

Rio Tinto and the devastation at Juukan Gorge — this issue is far from closed 17 September 2020



On the 11 September 2020, in response to the Juukan Gorge disaster, Rio Tinto (Rio) announced the resignation of its Chief Executive Officer, J-S Jacques as well as two executives: Chris Salisbury, Chief Executive Iron Ore, and Simone Niven, Group Executive Corporate Relations¹.

Our thoughts on the Board's decision making

This was in our view the appropriate decision from Rio but seems to be primarily the result of strong stakeholder pressure, as the initial decision of the board was less severe. The Board review report, published in August 2020², outlined the series of events that culminated in the destruction of the Juukan caves in May, as well as Rio's planned corrections to governance, resourcing, systems, culture, and changes to the relevant Executive bonus structures. The proposed changes to Executive bonus structures meant that J-S, as an example, would lose approximately £2.7m from his short- and long-term incentives; the other two executives would lose a smaller but still significant amount. Other than that, and a voluntary donation to the Clontarf Foundation from non-Executive Board members, no further corrective actions were planned.

Their reasons for not implementing more severe penalties are summarised below:

- The executives who made the original decisions some years ago were no longer with the company.
- The people currently in those positions were not aware of the significance of the site and were therefore not directly responsible.

¹ <https://www.riotinto.com/news/releases/2020/Rio-Tinto-Executive-Committee-changes>

² <https://www.riotinto.com/news/inquiry-into-juukan-gorge>

- This was a failure in systems and organisational culture. It was acts of omission, rather than commission, in failing to implement a fit-for-purpose management system at the mine.
- It was not in the interest of shareholders to remove the CEO as it would destabilise the business.

Following the release of the report, the feedback we provided, alongside much of the investment community, has been clear—the decision to limit corrective action to incentive payments showed insufficient accountability and leadership, a lack of respect for the traditional owners that were impacted by this terrible event, and given the extreme nature of this event it sent the wrong message internally and externally around company culture. We also communicated that we thought their decision was disproportionate to the action taken against CEOs and Chairs recently in the banking sector. Although the types of activities are different, we believe the gravity of the impacts are at a minimum comparable.

While we are generally satisfied with most of the Board's recommendations, we are disappointed that Rio's Board did not demonstrate adequate leadership on this issue. Instead they took the easy route and reacted appropriately only once their stakeholders voiced their dissatisfaction.

Accountability aside, we welcome the Board's proposed changes to governance and culture. Including the establishment of an Executive level Heritage Committee and new Social Performance function. In saying this, we still need to better understand the possible implications for business operations and future projects. We hope Rio will disclose further information on this as they firm up their approach. We are also reasonably comfortable with the Board's conclusions related to root cause events; however, we are withholding any firm views on this until the Parliamentary enquiry concludes.

How we've engaged with Rio and other mining companies

Since the blast in May, we have openly expressed our frustration over the lack of accountability and have been actively engaging with Rio and other mining companies within our portfolios. Some of this is as follows:

- **Rio:** We have had three discussions with the Chairman, Simon Thompson; two prior to the internal review and one in September after the Board review report was produced. Our engagement focussed on the findings of the review, changes made to prevent future occurrences, and financial consequences for responsible management. During the call in September we recognised the work that had gone into the Board's review, and Rio's engagement with the investment community, but also expressed strong disappointment to the Chairman on what seemed to us the insufficient consequences for senior leadership.
- **Other mining companies:**
 - As part of our ongoing engagement with companies on ESG, we have also engaged directly with Fortescue's CEO, Oz Minerals' CEO and its sustainability/environment team, BHP's CEO and Chairman, Santos' CEO, and Origin Energy's CEO to understand each company's views on their respect for indigenous heritage, and to seek information as to what they are doing to prevent a similar event occurring.

- Most of the miners we have spoken to have indicated they are reviewing their own risk exposure and firming up their systems to ensure a similar event doesn't happen to them. As an example, BHP recently announced it is establishing a Heritage Advisory Council with the Banjima people, the traditional owners of the land it is mining in the Pilbara, to provide input into mine planning at South Flank³
- We are hosting a one-hour session with Fortescue's CEO Elizabeth Gaines on September 30 with clients and consultants with the aim of having an open conversation about various ESG matters, including heritage protection, diversity to climate change and carbon emission reduction programs/aspirations.
- **Experts:** In June, we also engaged with two specialists in aboriginal and native title matters to better understand what had happened, and to learn of the issues we should be considering when investing in mining companies.

ESG considerations for future engagement

Looking ahead, the most challenging part of managing this risk is the need to see beyond glossy reports and a company's reputation and track record. Rio had previously been known as a leader in heritage management and community engagement. Unfortunately, this reputation has been destroyed along with the caves. Experts we've spoken with tend to agree that Rio was the mining company that took Aboriginal engagement most seriously. If this can happen to them, it can happen to anyone.

Not surprisingly this devastating event has shaken the Australian industry and made worldwide headlines. From here there are several key lessons that we'll be considering for future engagement.

- When companies are working within highly sensitive community or environmental areas, management measures need to be practical and transparent. Clearly, a policy or commitment is not always a suitable indicator for when an issue is being well managed.
- So environmental and social issues are given equal standing in decision making, and treating like safety, Board and executive level KPIs should include environmental and social matters like heritage or biodiversity.
- *Genuine* and *informed* engagement should be a central part of business operations, project development and delivery. This is especially important when engaging with traditional owners but is also relevant for other vulnerable members of our community. As investors, it's important we understand the nature of engagement, if it's fair and equal, whether different parties have been involved in the decision-making process, and if they feel they have been heard.
- Government regulation plays an important part in protecting our natural, Indigenous and European heritage. It also defines the legislation which dictates how projects are delivered and the rights of indigenous communities negotiating with large mining companies. We understand this legislation is being reviewed, however, where regulation falls short the market needs to bridge the gap.

³ <https://www.bhp.com/media-and-insights/news-releases/2020/09/banjima-elders-to-advise-on-south-flank-heritage/>

- ESG matters are becoming more and more critical to the reputation of Boards, CEOs, and senior leadership. To make sure we're ready for the next inevitable sustainability related shake up—we need to strengthen our own ESG assessment processes and ensure we are delivering focussed and regular engagement, especially where we identify a high risk which may seem to be well managed.

Ongoing implications for the Alphinity Sustainable Share Fund

With the parliamentary enquiry still ongoing, this issue is far from closed. The recent transcripts, responses to questions taken on notice⁴, and comments from MP Warren Entsch in the media⁵ indicate there is a view that Rio intentionally misled the traditional owners via their engagement and negotiations with the Puutu Kuntjirra and Pitjantjatjara people (PKKP). At this stage, the Alphinity Sustainable Share Fund has maintained a small holding in Rio, which has helped us to maintain a dialogue with key people in the company, and we can't rule out there being further implications for Rio. We will however be watching this issue closely. As the situation evolves, we will be ready to make the appropriate changes as needed.

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⁴ <https://www.aph.gov.au/DocumentStore.ashx?id=3491f7db-a6f0-45e3-a5f0-4e20d3dbbd9c&subId=690644>

⁵ <https://www.theguardian.com/business/2020/sep/10/rio-tinto-misled-juukan-gorge-inquiry-and-cant-plead-ignorance-as-a-defence-committee-chair-says>