



**ERA** Energy Resources of Australia Ltd

ABN 71 008 550 865  
A member of the Rio Tinto Group

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15 November 2019

The Manager  
Company Announcements Office  
ASX Limited  
20 Bridge Street  
Sydney NSW 2000

**NOT FOR DISTRIBUTION OR RELEASE IN THE UNITED STATES**

Dear Sir/Madam

**Energy Resources of Australia Ltd ACN 008 550 865  
Notice under section 708AA(2)(f) of the Corporations Act**

This notice is given by Energy Resources of Australia Ltd ACN 008 550 865 (**Company** or **ERA**) under section 708AA(2)(f) of the *Corporations Act 2001* (Cth) (**Corporations Act**) as modified by ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84 (**ASIC Instrument**). All references in this notice to the Corporations Act are references to the Corporations Act as notionally modified by the ASIC Instrument.

The Company has announced its intention to undertake a capital raising by way of a fully underwritten pro rata renounceable entitlement offer (**Entitlement Offer**) of 6.13 new fully paid ERA ordinary shares (**New Shares**) for every 1 existing ERA ordinary share held as at 7:00pm (Australian Eastern Daylight Time) on Wednesday, 20 November 2019 by eligible shareholders with a registered address in Australia, New Zealand or Singapore (**Eligible Shareholders**).

Words and expressions defined in the Company's announcement dated Friday, 15 November 2019 relating to the Entitlement Offer (the **ASX Announcement**) have the same meaning in this notice, unless the context requires otherwise.

The Company will offer the New Shares for issue without disclosure to investors under Part 6D.2 of the Corporations Act.

This notice is given by the Company under section 708AA(2)(f) of the Corporations Act.

As at the date of this notice, the Company has complied with:

- (a) the provisions of Chapter 2M of the Corporations Act as they apply to the Company; and
- (b) section 674 of the Corporations Act.

As at the date of this notice, there is no "excluded information" (within the meaning of sections 708AA(8) and 708AA(9) of the Corporations Act) which is required to be set out in this notice under section 708AA(7)(d) of the Corporations Act.



### **Potential effect on control of the Company**

The potential effect that the Entitlement Offer will have on control of the Company and the consequences of that effect are set out below.

The potential effect that the issue of the New Shares will have on the control of ERA, and the consequences of that effect, will depend on a number of factors including the number of New Shares taken up by each Eligible Shareholder (or by third party investors to which their entitlement is transferred) and the number of entitlements sold by the foreign holder nominee on behalf of Ineligible Shareholders under the Entitlement Offer, or placed to institutional and/or sophisticated investors under the Shortfall Bookbuild.

The Entitlement Offer is being underwritten by North Limited (**North** and **Underwriter**), a wholly-owned subsidiary of Rio Tinto. As at the date of this announcement, Rio Tinto holds relevant interests in 68.39% of the issued ERA shares, with North (being the Underwriter) directly holding 34.10% of the issued ERA shares and Peko-Wallsend Pty Ltd (**Peko-Wallsend**), another wholly-owned subsidiary of Rio Tinto, holding 34.29% of the issued ERA shares. Both North and Peko-Wallsend (the **Rio Tinto Parties**) have confirmed to ERA that they will take up their full pro rata entitlements to New Shares under the Entitlement Offer.

Entitlements to New Shares for which valid applications are not received before the Entitlement Offer closes (i.e., the **Shortfall Shares**) will be issued as follows:

- (a) firstly, to any Eligible Shareholders who submit valid applications for Additional New Shares under the Shortfall Facility (**Shortfall Applicants**);
- (b) secondly, should there be Shortfall Shares remaining, to successful applicants (if any) through the Shortfall Bookbuild to be undertaken by Euroz Securities Limited as described in the ASX Announcement; and
- (c) thirdly, the balance of the Shortfall Shares would be taken up by the Underwriter under the Underwriting Agreement.

There is no guarantee that Shortfall Applicants will receive the number of New Shares applied for in excess of their Entitlement, or that they will receive any at all.

ASIC has granted relief from Australia's takeover laws (Chapter 6 of the Corporations Act), which enables Eligible Shareholders to participate in the Shortfall Facility even if by doing so the number of New Shares issued to them would result in the takeover law threshold under section 606 of the Corporations Act being exceeded.

Accordingly, the number of New Shares that will be required to be taken up by the Underwriter will depend on how many New Shares are taken up under the Entitlement Offer (including under the Shortfall Facility) by persons other than North and Peko-Wallsend and the number of New Shares placed to institutional and/or sophisticated investors under the Shortfall Bookbuild. For example, if:

- (a) no New Shares are taken up under the Entitlement Offer by any person other than the Rio Tinto Parties and no New Shares are placed under the Shortfall Bookbuild (i.e. 100% of all New Shares are taken up by the Rio Tinto Parties), the percentage of the ERA shares in which Rio Tinto has relevant interests would increase from 68.39% to approximately 95.57%;



- (b) approximately 20.48% of all New Shares available to shareholders other than the Rio Tinto Parties (i.e. 6.47% of all New Shares) are taken up under the Entitlement Offer or the Shortfall Bookbuild by persons other than the Rio Tinto Parties, the percentage of the ERA shares in which Rio Tinto has relevant interests would increase from 68.39% to 90.00%;
- (c) approximately 75.68% of all New Shares available to shareholders other than the Rio Tinto Parties (i.e. 23.92% of all New Shares) were taken up under the Entitlement Offer or the Shortfall Bookbuild by persons other than the Rio Tinto Parties, the percentage of the ERA shares in which Rio Tinto has relevant interests would increase from 68.39% to 75.00%;
- (d) approximately 94.08% of all New Shares available to shareholders other than the Rio Tinto Parties (i.e. 29.74% of all New Shares) were taken up under the Entitlement Offer or the Shortfall Bookbuild by any persons other than the Rio Tinto Parties, the percentage of the ERA shares in which Rio Tinto has relevant interests would increase from 68.39% to 70.00%;
- (e) all New Shares available to shareholders other than the Rio Tinto Parties (i.e. 31.61% of all New Shares) were taken up under the Entitlement Offer or the Shortfall Bookbuild, there would be no change to the percentage of the ERA shares in which Rio Tinto has relevant interests.

**Consequences of the effect on control**

Depending on the number of New Shares taken up by each Eligible Shareholder (or by any third party investor to which their entitlement is transferred) and the number of entitlements sold by the foreign holder nominee on behalf of Ineligible Shareholders under the Entitlement Offer, or placed to institutional and/or sophisticated investors under the Shortfall Bookbuild, it is possible that, following the issue of the New Shares, Rio Tinto (through the Rio Tinto Parties), will have full beneficial interests in a greater percentage of the ERA shares.

The Rio Tinto Parties have confirmed to ERA that they will examine their options in respect of Rio Tinto's combined shareholding and relevant interests in ERA following the completion of the Entitlement Offer. In the event that the relevant interests of Rio Tinto (through the Rio Tinto Parties) increase following the completion of the Entitlement Offer, some of the options available to it include:

<b>Rio Tinto's total relevant interests in ERA shares</b>	<b>Consequences and potential rights of Rio Tinto</b>
Increases to 70% or more	Rio Tinto may look to appoint additional board member(s) to the Board of ERA at the next Annual General Meeting or to fill a casual vacancy if one arises or otherwise in accordance with the constitution of the Company.



<b>Rio Tinto's total relevant interests in ERA shares</b>	<b>Consequences and potential rights of Rio Tinto</b>
Increases to 75% or more	<p>Rio Tinto will be able to pass special resolutions at general meetings in respect of resolutions on which it is entitled to vote (for example, resolutions relating to proposed amendments to the constitution of the Company).</p> <p>Rio Tinto may seek to engage with ERA to consider initiating discussions with ASX in respect of a voluntary delisting having regard to factors including the liquidity of the shares, the number of unmarketable parcels and ongoing listing costs.</p> <p>Neither ERA nor Rio Tinto would seek to delist ERA without prior engagement with ASX and neither party has commenced any discussions with ASX in this respect.</p>
Increases to 90% or more	<p>Rio Tinto may look at compulsory acquisition in the six months following the date on which New Shares are issued under the Entitlement Offer in accordance with the procedure outlined below.</p>

If, immediately after the Entitlement Offer, Rio Tinto (through the Rio Tinto Parties) has beneficial interests in 90% or more of all ERA shares, it will have the right (but not the obligation) to compulsorily acquire all of the remaining ERA shares in accordance with the statutory procedure set out in Part 6A.2 of the Corporations Act, otherwise known as the "general compulsory acquisition procedure".

If enlivened, Rio Tinto will have six months from the date it becomes entitled to compulsorily acquire the remaining ERA shares, to lodge a notice with ASIC exercising this right (**Compulsory Acquisition Notice**). This date would align with the date of issue of the New Shares pursuant to the Entitlement Offer.

ERA has been informed by Rio Tinto that it has not yet decided whether it will exercise its right of compulsory acquisition if it becomes entitled to do so, and it does not intend to make that decision until the outcome of the Entitlement Offer is known. If Rio Tinto elects to exercise the right of compulsory acquisition, it must:

- (a) offer a cash amount for the acquisition of the remaining ERA shares, which must be the same amount for each share;
- (b) engage an independent expert nominated by ASIC to prepare a report which states whether, in the expert's opinion, the proposed price gives fair value for the ERA shares being acquired; and
- (c) provide shareholders with a copy of the Compulsory Acquisition Notice, the expert's report and an objection form.

The cash amount per ERA share offered by Rio Tinto pursuant to any potential compulsory acquisition process of the remaining ERA shares is uncertain and would be determined by Rio Tinto at its discretion, which could be more or less than the Offer Price under the Entitlement Offer.



ERA's shareholders will have a right to object to the compulsory acquisition of their ERA shares by Rio Tinto by returning the objection form to the Company within the objection period specified in the Compulsory Acquisition Notice (which must be at least one month). If shareholders holding at least 10% of the shares covered by the Compulsory Acquisition Notice object to compulsory acquisition by the relevant deadline, Rio Tinto (through North or Peko-Wallsend, as the case may be) will need to apply for court approval if it wishes to proceed with the compulsory acquisition, and the costs of such court proceedings will be borne by Rio Tinto unless the court finds that the objector(s) have acted improperly, vexatiously or otherwise unreasonably. If Rio Tinto establishes that the compulsory acquisition terms represent fair value, the court will be required to approve the compulsory acquisition on those terms; otherwise, the court must confirm that the acquisition will not take place.

In accordance with section 708AA(2)(f) of the Corporations Act and the relevant timetable set out in Appendix 7A of the ASX Listing Rules, this notice is given before the commencement of trading on ASX on the date the Company announced the Entitlement Offer.

Yours sincerely

**James O'Connell**  
**Legal Counsel & Company Secretary**  
**Energy Resources of Australia Ltd**

Important information

This document is issued by Energy Resources of Australia Ltd. This document is not a prospectus or offering document under Australian law or under any other law. It is for information purposes only and does not constitute an offer, invitation or recommendation to subscribe for, retain, purchase or sell any securities in the Company in any jurisdiction. This document does not constitute financial product advice and does not and will not form part of any contract for the acquisition of ERA ordinary shares.

This document does not constitute an offer to sell, or a solicitation of an offer to buy, securities in the United States or any other jurisdiction in which such an offer would be illegal. Neither the entitlements nor the New Shares to be offered and sold in the Entitlement Offer have been, or will be, registered under the U.S. Securities Act of 1933 (**U.S. Securities Act**) or the securities laws of any state or other jurisdiction of the United States. Accordingly, the entitlements may not be exercised or taken up by, and the New Shares may not be offered or sold, directly or indirectly, except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the U.S. Securities Act and any other applicable securities law of any state or other jurisdiction of the United States. There will be no public offer of the entitlements or the New Shares in the United States.

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