify as public goods and deliver a clear public benefit.

Water source protection is not primarily for the benefit of water service licence holders – indeed it is regulation/requirement to ensure certain quality standards are delivered to end consumers. This would suggest that, in order to be consistent with the principle of beneficiary pays, it is the consumers (ie the end users) that should bear this cost and there is therefore a strong argument to continue to fund these services via the Consolidated Fund.



As noted above, Rio Tinto is a licensed water service provider (through Hamersley Iron Pty Ltd) under the *Water Services Licensing Act 1995*, and provides potable water services to Dampier, Tom Price and Paraburdoo. While we are licensed service providers, our core business is mining, not the provision of water services. Rio Tinto's involvement in the licensed provision of water services is to support our mines and associated towns.

## 2.8 **Water metering [recommendation 11]**

Note that metering activities (purchase, installation, metering and reporting) are undertaken by some users, including Rio Tinto. Our metering activities are often required under the terms of our s5C Rights in Water and Irrigation Act licences.

Where this occurs the relevant charges should not be levied, consistent with recommendation 6.

## 2.9 **Water licensing [recommendations 12, 13 and 14]**

Recommendation 12 is supported in principle, though Rio Tinto highlights:

- a number of the activities envisaged as falling within the scope of this recommendation are either partly or fully undertaken by Rio Tinto, rather than the DoW;
- a number of these activities either exhibit some public good aspects or are non-excludable; and
- the need for this to be subject to recommendation 6.

Pages 25-32 of the *Draft Report* outlines a range of activities directly related to licence applications that are considered to fall within the reach of recommendation 13. Rio Tinto notes that it undertakes many of these tasks itself or provides much of the investigative and other preparatory work to facilitate these activities to the DoW, thereby significantly reducing the workload and significantly reducing the costs incurred by the DoW in performing these services (eg. hydrological and hydrogeological assessments, preparation of operating strategies). This reinforces the need to ensure that these contributions are recognised and that this recommendation is therefore subject to recommendation 6 of the *Draft Report*.

Regarding monitoring and enforcing compliance – there is a question as to whether enforcement costs should be incurred and shared amongst licensees who are not in breach or failing in their obligations. Rio Tinto considers that if those failing their conditions/obligations cannot be targeted in order to recoup these costs, then these costs should be borne by the public as enforcement is for the public benefit.

Regarding water allocation planning – Rio Tinto agrees with the DoW assessment (as cited at p30 of the *Draft Report*) that environmental water planning activities have a large element attributable to the public benefit. Rio Tinto also concurs with the ERA assessment that there is an element of public benefit here that needs to be apportioned accordingly. Rio Tinto reiterates the need for the next *Draft Report* to enter into a level of analysis that attempts to identify the extent to which public good attributes are applicable in these services, and how they may be reflected in both the design and quantum of water resource management and planning charges.

Regarding groundwater and surface water assessments - Rio Tinto agrees with the ERA assessment that there is an element of public benefit here that will need



to be attributed and the costs applicable to licensees adjusted downwards accordingly.

Regarding water measurement and information – Rio Tinto considers that this service should be excluded from costs applicable to licensees, as much of this activity is for the public benefit.

Regarding the attribution of corporate overheads – Rio Tinto does not agree with the ERA assessment that corporate overheads should be allocated via these charges to licensees. Firstly, Rio Tinto does not believe that there is a clear linkage between these costs and the direct benefits of service provision accruing to licensees. If this linkage cannot be clearly shown, then the costs should not be attributed. Secondly, as the Authority itself suggests on p49 of the *Draft Report*, corporate overheads are extremely difficult to benchmark to ensure that they are being provided efficiently. The Department of Treasury and Finance's comment (cited on p49) regarding a high level of administrative support roles at DoW is indicative of this concern. Without the ability to properly scrutinise these costs, there is no guarantee that they are being provided efficiently, and it follows that costs should not be imposed on licensees in these circumstances, consistent with recommendation 13.

Recommendation 13 stresses the need for charges to reflect efficient costs. Rio Tinto reiterates its position that costs should not be levied until proven that services are being provided efficiently – that is, only subsequent to the ERA review of service efficiency and only in relation to those services that are judged by the ERA as being performed efficiently.

Recommendation 14 is supported, however, as argued above, Rio Tinto considers that the public good element of the services identified are considerably greater than suggested by that part of the recommendation that states "The Authority recommends a small proportion of the cost of these activities be allocated to the general public." Rio Tinto considers that insufficient analysis has been undertaken by the ERA at this stage to be able to come to this conclusion.

As suggested above, Rio Tinto considers that monitoring and enforcing compliance needs to be categorised as substantially for the public good and therefore reflected in recommendation 14.

## **2.10 Options for recovering costs of water licensing [recommendations 15 and 16]**

Recommendation 15, that a fee for service approach be transparent and directly attributable to the licensee concerned, is considered consistent with the principle of beneficiary pays. There may be some disagreement over what is included, what is excluded and what is shared with the public depending on the public good nature of the service provided under a "Fee for service" arrangement (see comments on water licensing above). Rio Tinto has indicated its broad support for the principles for the recovery of water resource management and planning costs put forward by the ERA in recommendation 1, subject to further analysis that needs to be undertaken with regard to the attribution of the public good element of many of the services considered.

As previously stated, Rio Tinto reserves its unqualified agreement with the final recommendations until the full financial details (including impact assessments and consideration of administrative costs) are released as part of the second *Draft Report*.

Recommendation 16 recommends separate charges to be levied on large licence holders, but limits its discussion to the Water Corporation only. Rio Tinto would



request that the second *Draft Report* attempt to identify those licence holders that would fall within the ambit of this recommendation and that it clearly articulate the threshold that would determine a “large” licence holder and include reasons for determining this threshold.

Again recommendation 16 would need to be subject to recommendation 6.

## 2.11 **Alternative approaches to cost recovery [discussion pp39-42]**

Rio Tinto supports the ERA’s conclusion on p41 of the *Draft Report* that costs should not be recovered on a per ML volumetric basis or on the basis of size of licence and supports the Authority’s accompanying assessment of volumetric charging and of the size of licence as a basis for cost recovery.

Nevertheless, the size of licence as a basis for a charging regime is represented in several places in the *Draft Report* and Rio Tinto would like to re-state its view on why this has no relevance to the actual cost of administering water resource management and planning functions.

Rio Tinto does not agree with DoW’s comments (as cited on pp39-41) on this issue. The DoW observation that costs vary with the allocation status of the catchment cannot be reconciled with the DoW’s observations on the size of licence. For charges to be cost reflective, attribution to the size of licence or to volumes are both indirect and inaccurate. Indeed, the size of licence has little to do with the effort required to administer and manage it and therefore should not be a consideration as a basis for charging. Costs need to be reflective of the water resource management and planning effort.

For example, a licence for a given amount will involve far less administrative and management effort if it is geographically isolated, with few other users in the catchment and little risk of the resource being fully allocated than if the same volume licence was located within a fully allocated or near fully allocated catchment. Once licences are established within a non-competitive catchment, there is a relatively low cost to Government for ongoing administration and management.

As noted in the Rio Tinto submission to the *Issues Paper*, volumetric charging for mining operations would weaken the viability of some resource development, with no apparent benefit in water resource management terms, for the following reasons:

- Whilst one of the biggest users of water in the state, the use of water in the mining industry is also one of the highest value uses of that water. Flow of water to its highest value uses is one of the key objectives of the water reform agenda under the NWI;
- The resources industry often undertakes its own water resource exploration, investigations and sustainable management practises;
- In many regions mining operations access and use either non-potable or hypersaline water for which there are no other viable alternative uses;
- In the case of Rio Tinto’s Pilbara iron ore operations, despite having access to good quality potable water, the water resources are so remote that there is often no viable alternative uses and therefore a substantial charging regime linked to volume would exacerbate this market failure;



- The amount of water abstracted for dewatering purposes for below water table mining operations can be high. However this is an integral part of the mining process, and surplus water not used preferentially for production purposes is assessed in terms of putting the water to beneficial use in accordance with NWI principles and the Department of Water's own "Hierarchy of uses";
- In the case of dewatering for below water table mining operations, licence volumes are expressed in terms of the amount of water initially abstracted, and do not account for water surplus to production requirements that is returned to the environment, either by Aquifer Storage and Recovery (ASR) or discharge to the surface. Failure to appropriately account for net flows would make any volumetric charging proposition even more problematic; and
- In the case of multiple below water table mining operations that are located within the same catchment and where there is a likelihood of a cumulative effect of upstream dewatering activity, downstream abstractors would be severely penalised for re-pumping water volumes that infiltrate from upstream operations.

It is therefore critical that water resource management and planning charges relate to the cost of service provision, not to the size of licences. This would enable lower costs for those catchments where NWI type management arrangements (ie perpetual water access entitlements) do not apply because of market failure (eg. too few users), resulting in a charging system that is proportionate to the management and administrative effort required for that catchment or region.

## 2.12 **Setting performance indicators [recommendation 20]**

Rio Tinto is concerned that the consultants, Marsden Jacobs and Associates, were unable to make an assessment of the efficiency with which the DoW provides its water resources management and planning activities, because of the lack of meaningful information arising from repeated organisational restructuring and continued change to the department's published key efficiency indicators. The reasons for this (as provided on p47 of the *Draft Report*) do not inspire any confidence that, even if appropriate and agreed benchmarks and key efficiency indicators were to be established, that they would be maintained in a form that would allow for meaningful scrutiny and transparency into the future.

Therefore, while supportive of the intent of recommendation 20, Rio Tinto questions how realistic this expectation is, given the external forces that have generated the past inconsistencies noted in the *Draft Report*.

Given this lack of certainty with regard to the level of confidence that activities are being undertaken efficiently, there should be no expectation that licensees should cover anything but the reasonable and assessed costs for the efficient delivery of these services. Rio Tinto agrees with the ERA (p47 of the *Draft Report*), that it must be independently ascertained that the services are being provided efficiently before charges should be levied.

As already noted, p49 of the *Draft Report* indicates the difficulties benchmarking corporate overheads to ensure that they are being provided efficiently. Rio Tinto therefore does not agree with the ERA assessment that corporate overheads should be allocated via water resource management and planning charges to licensees.



Rio Tinto agrees with the ERA that stakeholder groups need to play a role in the development and setting of appropriate service standards and performance indicators.

### 2.13 **Regulatory oversight [recommendation 23]**

In its submission to the *Issues Paper*, Rio Tinto highlighted the danger in directly linking fees and charges to the cost of the provision of certain services that are provided by a single supplier (in this case Government). Effective limits need to be placed on the costs of the provision and proper scrutiny established to ensure the efficient delivery of services, so that the cost burden does not grow unchecked.

In the *Issues Paper*, Rio Tinto specifically advocated for periodic independent review of water resources management and planning charges to prevent uncontrolled increases in the cost burden to those affected by the charges.

Rio Tinto therefore welcomes recommendation 23.

Rio Tinto reiterates that this scrutiny should not just determine whether charges for water resource management and planning are delivered efficiently, but should also consider and make recommendations to ensure these services are being delivered to a level that is appropriate to the water resource management needs of the catchment in question.

Rio Tinto also notes that p(ii) of the *Draft Report* [Executive Summary] also refers to the ERA playing a role in efficiency reviews of the DoW, but this does not appear to be reflected in any of the recommendations relating to performance or regulatory oversight. Rio Tinto considers that such a role for the Authority is appropriate and should be expressly reflected in the recommendations of the *Draft Report*.

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