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21 October 2011

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Consultation Draft Environmental Offsets Policy - Submission

Rio Tinto welcomes the opportunity to comment on the Draft Environmental Offsets Policy. Rio Tinto supports an offset policy that provides greater certainty to Environment Protection and Biodiversity Conservation (EPBC) Act 1999 applicants offset requirements.

As part of our commitment to sustainability, Rio Tinto actively supports the protection of biodiversity and the environment. Rio Tinto's corporate biodiversity goals include achieving a net positive impact on habitats that support significant biodiversity by compensating for significant residual impacts and pursuing conservation opportunities that generate value for the company. Rio Tinto supports the use of a broad range of environmental offsets in achieving these goals. We support sensible measures that improve the administration of the current Act through the use of transparent, measurable and consistently applied policies and procedures.

We hope that an Environmental Offsets Policy provides greater certainty for industry regarding the use and application of environmental offsets, minimises delays in EPBC assessments and more generally improves the environmental outcomes.

Structure of this submission

This submission includes a written overview providing comments on the draft Environmental Offsets Policy (this document) and an accompanying copy of the Draft Environmental Offsets Policy with suggested tracked changes.

Synopsis

Rio Tinto:

- Strongly recommends that the Environmental Offsets Policy is quarantined to *significant residual impacts* only.
- Supports the need for a robust offsets policy that provides greater certainty for industry about processes by which offsets are determined and supports the timely assessment of EPBC applications.
- Supports the development of offsets on a bio-regional basis where it delivers more strategic, sustainable and cost effective environmental outcomes.
- Seeks the inclusion of measures that enhance habitat quality or reduce environmental threats to the protected matter as a direct offset.

- Seeks greater flexibility around the proposal that 75 per cent of offset points must be earned from direct offsets to cater for circumstances where direct offsets are not available due to factors outside the proponents control. Examples include, land availability and tenure status that limits availability of direct offsets.
- Seeks clarification on the head of power under the EPBC Act under which the Environmental Offset Policy is established.

Specific Comments

Aims of the policy and overarching offset requirements

The aims of the Policy should also include an objective that seeks to deliver the beneficial outcome to the National Environmental Significance (NES) matter given the available resources. This would help ensure the Policy delivers the most desirable environmental outcome given the economic contribution required by the applicant.

The Box 1 Offset should be amended to require government decision making to be conducted in a *reasonable and fair* manner in assessing the suitability of an offset. (Refer to page 4 of the tracked changes document for specific amendments).

The EPBC Act

A head of power under the EPBC Act under which the Environmental Offset Policy is established should be included in the Policy.

What are environmental offsets?

A very clear definition of what constitutes a *significant residual impact* is required to decide whether offsets are required or not. We recommend that what constitutes a significant residual impact is one where the significant residual impacts are significant and irreversible.

It is important that that Policy does not use the words "residual impact" in isolation. Rather the words "significant and irreversible residual impact" should be used consistently throughout the Policy.

Types of Offsets

The current definition of offsets requires further refinement to clarify what activities constitute a direct or indirect offset.

Direct Offsets

A range of 'on-ground' activities should be included in the definition of a direct offset. A direct offset should capture activities that:

- enhance habitat quality or reduce threats to the protected matter. For example, by removing invasive species or feral animals, or implementing suitable fire regime; and
- implement appropriate actions that would prevent further degradation (from processes such as soil erosion, loss of moisture content in the soil, water logging, salinisation and acidification).

The definition should also include the rehabilitation of *habitat* in poor condition. (Refer to page 6 of the tracked changes document for specific amendments).

Indirect Offsets

Given the inclusion of activities that enhance habitat quality or reduce threats to the protected matter as a direct offset, this should be removed as an indirect offset activity.

Assessment stage

As part of the assessment stage, consideration should be given to whether the residual impacts will be *significant* and whether the offsets needed to help compensate for significant residual impacts on the protected matter are both *practical* and feasible. (Refer to page 10 of the tracked changes document for specific amendments.)

Decision stage

As part of the decision stage it is suggested that offsets should not be required where the impact of a proposed action is *not significant*, in addition to being minor in nature and being reasonably able to be mitigated. Where a suitable offset may not be available the Minister must retain the discretion under this policy *to either approve or not approve* the action. (Refer to page 11 of the tracked changes document for specific amendments.)

Offset Requirements

It is suggested that *rehabilitating or improving habitat that is in a degraded condition or by preventing further environmental degradation* be recognised in the Policy as a method by which an improved conservation outcome may be achieved.

It is suggested that the inclusion of *surrounding conservation values* relevant to the matter protected be included in the list of matters considered in determining and appropriate offsets package. (See tracked changes document for specific amendments.)

Rio Tinto supports consideration of the cost effectiveness of the proposed offset to determine whether a similar or greater benefit to the NES matter could be achieved through another offset arrangement.

What constitutes a suitable offset?

Rio Tinto supports the development of offsets on a bio-regional basis where it delivers more strategic, sustainable and cost effective environmental outcomes that protect NES matters. Given a broad range of Rio Tinto growth projects are located within distinct bio-regions an opportunity exists to pre-emptively align future offsets requirements.

Rio Tinto supports appropriate governance arrangements regarding offsets that are transparent, consistently applied, measurable and auditable. Biennial departmental reports and audited statements should satisfactorily achieve this outcome.

The Policy should acknowledge that in some cases there is a role for Government to co-operate and add lands set aside for offsets to the public conservation estate, subject to mutual agreement between the proponent and the Government in question.

Methodology used in the guide

I. The appropriateness of the factors that influence impact points

The "impact point" factors appear suitable but it should be noted that in assessing habitat condition and type of habitat, the wider range of factors set out in the Significant Impact Guideline 1.1 needs to be considered. The need for "transient" duration factor is unnecessary given this would not constitute a significant impact.

II. Suggestions for quantifying the impact categories of low, medium, high and very high

If there is "low" residual impact then it is not significant and an offset is not required. This is why a clear threshold of residual impact is needed to decide whether offsets are required or not. The assessment of significant residual impacts should be carried out considering the factors and then a point score will arise. Depending on the value of the points score, the impact category will be allocated. With a points system, a three category system is preferable: Significant- threshold; Significant- medium, Significant – high. The "impact calculator" table is misleading in that it seems to presuppose there is an independent pre-determined category of "level of impact on protected matter". This category is actually dependent on the scoring assessment. Presumably an independent assessment of the impact and offset would be needed for each protected matter species or community and this should be clearly articulated.

III. The proposal that 75 per cent of offset points must be earned from direct offset

While this might be a general objective, flexibility must be maintained to account for existing land use and tenure status within regions in which Rio Tinto operates. Circumstances will arise where it may not be physically possible to provide a majority of offsets points in the form of a direct offset (e.g. where access to relevant land is denied by a third party, the existence of third party mining tenements or a suitable degraded

habitat able to be improved simply does not exist). In such cases, a higher contribution of points from indirect offsets would be necessary and these extenuating circumstances must be accounted for. This is specifically relevant for the Pilbara where, the overwhelming majority of land is not freehold, existing third party mining tenements are extensive and there are limited opportunities to secure land that would satisfy the requirements for direct offsets.

The policy should note that a minimum of 75 per cent of the total offset points required in all but exceptional cases should be derived from direct offsets.

IV. The appropriateness of the actions that can earn offset points

A broad range of actions should be able to earn offset points. This includes enhancing habitat quality or reducing threats to the protected matter, for example by removing invasive species, feral animals, waterlogging, salinisation, acidification, or implementing suitable fire regimes. Such measures are direct measures and should be included as such and be eligible to earn offset points.

V. Suggestions for appropriate weightings of offset points for particular actions

To avoid impact scores being influenced by artefacts of the points system, each of the four factor categories should ideally have the same number of scoring value options. For example, Conservation status, V = 1, E = 2, CE = 3; Duration Short = 1, Medium = 2, Permanent = 3; Condition Low = 1, Medium = 2, High = 3; Type Average = 1, Core = 2, Refugia = 3.

VI. Potential matters for which the guide may need to be tailored to particular circumstances

The guide must be able to cater for circumstances where direct offsets are not available due to factors outside the proponents control. In remote areas of Western Australia where operations are governed under state agreements, there is a particular need to ensure the guide does not mandate impracticable outcomes.

Interactions with other legislation and schemes

Rio Tinto supports greater consistency between the Federal and State Governments on the policies and procedures associated with environmental offsets. The establishment of administrative procedures to ensure the appropriate engagement between assessing officers from relevant State agencies, DSEWPaC and applicants should be also considered. Rio Tinto advocates for a well-structured approach to the process of determining offsets (so that there is no duplication or conflict between Federal and State Governments).

Environmental Offset Assessment Guide

While Rio Tinto supports the use of a more quantitative approach to determining the magnitude of offsets, too little detail is currently available to evaluate the practicality or effectiveness of the impacts and offsets calculator. Further consultation is required on the offsets calculator.

If there are any questions regarding this submission, please contact [REDACTED] at [REDACTED] directly on [REDACTED]

Yours sincerely,



David Peever
Managing director, Rio Tinto Australia