Australian Marine Parks Management Planning Comments
Department of the Environment and Energy
Reply Paid 787
Canberra ACT 2601

6 September 2017
Our reference: RTIO-HSE-0314249

Dear Sir/Madam

Draft North-west Commonwealth Marine Reserves Network Management Plan 2017

Submission from the Iron Ore Division of Rio Tinto

Thank you for your invitation to comment on the Draft North-west Commonwealth Marine Reserves (CMR) Network Management Plan 2017 (the draft 2017 management plan).

This letter constitutes a submission from the Iron Ore Division of Rio Tinto (Rio Tinto) on the draft 2017 management plan, especially in relation to the implications of the Dampier Marine Park (DMP, previously named the Dampier Commonwealth Marine Reserve, or Dampier CMR) on our Pilbara port operations. Rio Tinto’s Pilbara port operations are at Dampier and Cape Lambert.

Previous submissions from Rio Tinto on the Northwest CMR Network/Dampier CMR

Rio Tinto has been an active stakeholder in this matter and has previously made submissions on the proclamation and management of the Northwest CMR Network/Dampier CMR. Specifically, Rio Tinto has made submissions on the:

- Proclamation of the North-west CMR Network/Dampier CMR (submission dated 7 September 2012);
- Proposal to prepare a management plan for the North-west CMR Network/Dampier CMR (submission dated 18 December 2012);
- Draft management plan for the North-west CMR Network/Dampier CMR (submission dated 11 February 2013); and
- Proposal to prepare a new management plan for the North-west CMR Network/Dampier CMR (submission dated 28 October 2016).

Rio Tinto interests

Of special interest to Rio Tinto is the management of the DMP. The DMP is located 10 km north-east of Cape Lambert and 40 km from Dampier and adjoins the state water boundary in the Pilbara region of Western Australia (refer Figure 1).

In the Pilbara, Rio Tinto operates the world’s largest integrated portfolio of iron ore assets. This includes a network of 16 mines, four port terminals, over 1,700km of the largest privately-owned heavy freight railway in Australia and related infrastructure, all remotely supported by the Operations Centre in Perth. The Cape Lambert port operation includes a 4-berth terminal at Cape Lambert Port A and a 4-berth terminal at Cape Lambert Port B. The Dampier port operation includes a 4-berth terminal at Parker Point and a single berth/single lay-by berth at East Intercourse Island.
The Cape Lambert port operation was established by Robe River Iron Associates and has shipped iron ore to export markets since 1972. The Cape Lambert port operation now forms an integral component of Rio Tinto’s entire Pilbara operations. The port operation has generated significant employment through its ongoing production, regular scheduled maintenance and periodic construction activities and has significantly added to Rio Tinto’s overall contribution to the State and national economies through taxes, royalties and other payments.

The location of Rio Tinto’s marine infrastructure for the Cape Lambert port operation in relation to the DMP is shown in Figure 1.

The draft 2017 management plan is relevant to the Cape Lambert port operation because:

- Arriving ore carrier vessels transit through the DMP to access Cape Lambert;
- Departing loaded ships utilise a dredged shipping channel that dissects the DMP to access deeper water and overseas ports;
- Maintenance and capital dredging programs use one or more of three established spoil grounds offshore from Cape Lambert - one (SG1) is located in State waters, the other two (SG2 and SG3) are located in the DMP (in Commonwealth waters); and
- Installed and proposed anchorages and essential navigational aids (including buoys, cardinals, marks, beacons and buoy lights) are within both State and Commonwealth waters, many located in the DMP.

These activities have been mainly regulated, in addition to other legislative instruments, through the Iron Ore (Robe River) Agreement Act 1964 (WA) (the Robe River State Agreement), the Environmental Protection Act 1986 (WA), the Biodiversity Conservation Act 2016 (WA), the Land Administration Act 1997 (WA), the Shipping and Pilotage Act 1967 (WA), the Environment Protection and Biodiversity Conservation Act 1999 (C’wth) (the EPBC Act), the Environment Protection (Sea Dumping) Act 1981 (C’wth) (the Sea Dumping Act) and their associated regulations.

Comments on the draft 2017 management plan

Rio Tinto notes Section 1.3 of the draft 2017 management plan states the vision of the Director of National Parks (the Director) is that marine parks are healthy, resilient and well-managed to enhance Australia’s well-being and this means (amongst other listed things) that marine parks support jobs and businesses. The importance of port activities is also expressly recognised in respect of the DMP, and it is noted (Page 102 of the draft 2017 management plan) that such activities, amongst others, “contribute to the wellbeing of regional communities and the prosperity of the nation”. This is an important aspect and is warranted recognition for major port operations (such as Cape Lambert) located in proximity to marine parks, especially given the Cape Lambert port operation (commenced in 1972) significantly pre-dates the 2013 proclamation of the DMP.

1. Zonings for the DMP

Rio Tinto supports the proposed three zonings within the DMP:

- Multiple Use Zone (MUZ) (IUCN category VI, covering 1,074 km² or ~86% of the DMP) - stated objective is to provide for ecologically sustainable use and the conservation of ecosystems, habitats and native species;
- Habitat Protection Zone (HPZ) (IUCN category IV, covering 104 km² or ~8% of the DMP) - stated objective is to provide for the conservation of ecosystems, habitats and native species in as natural a state as possible, while allowing activities that do not harm or cause destruction to seafloor habitats; and
- National Park Zone (NPZ) (IUCN category II, covering 73 km² or ~6% of the DMP) - stated objective is to provide for the protection and conservation of ecosystems, habitats and native species in as natural a state as possible.
Given the regional/local context, these zonings represent a sound compromise between the need for conservation of the natural, cultural, heritage and social and economic values (presented in Schedule 2.1 of the draft 2017 management plan) and the need to not constrain normal port operations and to allow essential port related infrastructure to be constructed and maintained (primarily within the MUZ).

Rio Tinto notes the area of some DMP zones has changed since the release of the 2016 report of the independent Commonwealth Marine Reserves Review undertaken by the Bioregional Advisory Panel and the Expert Scientific Panel. The MUZ (previously ‘Special Purpose Zone’ or SPZ) has increased 20 km² (from 1,054 km² to 1,074 km²) as a result of a slight westward extension of its western boundary. The HPZ remains unchanged at 104 km². The NPZ (previously ‘Marine National Park Zone’) has reduced by 20 km² (from 93 km² to 73 km²) as a result of a slight contraction of its eastern boundary. Overall, the area of the DMP has not therefore materially changed (around 1,252 km²). Rio Tinto has no objection to the revisions to these zones or the increased area of the MUZ/SPZ.

**Rio Tinto supports the DMP zonings as presented in the draft 2017 management plan.**

### 2. Activities in the DMP

Section 4.2 of the draft 2017 management plan specifies the ‘rules for activities’ in the various zonings in the North-west Network. The relevant zonings for the DMP are stated in Item 1 above (the MUZ, the HPZ and the NPZ). Zonings relevant to other marine parks in the North-west Network (excluding the DMP) include Special Purpose Zones (Trawl), Recreational Use Zones and Sanctuary Zones.

Table 1 summarises the activities relevant to Rio Tinto’s Cape Lambert port operation and Rio Tinto’s assessment of the potential effect of the draft 2017 management plan for each zone of the DMP (i.e., whether the activity is allowed, is not allowed, is allowed with an authorisation, is allowed subject to EPBC regulations).

### Table 1. Relevant and allowable activities (relevant to the Cape Lambert operation) in each zone of the DMP

<table>
<thead>
<tr>
<th>Activity</th>
<th>Reference (from draft 2017 management plan)</th>
<th>MUZ</th>
<th>HPZ</th>
<th>NPZ</th>
<th>Addressed in this submission</th>
<th>Allowable use</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General use - Ballast water discharge and exchange</strong>&lt;br&gt;(managed under international, national or state arrangements)</td>
<td>Table 4.2</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td><strong>General use - Dispose of waste from vessels</strong>&lt;br&gt;(compliant with MARPOL)</td>
<td>Table 4.2</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td><strong>Commercial shipping - Anchoring</strong></td>
<td>Table 4.3</td>
<td>✓</td>
<td>✗</td>
<td>✗</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td><strong>Commercial shipping – Vessel transiting</strong></td>
<td>Table 4.3</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td><strong>Structures and works – Moorings, excavation and maintenance</strong></td>
<td>Table 4.11</td>
<td>A</td>
<td>A</td>
<td>A</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td><strong>Structures and works – Disposal of dredged</strong></td>
<td>Table 4.11</td>
<td>A</td>
<td>X</td>
<td>X</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Activity</td>
<td>Reference (from draft 2017 management plan)</td>
<td>MUZ</td>
<td>HPZ</td>
<td>NPZ</td>
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<td></td>
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<tr>
<td>Research and Monitoring - Research</td>
<td>Table 4.12</td>
<td>A</td>
<td>A</td>
<td>A</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

✓ = activity allowed (in accordance with the prescriptions of the draft 2017 management plan without the need for a permit, class approval or commercial activity licence or lease authorisation issued by the Director).

A = authorisation required (activity is allowable in accordance with a permit, class approval or commercial activity licence or lease authorisation issued by the Director).

X = not allowed (not consistent with zone objectives)

anchoring not allowed, except in anchoring areas determined under r.12.56 of the EPBC Regulations.

Rio Tinto’s activities are primarily restricted to the area of the MUZ and it is unlikely its activities will extend into either the HPZ or NPZ except, on occasions, vessel transit by loaded or unloaded ore carriers or occasional additional project/port vessel movements (an allowed activity not requiring approval/s).

Rio Tinto believes that any research/monitoring (Table 4.12 in the draft 2017 management plan) required to comply with conditions of approval from a permit granted under the EPBC Act or the Sea Dumping Act (e.g. a Sea Dumping Permit, or SDP), or required by approved management plans under these approvals, should be exempt from the need to seek any separate authorisation from the Director. These activities have already been considered and approved by an appropriate environmental regulator, and so this additional approval requirement would create unnecessary administrative burden.

Maintenance of structures along the shipping channels (e.g. navigational aids) should not warrant specific authorisation from the Director as the potential environmental risks associated with these activities is negligible. Rio Tinto appreciates that the other two items included in this activity (installing moorings and undertaking excavations) might warrant specific authorisation from the Director; however maintenance of installed infrastructure should not.

Section 4.2.10 (Structures and works) of the draft 2017 management plan states: “The prescriptions provide for a three-year transition period to allow existing structures to remain at their current location and to facilitate implementation and awareness of the management arrangements for structures and works. After the transition period existing structures may then be required by the Director to be removed or relocated after assessment of their suitability in accordance with Section 4.3.1 (Decision making). The prescriptions do not affect any structures or works that were installed in a marine park under a usage right relating to the seabed that existed immediately before the proclamation of the North-west Network (and preserved by s359 of the EPBC Act). During this transition period operators will be able to continue to conduct their activities in the North-west Network (i.e. the DMP) in the same manner that they were able to prior to the commencement of this plan.”

In relation to this section (Section 4.2.10) of the draft 2017 management plan, Rio Tinto is of the view that all infrastructure established for the Cape Lambert port operation has been done under approvals, permits, licences or leases issued under applicable legislative instruments at the time of installation and as such are considered installed under a usage right to the seabed that pre-dates the 2013 proclamation of the DMP. For example:

- Most infrastructure for the Cape Lambert port operation (including infrastructure currently located within the current boundary of the DMP) was installed prior to the EPBC Act being enacted in 1999, in accordance with the rights and obligations under the Robe River State Agreement (which was developed through a rigorous whole-of-Government process culminating in a formal Act of Parliament) and/or with the
approval of the Department of Transport which currently manages Port Walcott, within which the Cape Lambert port operation is located;

- Current navigational aid structures, anchorages, dredged shipping channels and spoil disposal areas (SG1, SG2 and SG3) have been installed and utilised by Rio Tinto since well before the North-west Network (including the DMP) was proclaimed under the Environment Protection and Biodiversity Conservation (Commonwealth Marine Reserves) Proclamation 2013 and declared to be Commonwealth reserves by Section 6 of the proclamation) or commencement of the management plan, hence Rio Tinto considers these facilities are covered under s359 of the EPBC Act; and

- In addition, many structures (especially navigational aids) located in State and Commonwealth waters have been installed for maritime safety purposes and are mandated by various government authorities under legislation/regulations and these and future navigational aids to be installed under these requirements should be exempt from additional approval requirements under the draft 2017 management plan.

**Rio Tinto recommends that provision is made in the draft 2017 management plan for:**

- Research and monitoring undertaken under conditions of EPBC or SDP approvals (or associated management plans) to be exempt from requiring additional or separate authorisation from the Director;

- Exemption from any additional approval requirement where a Proponent has already been granted an EPBC approval and/or a SDP for a development proposal located within a portion of the MUZ of the DMP; and

- Separation of ‘maintenance’ from ‘moorings, excavation and maintenance’ under the Structures and Works activity and that the need for authorisation is re-assessed to “activity allowed in accordance with the prescriptions of the draft 2017 management plan without the need for a permit, class approval or commercial activity licence or lease issued by the Director”.

3. Class approvals

Section 4.4 of the draft 2017 management plan outlines processes for authorisation by the Director of ‘allowable activities’ within the North-west Network (including the DMP), covering permits (Section 4.4.1) and class approvals (Section 4.4.2) and activity licences and leases (Section 4.4.3) and specifies prescriptions for these approvals. It is noted that class approvals may be issued for activities regulated under other government or industry policies, plans or programs where the impacts of such activities are subject to satisfactory assessment and would be introduced in consultation with the relevant person or class of persons.

Rio Tinto considers this approach (for class approvals) is broadly appropriate for some activities associated with the Cape Lambert port operation in the DMP, notwithstanding the points made in Comment Item 2. It is not clear whether this class approval process applies to existing activities being undertaken within the DMP that may require a class approval, nor is it clear if this process is to be undertaken within the three-year transition period and who must initiate that process, if it is required. Furthermore obtaining a class action approval appears to be regulatory duplication where an existing EPBC and/or a SDP has already been granted.

**Rio Tinto recommends that further details on the class approval process are provided in the draft 2017 management plan particularly in relation to existing port infrastructure/activities.**

4. Summary

A summary of the key recommendations/comments made by Rio Tinto in this submission on the draft 2017 management plan is presented in Table 2.
Table 2. A summary table of Rio Tinto recommendations/comments

<table>
<thead>
<tr>
<th>Number</th>
<th>Reference</th>
<th>Recommendation/comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Part 3</td>
<td>Rio Tinto supports the DMP zonings as presented in the draft 2017 management plan.</td>
</tr>
<tr>
<td>2</td>
<td>Section 4.2.11</td>
<td>Rio Tinto recommends that provision is made in the draft 2017 management plan for research and monitoring undertaken under conditions of EPBC or SDP approvals (or associated management plans) to be exempt from requiring additional or separate authorisation from the Director.</td>
</tr>
<tr>
<td>3</td>
<td>Section 4.2.10</td>
<td>Rio Tinto recommends that provision is made in the draft 2017 management plan for separation of ‘maintenance’ from ‘moorings, excavation and maintenance’ under the Structures and Works activity and that the need for authorisation is reassessed to “activity allowed in accordance with the prescriptions of the draft 2017 management plan without the need for a permit, class approval or commercial activity licence or lease issued by the Director”</td>
</tr>
<tr>
<td>4</td>
<td>Section 4.2.10</td>
<td>Rio Tinto recommends that provision is made in the draft 2017 management plan for an exemption for any additional approval requirement where a Proponent has already been granted an EPBC approval and/or a SDP for a development proposal located within a portion of the MUZ of the DMP.</td>
</tr>
<tr>
<td>5</td>
<td>Section 4.4.2</td>
<td>Rio Tinto recommends that further details on the class approval process are provided in the draft 2017 management plan particularly in relation to existing port infrastructure/activities.</td>
</tr>
</tbody>
</table>

If further information or clarification of any aspect of this submission is required, please contact Mr Peter Royce on (08) 6211 6696 or peter.royce@riotinto.com.

Yours faithfully

Chris Richards
General Manager State Agreements and Approvals

Attachment:

Figure 1: Location of Rio Tinto infrastructure in relation to the DMP