

## RIO TINTO ALCAN SUBMISSION ON THE WENLOCK BASIN WILD RIVER DECLARATION PROPOSAL

### INTRODUCTION

Rio Tinto Alcan supports the intent of the *Wild Rivers Act 2005* and the intent of the Queensland Government regarding the protection of important river systems, however, notes that the implementation of the Act must have regard to appropriate scientific data and existing legal entitlements within a wild river declaration area.

Rio Tinto Alcan has been operating in the Western Cape for more than 40 years, and like all Queenslanders, we value land and water as essential resources from an overall sustainable development perspective. Rio Tinto Alcan is strongly committed to managing land and water in a sustainable manner. We have a long established track record of continually looking for ways to improve our land and water management while contributing to the Queensland economy and communities in Cape York.

Respect for the environment is central to our approach. For example, in 2008 Rio Tinto Alcan Weipa recycled 14,902 ML of water, which is over 40 per cent of its entire requirements. The company also rehabilitated 1,166 hectares of land. To put this area in context, Rio Tinto Alcan Weipa rehabilitated the equivalent area of the Brisbane CBD 7.4 times over in one year, which is potentially the highest rate on a mining lease ever achieved in Queensland over a one year period.

### DISCUSSION POINTS

Rio Tinto Alcan (RTA) has reviewed the Wenlock Basin Wild River Declaration Proposal and would like to make the following comments.

#### Land Planning

Rio Tinto Alcan would like to submit our objection to the use of basins as the basis for wild river areas. The 2004 election commitment did not make it clear that the rivers on Cape York Peninsula would be listed as wild river basins (thus placing about 80 per cent of the Cape under a de facto conservation tenement), instead that it would be 13 rivers listed individually. It is important to highlight that this makes the mapping of the High Preservation Areas (HPAs), nominated waterways and buffer zones even more critical and even more dependant on sound scientific analysis.

RTA has concerns about the level of scientific rigour used in determining the proposed HPAs under the Act. Currently, the HPAs continue to be initiated by using a one kilometre buffer zone either side of a river, such as the Wenlock River, and the associated tributaries when s41 of the *Wild Rivers Act 2005* states "the area, stated in the wild river declaration for the wild river area, of up to one kilometre either side of the wild river, its major tributaries and any special features".

An arbitrary zone **starting at one kilometre** has no scientific basis for protecting high biodiversity ecosystems. To understand any regional ecosystem and its biodiversity, an on ground assessment needs to be undertaken to determine if there are high biodiversity ecosystems that require protection within the riparian zone. A systematic on-ground assessment process is what RTA completes as part of the planning of mining boundaries to ensure compelling protection of the regional ecosystems.

Rio Tinto Alcan's Weipa operation has a rigorous environmental and culturally scientific process integrated into its mine planning to ensure sustainable ecological protection, particularly for high biodiversity ecosystems. This consists of mapping of the proposed mining area, then conducting cultural and environmental pre-clearing surveys to determine any areas that require protection, then if there are any areas of special significance these are protected by a buffer zone prior to any mining activities commencing. It is important to note that any riparian zone of high biodiversity remains

protected and that Rio Tinto Alcan only conducts mining activities in lower biodiversity areas based on the pre-clearing ground surveys.

There are many situations where the higher biodiversity riparian ecosystem and its associated ecotone transition to the tall Eucalypt woodland are well within the arbitrary one kilometre zone that has been the basis of the declaration proposals. These are therefore areas where mining can safely occur without disturbance of the riparian and riverine ecosystems

Further, our evidence-based approach has also shown that there are locations where it is prudent that our mining will not commence until significantly greater distances than one kilometre from the river bank in order to preserve these important ecosystems.

This has been Rio Tinto Alcan's standard practice for our 40 year mining history at Weipa, which includes the requirements of the Rio Tinto Global Environmental Standards, and is above and beyond the requirements of the *Commonwealth Aluminium Corporation Pty Limited Agreement Act 1957* and *Alcan Queensland Pty Limited Agreement Act 1965* obligations. The current buffer practices guide the basis on which our reserves and resources are calculated as per the Code for Reporting of Mineral Resources and Ore Reserves (the JORC Code).

Overall, we submit that it is prudent to understand the real ecosystem boundaries based on sound science and analysis in order to set effective HPA boundaries. In regards to this key matter, we would ask the Queensland Government to appreciate the need for ongoing effective consultation with Rio Tinto Alcan and other local parties who have the local knowledge of the significant environmental and cultural areas which need to be protected through any declaration.

#### **Water entitlements**

In October 2008, Rio Tinto Alcan provided your Department with an estimation of the company's potential future water needs as far as the company can foresee with the current mining operations. Whilst Rio Tinto Alcan provided an estimate of the required take from the Wenlock River in order to allow mining to occur in that region, we also specifically reserved the broader rights we have under the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* and *Alcan Queensland Pty Limited Agreement Act 1965*, which are preserved for both ML 7024 and ML 7031 under the Wild Rivers legislation.

Rio Tinto Alcan's current estimate for a viable large scale mine is ninety gigalitres per annum (90 GLpa), which is equivalent to approximately 2.45 per cent of the government-measured annual mean flow of 3,670 GLpa for the Wenlock River. In calculating this estimate of potential future water needs in the region, Rio Tinto Alcan is continuing with its current policy of maximising water recycling throughout our activities and prioritising reuse of tailings dam water. Therefore, Rio Tinto Alcan believes it is taking a responsible and workable position on the requested long term take from the Wenlock River.

Whilst it is possible to provide a current estimate for Rio Tinto Alcan's mining operations in this area, it is not possible to deal with all potential eventualities in the future. For example, Rio Tinto Alcan's ML7024 and ML7031 include significant resources bounded by the Wenlock and Ducie Rivers. Exploration programmes on these deposits have identified the potential for significant quantities of low monohydrate bauxite. However, as there is currently limited knowledge of how to efficiently beneficiate ore from the Wenlock River locales, the estimate of the water requirements will also be dependent on the development of mining technology, which is likely to assist in the reduction water required to mine, beneficiate and transport.

Currently, the declaration proposal does not explicitly state that RTA's existing water rights are protected under the *Wild Rivers Act 2005* and we would seek such a statement in any declaration.

Rio Tinto Alcan would like to specifically note the importance of respecting the potential use of water from the Wenlock Basin by the Traditional Owners of the land. We note the 5000 megalitres Indigenous reserve (Division 3 – 14.2) to be made available to meet the economic and social aspirations of Traditional Owners. We strongly support that the declaration proposal has identified the potential use of water from the Wenlock River by Traditional Owners of the land represented within the Western Cape Communities Coexistence Agreement and hope that the reserved amount has been based on comprehensive analysis and consultation. Rio Tinto Alcan has a history of effective negotiations and processes available under this agreement.

## Legal Position

The purpose of the *Wild Rivers Act 2005* is to preserve the natural values of wild rivers that have all, or almost all, of their natural values intact by providing for a process for an area of the State to be declared as a wild river area and to provide a framework for the regulation of activities and the taking of natural resources.

Any declaration of a wild river area should be consistent with, and within the powers granted by, the Act for the declaration to be legally valid. Therefore, where the Act has restrictions or limitations which apply generally or specifically, any relevant declaration should recognise those.

Section 17 of the *Wild Rivers Act 2005* expressly recognises that

- carrying out activities or taking natural resources (occurring before the declaration takes effect) may continue; and
- existing authorisations (in place before the declaration) to carry out activities or take natural resources may start and continue.

The intent and effect of this section is that these rights and authorisations have been preserved and the relevant activities or taking of resources can continue or start and continue without further regulation as a consequence of the declaration, even if they are inconsistent with the purpose of the Act or requirements that are imposed upon new activities or the taking of resources following the declaration.

The explanatory memorandum to the *Wild Rivers Bill 2005* expressly cites the authorisations conferred by the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* as being preserved. The *Alcan Queensland Pty Limited Agreement Act 1965* also confers rights and authorisations that are preserved and relate to water, areas and resources within the proposed Wenlock wild river area.

Rio Tinto Alcan submits that express recognition of these special agreement Acts is necessary in the declaration in order to properly address all of the criteria required to be included pursuant to 14 of the Act. The criteria relevantly includes:

- (k) *the matters that must be considered in deciding whether to allow the carrying out of an activity or the taking of a natural resource in the wild river area;*
- (o) *information about water available for future consumptive purposes and the priorities for use or reservation of water;*
- (p) *any threshold limits for carrying out activities or taking natural resources in the wild river area;*

It is accordingly necessary for proper compliance with section 14 of the Act and enduring validity of the declaration that rights and authorisations in each of the special agreement Acts as relevant to the criteria mentioned above are noted.

An additional practical aspect is that the proposed declaration, which will be subordinate legislation, should not be uncertain or apparently inconsistent with the Act so that no person (including third parties) can be potentially confused or misled by not making it clear that the declaration does not apply to these rights and authorisations.

Due to the interrelationship between a declaration made under the Act and processes for allocation for water licences, resource operation plans or water resource plans in the *Water Act 2000* or development applications under the *Integrated Planning Act 1997*, it is necessary that it be made clear that a wild rivers declaration does not alter existing obligations in respect of the relevant activities or taking of resources.

Clause 2(2) of the declaration proposal is not included within those parts of the proposal "written as if it were a declaration" (see clause 2(3)). The drafting of the acknowledgement of section 17 at clause 2(2) should reflect the terms of section 17 which allows the activity or the taking of the resource to continue or to start and continue "as if the declaration had not been made". Clause 2(2) of the proposal does not achieve this with clarity. In particular, to give full effect to section 17(3) of the Act, it needs to be emphasised that the parts of the declaration that bring in requirements concerning other statutes (e.g. the *Integrated Planning Act*) do not apply to the activities and takings protected by section 17. A mere reference to the authorisations in section 17 does not achieve this outcome.

Rio Tinto Alcan submits that this must be addressed through the insertion of an additional provision at clauses 11(4), 19(2) and 22(5) of the declaration proposal (adopting the numbering of the declaration proposal, but subject to renumbering in the final form of declaration). The proposed amendments are as follows:

- Clause 11(4) - *"This part does not apply to the carrying out an activity or the taking of a resource which may continue or which may start and continue under section 17 of the Wild Rivers Act 2005";*
- Clause 19(2) - *"This part does not apply to the carrying out an activity or the taking of a resource which may continue or which may start and continue under section 17 of the Wild Rivers Act 2005"*
- Clause 22(5) - *"This Chapter does not apply to the carrying out an activity or the taking of a resource which may continue or which may start and continue under section 17 of the Wild Rivers Act 2005"*

Rio Tinto Alcan submits that a further practical aspect of the proposed declaration is that no statement is made about the threshold limit for carrying out the activity of taking water from the wild river area. Clause 14 identifies 'Unallocated water reserves' annual volumetric limits for indigenous, strategic and general reserves. Clause 13 states that *"the chief executive must not make a decision that would increase the total annual volume of water available to be taken in the wild river area"*, but the declaration does not include a statement of the threshold limit inclusive of existing rights and unallocated reserves. Having regard to the proposed unallocated water reserves and section 17 and the volume of water required for a viable large scale mine, the declaration should include a volumetric statement of the annual volume of water available to be taken in the wild river area.

## CONCLUSION

Rio Tinto Alcan is strongly committed to managing land and water in a responsible way. We have a long established track record of continually looking for ways to improve our land and water management while contributing to the Queensland economy and all the communities on Cape York. Rio Tinto Alcan supports the intent of the *Wild Rivers Act 2005* and the intent of the Queensland Government regarding the protection of important river systems, however, notes that the implementation of the Act must have regard to

appropriate scientific data and existing legal entitlements within a wild river declaration area.

In making this submission on the Wenlock Basin Wild River Declaration proposal we are seeking a Government commitment that any final declaration is based on both accurate scientific evidence as well as consideration of the full socio-economic impacts on the region and the performance of those industries operating in the region.

Rio Tinto Alcan would also like to support the submission made by the peak group for the resources sector, the Queensland Resources Council, on the declaration proposal.

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