



# Notice of annual general meeting

ERM Power Limited ACN 122 259 223

# Notice of annual general meeting

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Notice is given that the annual general meeting of ERM Power Limited ACN 122 259 223 (**ERM Power** or **Company**) will be held at:

<b>Location</b>	Christie Conference Centre, Caribbean Room, Level 1, 320 Adelaide Street, Brisbane QLD 4000
<b>Date</b>	Wednesday, 26 October 2016
<b>Time</b>	9:00 am (Brisbane time)

## Ordinary Business

### Financial statements and reports

To receive and consider the Company's financial reports and the reports of the directors and the auditor for the financial year ended 30 June 2016.

### Directors' remuneration report

To consider, and if in favour, to pass the following resolution under section 250R(2) *Corporations Act 2001* (Cth) (**Corporations Act**):

- 1 'That the remuneration report of the directors for the financial year ended 30 June 2016 be adopted.'

**Note:** This resolution will be decided as if it were an ordinary resolution but, under section 250R(3) *Corporations Act*, the vote on this resolution is advisory only and does not bind the directors or the Company.

### Election of directors

To consider, and if in favour, to pass the following as ordinary resolutions:

- 2 'That Mr Anthony (Tony) Bellas, who retires by rotation under rule 19.3 of the Company's constitution, and being eligible, be re-elected as a director of the Company.'
- 3 'That Mr Wayne St Baker, who was appointed as a director of the Company on 1 March 2016 and retires under rule 19.2(b) of the Company's constitution, and being eligible, be elected as a director of the Company.'
- 4 'That Ms Georganne Hodges, who is nominated by the directors under rule 19.3(h) of the Company's constitution, and being eligible, be elected as a director of the Company.'

**Note:** Information about each candidate appears in the Explanatory Memorandum.

## Special business

### Approval of employee incentive plans

To consider and, if in favour, to pass the following resolutions as ordinary resolutions:

- 5 'That the issue of securities in the Company under the Short Term Incentive Share Trust plan be approved for the purposes of the ASX Listing Rule 7.2, exception 9.'
- 6 'That the issue of securities in the Company under the Long Term Incentive Share Trust plan be approved for the purposes of the ASX Listing Rule 7.2, exception 9.'
- 7 'That the issue of securities in the Company under the Long Term Incentive Option Trust plan be approved for the purposes of the ASX Listing Rule 7.2, exception 9.'

### Approval of related party benefits under Long Term Incentive plan

To consider, and if in favour, to pass the following resolution as an ordinary resolution:

- 8 'That, for the purposes of ASX Listing Rule 10.14 and Chapter 2E of the Corporations Act, shareholders approve the granting of 633,361 units in the Long Term Incentive Share Trust (each representing a share in ERM Power) to Mr Jonathan (Jon) Stretch, the Company's Managing Director and Chief Executive Officer, in the manner contemplated by the Explanatory Memorandum.'

### Renewal of proportional takeover approval provisions

- 9 To consider and, if in favour, to pass the following resolution as a special resolution:  
  
'That the proportional takeover approval provisions contained in rule 15 of the Company's constitution be granted effect for a further three years effective on the day on which this resolution is passed.'

Dated 23 September 2016

By order of the Board

A handwritten signature in grey ink, appearing to read "Phil Davis".

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**Phil Davis**  
Company Secretary

## Notes

- (a) A shareholder who is entitled to attend and cast a vote at the meeting is entitled to appoint a proxy.
- (b) The proxy need not be a shareholder of the Company. A shareholder who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.
- (c) If you wish to appoint a proxy and are entitled to do so, then complete and return the **attached** proxy form.
- (d) A corporation may elect to appoint a representative in accordance with the Corporations Act in which case the Company will require written proof of the representative's appointment which must be lodged with or presented to the Company before the meeting.
- (e) The Company has determined under regulation 7.11.37 of the Corporations Regulations 2001 that for the purpose of voting at the meeting or adjourned meeting, securities are taken to be held by those persons recorded in the Company's register of shareholders as at 7.00pm (Sydney time) / 6.00pm (Brisbane time) on Monday, 24 October 2016.
- (f) If you have any queries on how to cast your votes then call Link Market Services Limited on 1300 554 474 during business hours.

## Voting exclusion statement

As required by the ASX Listing Rules and the Corporations Act, the Company will disregard any votes cast:

Resolution 1 – Directors' remuneration report	by or on behalf of a member of key management personnel (KMP) whose remuneration is disclosed in the remuneration report (or a closely related party of such a member) in any capacity and by a member of the KMP at the date of the meeting (or a closely related party of such a member) acting as a proxy.
Resolutions 5, 6 and 7 – Approval of employee incentive plans	by Mr Jon Stretch and any of his associates in any capacity and by a member of the KMP at the date of the meeting (or a closely related party of such a member) acting as a proxy.
Resolution 8 - Approval of related party benefits under Long Term Incentive plan	by Mr Jon Stretch and any of his associates in any capacity and by a member of the KMP at the date of the meeting (or a closely related party of such a member) acting as a proxy.

However, the Company need not disregard a vote by a member of the KMP (or an associate or closely related party of such a member) if it is cast as proxy for a person who is entitled to vote and:

- (a) is in accordance with the directions on the proxy voting form specifying how the proxy is to vote; or
- (b) the vote is cast by the Chair of the meeting and the proxy form expressly authorises him to vote as he decides.

# Explanatory Memorandum

ERM Power Limited ACN 122 259 223 (**ERM Power** or **Company**)

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This Explanatory Memorandum accompanies the notice of annual general meeting of the Company (**Notice**) to be held at the Christie Conference Centre, Caribbean Room, Level 1, 320 Adelaide Street, Brisbane QLD 4000 on Wednesday, 26 October 2016 at 9:00 am (Brisbane time).

The Explanatory Memorandum has been prepared to assist shareholders in determining how to vote on the resolutions set out in the Notice and is intended to be read in conjunction with the Notice.

## Financial statements and reports

- 1 The *Corporations Act 2001* (Cth) (**Corporations Act**) requires that the report of the directors, the auditor's report and the financial report be laid before the annual general meeting.
  - 2 Apart from the matters involving remuneration which are required to be voted upon, neither the Corporations Act nor the Company's constitution requires a vote of shareholders at the annual general meeting on the financial statements and reports.
  - 3 Shareholders will be given reasonable opportunity at the meeting to raise questions and make comments on these reports.
  - 4 In addition to asking questions at the meeting, shareholders may address written questions to the Chair about the management of the Company or to the Company's auditor, PricewaterhouseCoopers, if the question is relevant to:
    - (a) the content of the auditor's report; or
    - (b) the conduct of its audit of the annual financial report to be considered at the meeting.
- Note:** Under section 250PA(1) Corporations Act a shareholder must submit the question to the Company no later than the fifth business day before the day on which the AGM is held.
- 5 Written questions for the auditor must be delivered by 19 October 2016. Please send any written questions for PricewaterhouseCoopers on the question form supplied with this Notice, and forward to Link Market Services Limited using any of the methods identified on the form.

## Resolution 1: Directors' remuneration report

- 6 The Corporations Act requires that the section of the directors' report dealing with the remuneration of directors and other key management personnel be put to the vote of shareholders for adoption.
- 7 The resolution of shareholders is advisory only and **not binding** on the Company. However, if more than 25% of the votes cast on this resolution are against the adoption of the remuneration report, the remuneration report for the following year must either address any comments received from shareholders or explain why no action has been taken in response to those comments. If, at the following annual general meeting, the remuneration report again has a vote against it of 25% or more, a 'spill resolution' will be put to shareholders. If at least 50% of the votes cast are in favour of the 'spill resolution' a special meeting of the Company will be held within 90 days at which the directors in office at the time of the second annual general meeting must resign and stand for re-election.

- 8 More than 80% of proxies received prior to the Company's 2015 AGM were in favour of the remuneration report for that year with the resolution passed on a show of hands. The Company did not receive any specific feedback from shareholders at that AGM or during the year on its remuneration practices.
- 9 However, the Company has introduced malus and clawback provisions to both the short and long term incentive awards to enable the Company to reduce or clawback awards where appropriate to do so. Where the Board is not satisfied that an award determination is appropriate and warranted, it has the discretion to apply malus to vary the award downward, including to zero. Clawback provisions provide the Board with the ability to cancel unvested equity awards or to demand the return of shares or the realised cash value of those shares where the Board determines that the benefit obtained was inappropriate as a result of fraud, dishonesty or breach of employment obligations by either the recipient or any employee of the Group.
- 10 The remuneration report is contained in the 2016 annual report, which is available on the ERM Power website at <http://www.ermpower.com.au/investor-centre/financial-reports/>. It:
- (a) explains the policies of the board of directors of ERM Power (**Board**) in relation to the nature and level of remuneration paid to directors and other key management personnel within the ERM Power group;
  - (b) discusses the link between the Board's policies and ERM Power's performance;
  - (c) sets out the remuneration details for each director and for each other member of ERM Power's key management personnel; and
  - (d) makes clear that the basis for remunerating non-executive directors is distinct from the basis for remunerating executives, including executive directors.
- 11 Notably, for the 2016 financial year the remuneration committee exercised its discretion and withheld all performance-based short term incentive awards for both senior executives and other employees within the Group. This is consistent with the Company's strategy of aligning reward to performance.
- 12 The Chair will give shareholders a reasonable opportunity to ask questions about, or to make comments on, the remuneration report.

#### **Directors' recommendation**

- 13 The directors recommend you vote for this resolution.

#### **Election of directors**

- 14 Rule 19.3 of the Company's constitution requires that, at every annual general meeting, one-third of the directors (excluding the managing director and any director appointed by other directors under rule 19.2 of the Company's constitution) retire from office and stand for re-election. Where, after those excluded, there remain five or less directors, at least two must retire from office at each annual general meeting.
- 15 The directors to retire under rule 19.3 are those who have been in office the longest since being re-appointed. As between directors who were elected on the same day, the directors to retire are (in default of agreement between them) determined by ballot.
- 16 The Board has determined that Mr Anthony (Tony) Bellas will retire from office under rule 19.3 of the Company's constitution and stand for re-election. Mr Martin Greenberg, who will also retire

from office under rule 19.3 of the Company's constitution, has advised the Board that he will not stand for re-election.

- 17 Rule 19.2 of the Company's constitution further requires that a director appointed by the Board as an addition to the existing directors retire at the conclusion of the next annual general meeting following his or her appointment. As Mr Wayne St Baker was appointed by the Board effective 1 March 2016, he is required to retire from office under rule 19.2 of the Company's constitution and stand for election at this annual general meeting.
- 18 The Board also nominates a new director, Ms Georganne Hodges to join the Board under rule 19.3(h) of the Company's constitution.

## **Resolution 2: Re-election of Mr Tony Bellas**

- 19 Mr Tony Bellas retires from office under rule 19.3 of the Company's constitution and stands for re-election as an independent non-executive director.
- 20 Tony was appointed Chair of ERM Power on 21 October 2011, having served as a director since December 2009 and has brought to the business almost 25 years of policy and operational experience in the energy industry. Tony was previously non-executive deputy chair of listed entity Guildford Coal Ltd, and until June 2010, CEO of the Seymour Group, one of Queensland's largest private investment and development companies.
- 21 Tony also had a long career with Queensland Treasury, achieving the position of Deputy Under Treasurer. In 2000, as an Assistant Under Treasurer, he was responsible for the Industry and Energy Division of Queensland Treasury and was heavily involved in formulating the State Government's energy strategy.
- 22 Tony is the non-executive chair of ASX listed entities: Corporate Travel Management Ltd Shine Corporate Ltd and GraphiteCorp Ltd, and is also a director of Loch Explorations Pty Ltd, West Bengal Resources (Australia) Pty Ltd and the Endeavour Foundation.
- 23 The Board is conscious of the time commitment required of directors and in particular of Tony Bellas who holds the position of Chair. The Board is satisfied that Tony Bellas makes sufficient time available to serve the Group effectively and that none of Tony Bellas' other commitments interfere with the discharge of his responsibilities to the Group.
- 24 Tony has an MBA from Queensland University of Technology, and a Bachelor of Economics and a Diploma in Education from the University of Queensland. He is a Fellow of the Australian Institute of Management, the Australian Institute of Company Directors and CPA Australia Ltd.
- 25 Tony is currently the chair of ERM Power's nomination committee, as well as a member of the audit and risk committee, the remuneration committee, and the health, safety, environment and sustainability committee.



## **Directors' recommendation**

- 26 The Board (with Mr Bellas abstaining) supports the re-election of Mr Tony Bellas as a director.

### **Resolution 3: Election of Mr Wayne St Baker**

- 27 Mr Wayne St Baker retires from office under rule 19.2(b) of the Company's constitution and stands for election.
- 28 The board considered the skills and experience, and endorsed the appointment, of Wayne St Baker on 1 March 2016 as director for the St Baker family interests. As brother to Trevor St Baker who is a substantial shareholder in the Company, Wayne is not considered to be independent.
- 29 Wayne brings more than 40 years' experience as a chair, executive director and non-executive director of listed and private companies in Australia and SE Asia across the industrial sector.
- 30 Wayne is also currently a non-executive director of ProComp Energy Machinery Co. Ltd (China). From March 2010 to April 2016 he was a non-executive director of CAPS Australia, and up to 2009 was the Managing Director of Champion Compressors, enabling the company to expand from a small private service and sales company to become a publicly listed manufacturer and market leader in Australia and Asia. Wayne has also held global business development roles for divisions of United Technology Corporation (USA). Wayne was previously a non-executive director on the ERM Power board between July 2007 and June 2010.
- 31 Wayne holds a Graduate Diploma of Business Administration (Technology Management) from Deakin University, a Diploma of Mechanical Engineering, and is a Fellow of the Australian Institute of Company Directors.



### **Directors' recommendation**

- 32 The Board (with Mr Wayne St Baker abstaining) supports the election of Mr Wayne St Baker as a director.

### **Resolution 4: Election of Ms Georganne Hodges**

- 33 Ms Georganne Hodges has been nominated by the directors under rule 19.3(h) of the Company's constitution and stands for election as an independent non-executive director.
- 34 Georganne is a finance executive with 25 years of wholesale and retail energy experience, including extensive industry experience across the energy value chain leading the finance, accounting and other back office operations of medium to large North American wholesale and retail energy companies. Georganne has a proven track record of building and leading high performing back office teams that act as business partners while maintaining financial controls.
- 35 Georganne is currently based in Houston, Texas, as the CFO of Motiva Enterprises, LLC a leading refiner, distributor and marketer of fuels in the Eastern, Southern, and Gulf Coast regions of the United States (US).
- 36 Previously, between 2013 to mid-2016, Georganne was Chief Financial Officer and Treasurer for Spark Energy, Incorporated (Nasdaq:SPKE), a US natural gas and electricity supplier serving residential and commercial customers in 16 states, where she was responsible for corporate financial reporting, risk management, accounting, financial planning and analysis, treasury, tax





and internal controls. During her time there, she successfully completed the company's initial public offering in August 2014 as well as several acquisitions.

- 37 Prior to joining Spark Energy, Georganne served as Vice President Finance for US company Direct Energy's retail energy business from August 2009 to October 2012 and in various other senior financial roles prior to that. Georganne began her finance career in 1987 with Arthur Andersen, where she audited companies across the energy value chain.
- 38 Georganne holds a Bachelor of Business Administration in Accounting from Baylor University and is a licensed certified public accountant in the state of Texas. She holds memberships in the Houston Chapter of CPA's and the Women's Energy Network.

#### **Directors' recommendation**

- 39 The Board supports the election of Ms Georganne Hodges as a director.

## **Special business**

### **Approval of employee incentive plans**

- 40 ASX Listing Rule 7.1 prohibits the Company issuing equity securities which, in aggregate, exceed 15% of the fully paid ordinary share capital of the Company in any 12 month period.
- 41 ASX Listing Rule 7.2 exception 9 provides that ASX Listing Rule 7.1 does not apply to the issue of securities by the Company under an employee incentive scheme if the scheme was established before the entity listed and a summary of the terms were included in the prospectus, or if the scheme has been approved by shareholders within three years from the date of issue of the relevant securities.

### **Resolutions 5, 6 and 7: Approval of employee incentive plans**

- 42 The Company previously received approval of its employee incentive plans by shareholders at the 2013 AGM. Accordingly, securities issued until 31 October 2016 are excluded from the 15% capacity in ASX Listing Rule 7.1.
- 43 However, so that the future issue of securities pursuant to the plans will not be counted for the purposes of ASX Listing Rule 7.1, the Company seeks shareholder approval for the purposes of ASX Listing Rule 7.2 exception 9 for the following three plans (**Plans**):
- (a) the Short Term Incentive Share Trust (**STIST**) plan. The objective of the STIST plan is to award short term incentives to eligible employees and executives through the provision of ERM Power shares (**Shares**) through a trust, the STIST. The awards under the STIST are usually focused on achieving annual profit and operational targets determined after assessing the achievement of individual, business unit and Group key performance indicators set at the beginning of each financial year.
  - (b) the Long Term Incentive Share Trust (**LTIST**) plan. The LTIST plan is focused on the alignment of remuneration with long term service and/or performance targets as set by the Board from time to time, as well as encouraging talent retention; and
  - (c) the Long Term Incentive Option Trust (**LTIOT**) plan. The LTIOT is another vehicle which could be utilised to align remuneration outcomes with specified Group targets by the issue of options over Shares (**Options**).

- 44 Eligible participants in the Plans are those employees and executives (including executive directors) who are invited by the Company to receive an award under any of the Plans.
- 45 For the STIST and LTIST (**Share Plans**), Shares will be acquired by a trustee who will hold those Shares on behalf of participants. The Shares will be acquired by the trustee either subscribing for new Shares or purchasing Shares on market. For the LTIOOT, Options will be granted by ERM Power to a trustee who will hold those Options on behalf of participants.
- 46 The awards under the STIST will not be subject to vesting conditions. However, the long term incentive plans are subject to vesting conditions the terms of which will be set out in individual letters of offer, and may be a combination of service and/or performance hurdles, as determined by the directors.
- 47 Participants hold their interest in the Plans by holdings units, where one unit represents one Share or one Option respectively. Participants are issued units at the prevailing market value and financed by way of an interest-free non-recourse loan from the Plans.
- 48 The loans are interest-free whilst the participant remains involved with the Plans, and are not expected to be repaid until the underlying Shares or Options acquired are transferred, sold or exercised (**Withdrawn**). Loans are extinguished by the payment of salary from the trustee at the time when an underlying share or option is Withdrawn. As such, participants receive the full value of the Shares or Options acquired on their behalf under the Plans. If the market value of the Shares or Options falls below the value of the original loan amount (i.e. if the ERM Power share price falls below the price at which the units were issued), participants can surrender their units in the Plans in full satisfaction of the loan.
- 49 Both vested and unvested units in the Share Plans are held beneficially on behalf of the participants, and thus the participant enjoys many of the same benefits as the holder of ordinary Shares; with entitlement to dividends and the right to direct the trustee as to how to cast their vote in the case of a poll at a meeting of members of ERM Power.
- 50 If the participant's employment ceases prior to the units vesting, the participant's units in the Plans will generally be forfeited. After vesting, on cessation of employment participants have six months to withdraw from the Plans. A participant may withdraw by instructing the trustee to sell the underlying Shares or Options which have vested at that time on their behalf or transferring title to the participant.
- 51 Early vesting, may occur in the following circumstances:
- (a) on a change of control of ERM Power, being a material change in the composition of the board initiated as a result of a change of ownership of Shares and the purchaser of the Shares requiring (or agreeing with other Shareholders to require) that change in board composition, or in other circumstances that the board determine appropriate; or
  - (b) on termination of employment due to redundancy, death or permanent disability, or in circumstances that the directors determine appropriate.
- 52 Non-forfeiture on cessation of employment prior to vesting may occur on redundancy, retirement or termination by mutual agreement, whereby the leaver will continue to be a participant in the relevant plan for unvested units until the end of the performance period. If the participant dies prior to vesting, the units will immediately vest (subject to limits outlined in Corporations Act as they relate to Termination Payments).
- 53 The issue price of Shares acquired by the Share Plans is the volume weighted average price at which the Shares traded on ASX on the 10 trading days preceding the date of allocation of the award, or such other period as determined by the directors.

- 54 The exercise price of Options granted under the LTIOT plan is the volume weighted average price at which Shares trade on ASX on the 10 trading days preceding the date of allocation. If, prior to the exercise of an Option, the Company enters into a reorganisation of capital, the terms of the Options are to be reconstructed to the extent necessary to comply with any Listing Rules applying to a reorganisation of capital.
- 55 During 2016 financial year, the Company introduced malus and clawback provisions to its incentive plans. Under these provisions, awards will lapse, be forfeit or a participant may be required to reimburse the Company all or part of the cash received as net proceeds on the sale of any award if, in the opinion of the board:
- (a) a participant is found to have acted fraudulently or dishonestly or is in material breach of obligations to the Group;
  - (b) the Company becomes aware of a material misstatement or omission in the financial statements in relation to the Group; or
  - (c) any circumstances occur that the board determines in good faith to have resulted in an unfair benefit to the participant.
- 56 As at the date of this notice of meeting, the following have been issued under the Plans since last approved by shareholders;
- (a) 2,430,178 Shares have been issued under the STIST plan,
  - (b) 6,387,476 Shares have been issued under the LTIST plan, and
  - (c) There have been no issues under the LTIOT plan.

#### **Directors recommendation**

- 57 The directors recommend that you vote for Resolutions 5, 6 and 7.

### **Approval of related party benefit under long term incentive plan**

- 58 Section 208(1) of the Corporations Act provides that a public company must not, without the approval of its shareholders, give a financial benefit to a related party, subject to certain exceptions. A related party includes directors of ERM Power under section 228 of the Corporations Act. Financial benefit is defined in section 229 of the Corporations Act and includes issuing securities, granting an option or providing finance to a related party.
- 59 ASX Listing Rule 10.14 also requires a listed company to obtain shareholder approval (by ordinary resolution) prior to the issue of securities or options under an employee incentive scheme to a director of the company.
- 60 Further, ASX Listing Rule 10.11 requires a listed company to obtain shareholder approval (by ordinary resolution) prior to the issue of securities to a related party of the company.

#### **Resolution 8: Approval of related party benefit under incentive plan – Mr Jon Stretch**

- 61 Mr Jon Stretch is a director of ERM Power for the purposes of ASX Listing Rule 10.14.1. Being a director of the Company, Mr Jon Stretch is also a related party of ERM Power for the purposes of Chapter 2E of the Corporations Act.
- 62 The Company intends to issue Mr Jon Stretch units in the LTIST as part of his FY2017 long term incentive award. Mr Stretch's participation in the LTIST plan is on the same terms as all other eligible employees of ERM Power.

- 63 The participants in the LTIST receive a financial benefit by accepting the offer to participate because the issue of units is financed by way of an interest-free, non-recourse loan. If the participant were to borrow funds from a third party lender, interest would otherwise be payable. The loans are interest-free whilst the participant remains in the LTIST, and is not expected to be repaid until the underlying Shares acquired under the LTIST are transferred or sold. As such, participants receive the full value of the Shares acquired on their behalf under the LTIST. If the market value of the Shares falls below the value of the original loan amount (i.e. if the ERM Power share price falls below the price at which the units were issued), participants can surrender their units in the LTIST in full satisfaction of the loan.
- 64 ERM Power therefore seeks shareholder approval in accordance with ASX Listing Rule 10.14 and Chapter 2E of the Corporations Act to grant Mr Jon Stretch 633,361 units in the LTIST (each representing a share in ERM Power) in accordance with the terms and conditions of the LTIST, with vesting subject to Mr Jon Stretch's continued employment with ERM Power to the end of the performance period being 30 June 2019 and achievement of the following Total Security holder Return (TSR) performance hurdle.
- 65 Satisfaction of the TSR vesting condition will be determined by ERM Power's relative TSR performance over the period from 1 July 2016 to 30 June 2019, measured against the TSR performance of a comparator group, being those companies in the Standard & Poor's ASX 300 index at the beginning of the performance period.

TSR ranking in each vesting period	Percentage of underlying Shares in LTIST that will vest if condition is met
At or below the 50 <sup>th</sup> percentile	0%
Above the 50 <sup>th</sup> percentile to less than the 75 <sup>th</sup> percentile	50% increasing linearly to 100% at the 75 <sup>th</sup> percentile
At or above the 75 <sup>th</sup> percentile	100%

The performance hurdle will only be satisfied where the TSR value is positive. If the TSR value is negative, the performance hurdle will not be satisfied, and the underlying Shares in the LTIST will not vest.

- 66 If this resolution is approved, Mr Jon Stretch will acquire the LTIST units via the establishment of a loan from the LTIST trustee (based on the market value of the Shares at the time of issue) that will be non-recourse and does not bear interest, thereby creating a financial benefit. The loan is expected to be repaid by the payment of salary by the trustee subsequent to the underlying Shares vesting, when transferred or sold (as relevant).
- 67 The reason for providing these financial benefits is to appropriately remunerate Mr Jon Stretch in accordance with the Company's long term incentive plan, and to align the interests of Mr Jon Stretch with those of shareholders.

#### **Determination of the number of Units**

- 68 The number of units to be awarded under the LTIST was determined by reference to the same price that the FY2017 LTIST award was made to all other participants of the Company, being the VWAP over 10 trading days from 17 to 30 June 2016 (inclusive), being \$0.9241. 75% of Mr Jon Stretch's FY2017 base salary of \$780,384.40 provides for an award of \$585,288.30, which at \$0.9241 per unit results in 633,361 units.

## Valuation of the financial benefit

- 69 The accounting value of the benefit to be awarded under the LTIST, having regard to the likelihood of achieving the performance conditions set out at paragraph 65 above, is calculated in a manner consistent with AASB 2 (Share-based Payment). The LTIST will have a performance period expiring on 30 June 2019 and has both market and non-market vesting conditions.
- 70 The LTIST indicative fair value has been determined using a Monte Carlo simulation (using a Black-Scholes framework). The following key assumptions will be adopted in estimating the value of the proposed LTIST units on grant date: risk free interest rate, share volatility, the market value of ERM's Shares on grant date and a forecast of ERM's dividend yield over the vesting period.
- 71 The table below provides an estimate of the LTIST benefit to be granted at varying market prices for the 633,361 share units to be issued based on a risk free interest rate of 1.41%, a share volatility measure of 38.6% and a forecast dividend yield of 9.5%, which is commensurate with historical dividend payments made by the company.

Market price of ERM Shares on grant date (\$)	Value per unit (\$)	Value of LTIST award (\$)
0.90	0.57	357,854
1.00	0.60	377,692
1.05	0.61	387,903
1.10	0.63	396,462
1.15	0.64	404,973
1.20	0.66	415,438

## Mr Jon Stretch's interests in ERM Power and remuneration package

- 72 Mr Jon Stretch currently has a relevant interest (either directly or indirectly) in the following Shares in ERM Power<sup>1</sup>:

Holder	Number of Shares
Blueshore Management Pty Limited as trustee for the Stretch Family Super Fund	70,000
Jonathan Stretch as trustee for The Stretch Family Trust - 2016	250,000
Smartequity Pty Ltd (Incentive plan trustee)	1,126,216
<b>Total</b>	<b>1,446,216</b>

- 73 If shareholders approve this resolution, the effect will be to dilute the holdings of existing shareholders by an equivalent amount, as follows:

<sup>1</sup> As at 23 September 2016, and excludes any Shares to be issued after 23 September 2016 under the ERM Power dividend reinvestment plan, LTIST or otherwise.

Shareholders	Current share capital <sup>2</sup>		Share capital on issue of Shares	
	Number	Percent	Number	Percent
Mr Jon Stretch	1,446,216	0.58%	2,079,577	0.83%
Other shareholders	248,772,991	99.42%	248,772,991	99.17%
<b>Total</b>	<b>250,219,207</b>	<b>100.00%</b>	<b>250,852,568</b>	<b>100.00%</b>

- 74 Mr Jon Stretch's total remuneration for the year ending 30 June 2017 is as follows:

Fixed remuneration	
<b>Base salary</b>	\$780,384.40
<b>Superannuation</b>	\$ 19,615.60
<b>Total Fixed</b>	\$800,000.00
At risk remuneration (subject to performance conditions)	
<b>Short term incentive</b>	Up to 150% (maximum) of base salary paid in cash or securities as determined by the directors
<b>Long term incentive</b>	Up to 75% (maximum) of base salary paid in securities with vesting conditions determined by the directors

- 75 The units to be provided in the LTIST, if approved, relate to Mr Jon Stretch's at risk remuneration for the financial year ended 30 June 2017.

#### Other information

- 76 Additional information required to be provided to shareholders in connection with the resolution to approve the granting of a financial benefit to Mr Jon Stretch in accordance with the ASX Listing Rules and the Corporations Act is set out below:

Information required	Disclosure
<b>Date by which the securities will be issued</b>	The units in the LTIST (and the underlying Shares) will be issued within one month after the date of approval.
<b>The names of all persons referred to in ASX Listing Rule 10.14 entitled to participate in the LTIST</b>	Mr Jon Stretch. Participation in the LTIST is only open to those employees (including executive directors) who are invited by the directors to receive a long term incentive. No other members of the Board, all of whom are non-executive directors, are eligible to participate in the LTIST. ERM Power's policy is that non-executive directors do not receive performance-based remuneration that have performance hurdles attached, as it may lead to bias in their decision-making and compromise their objectivity.

<sup>2</sup> As at 23 September 2016, and excludes any Shares to be issued after 23 September 2016 under the ERM Power dividend reinvestment plan, LTIST or otherwise.

**Prior issue of securities to persons referred to in ASX Listing Rule 10.14 under the LTIST since the plan was last approved**

Mr Jon Stretch was issued:

- a) 140,057 units in the LTIST for FY2015; and
- b) 253,980 units in the LTIST for FY2016

at a purchase price of \$2.1869 each, following approval by shareholders on 29 October 2015.

**Maximum number of securities that may be acquired by Mr Jon Stretch if Resolution 8 is approved**

633,361 units in the LTIST.

- 77 Other than as set out in this Explanatory Memorandum, the directors are not aware of any additional information that shareholders should consider before making a decision to vote on this resolution.

#### **Directors' recommendation**

- 78 The Board believes that the provision of units and loans by the trustee to Mr Jon Stretch pursuant to Resolution 8 is reasonable and appropriate having regard to the circumstances of the Company and Mr Jon Stretch's responsibilities as Managing Director and Chief Executive Officer, is commensurate with current market practice, and is therefore in the best interests of the Company and its shareholders. Accordingly, the Board (with Mr Jon Stretch abstaining) recommends that shareholders approve the grant of units and loan by the trustee to Mr Jon Stretch and the corresponding grant of Shares to the LTIST plan trustee to be held on his behalf. No director (other than Mr Jon Stretch) has an interest in the outcome of Resolution 8.

## **Renewal of proportional takeover approval provisions**

### **Resolution 9: Renewal of proportional takeover approval provisions**

- 79 Rule 15 of the Company's constitution includes proportional takeover approval provisions which enable the Company to refuse to register securities acquired under a proportional takeover bid unless a resolution is passed by shareholders in general meeting approving the offer. Under the Corporations Act, proportional takeover provisions expire after three years from adoption or renewal and may then be renewed.
- 80 Shareholders last approved to renew these provisions at the 2013 AGM, and thus those provisions contained in the Company's constitution would cease to apply from 31 October 2016.
- 81 The Company is seeking shareholder approval to renew these provisions under the Corporations Act. The proposed proportional takeover provisions are identical to those adopted by shareholders at the 2013 AGM. The Corporations Act requires the Company to provide shareholders with an explanation of the proportional takeover approval provisions as set out below.

#### **What is a proportional takeover bid**

- 82 A proportional takeover bid is a takeover offer sent to all shareholders but only for a specified portion of each shareholder's securities. Accordingly, if a shareholder accepts in full the offer under a proportional takeover bid, it will dispose of the specified portion of its securities in the Company and retain the balance of the securities.



### **Effect of renewal**

- 83 If renewed, under existing rule 15, and if a proportional takeover offer is made to shareholders of the Company, the board of the Company is required to convene a meeting of shareholders to vote on a resolution to approve the proportional takeover. That meeting must be held at least 15 days before the offer under the proportional takeover bid closes.
- 84 The resolution is taken to have been passed if a majority of securities voted at the meeting, excluding the securities of the bidder and its associates, vote in favour of the resolution. If no resolution is voted on at least 15 days before the close of the offer, the resolution is deemed to have been passed. Where the resolution approving the offer is passed or deemed to have been passed, transfers of securities resulting from accepting the offer are registered provided they otherwise comply with the Corporations Act, the ASX Listing Rules, the ASX Operating Rules and the Company's Constitution. If the resolution is rejected, then under the Corporations Act the offer is deemed to be withdrawn.

### **Reasons for proposing the resolution**

- 85 The directors consider that shareholders should have the opportunity to renew rule 15 in the constitution. Without rule 15 a proportional takeover bid for the Company may enable effective control of the Company to be acquired without shareholders having the opportunity to dispose of all of their securities to the bidder. Shareholders could be at risk of passing control to the bidder without payment of an adequate control premium for all their securities whilst leaving themselves as part of a minority interest in the Company.
- 86 Without rule 15, if there was a proportional takeover bid and shareholders considered that control of the Company was likely to pass, shareholders would be placed under pressure to accept the offer even if they did not want control of the Company to pass to the bidder. Renewing rule 15 of the constitution will make this situation less likely by permitting shareholders to decide whether a proportional takeover bid should be permitted to proceed.

### **No knowledge of present acquisition proposals**

- 87 As at the date of this notice, no director is aware of a proposal by any person to acquire or increase the extent of a substantial interest in the Company.

### **Potential advantages and disadvantages**

- 88 The renewal of rule 15 will enable the directors to formally ascertain the views of shareholders about a proportional takeover bid. Without these provisions, the directors are dependent upon their perception of the interests and views of shareholders. Other than this advantage, the directors of the Company consider that renewal of rule 15 has no potential advantages or potential disadvantages for them, as they remain free to make a recommendation on whether a proportional takeover offer should be accepted.
- 89 The directors consider that renewing rule 15 benefits all shareholders in that they will have an opportunity to consider a proportional takeover bid and then attend or be represented by proxy at a meeting of shareholders called specifically to vote on the proposal. Accordingly, shareholders are able to prevent a proportional takeover bid proceeding if there is sufficient support for the proposition that control of the Company should not be permitted to pass under the proportional takeover bid. Furthermore, knowing the view of shareholders assists each individual shareholder to assess the likely outcome of the proportional takeover bid and whether to accept or reject that bid.



- 90 As to the possible disadvantages to shareholders renewing rule 15, it may be argued that the proposal makes a proportional takeover bid more difficult and that proportional takeover bids will therefore be discouraged. This may reduce the opportunities which shareholders may have to sell all or some of their securities at a premium to persons seeking control of the Company and may reduce any takeover speculation element in the Company's share price. Rule 15 may also be considered an additional restriction on the ability of individual shareholders to deal freely on their securities.
- 91 On balance, the directors consider that the possible advantages outweigh the possible disadvantages so that the renewal of rule 15 is in the interest of shareholders.

#### **Review of advantages and disadvantages**

- 92 While proportional takeover provisions have been in effect under the Company's constitution, no takeover bids for the Company have been made, proportional or otherwise, so there are no actual examples against which the advantages or disadvantages of the existing proportional takeover provisions could be reviewed for the directors and shareholders. The directors are not aware of any potential takeover bid that was discouraged by the existing rule 15.

#### **Directors recommendation**

- 93 The directors recommend you vote in favour of this resolution.



**ERM Power Limited**  
ABN 28 122 259 223

## LODGE YOUR VOTE



**ONLINE**  
[www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)



**BY MAIL**  
ERM Power Limited  
C/- Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235 Australia



**BY FAX**  
+61 2 9287 0309



**BY HAND**  
Link Market Services Limited  
1A Homebush Bay Drive, Rhodes NSW 2138; or  
Level 12, 680 George Street, Sydney NSW 2000



**ALL ENQUIRIES TO**  
Telephone: +61 1300 554 474

## LODGEMENT OF A PROXY FORM

This Proxy Form (and any Power of Attorney under which it is signed) must be received at an address given above by **9:00am (Brisbane time) on Monday, 24 October 2016**, being not later than 48 hours before the commencement of the Meeting. Any Proxy Form received after that time will not be valid for the scheduled Meeting.

Proxy Forms may be lodged using the reply paid envelope or:



**ONLINE**  
[www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)

Login to the Link website using the holding details as shown on the Proxy Form. Select 'Voting' and follow the prompts to lodge your vote. To use the online lodgement facility, shareholders will need their "Holder Identifier" (Securityholder Reference Number (SRN) or Holder Identification Number (HIN) as shown on the reverse of this Proxy Form).

## HOW TO COMPLETE THIS SHAREHOLDER PROXY FORM

### YOUR NAME AND ADDRESS

This is your name and address as it appears on the Company's share register. If this information is incorrect, please make the correction on the form. Shareholders sponsored by a broker should advise their broker of any changes. **Please note: you cannot change ownership of your shares using this form.**

### APPOINTMENT OF PROXY

If you wish to appoint the Chairman of the Meeting as your proxy, mark the box in Step 1. If you wish to appoint someone other than the Chairman of the Meeting as your proxy, please write the name of that individual or body corporate in Step 1. A proxy need not be a shareholder of the Company.

### DEFAULT TO CHAIRMAN OF THE MEETING

Any directed proxies that are not voted on a poll at the Meeting will default to the Chairman of the Meeting, who is required to vote those proxies as directed. Any undirected proxies that default to the Chairman of the Meeting will be voted according to the instructions set out in this Proxy Form, including where the Resolutions are connected directly or indirectly with the remuneration of KMP.

### VOTES ON ITEMS OF BUSINESS – PROXY APPOINTMENT

You may direct your proxy how to vote by placing a mark in one of the boxes opposite each item of business. All your shares will be voted in accordance with such a direction unless you indicate only a portion of voting rights are to be voted on any item by inserting the percentage or number of shares you wish to vote in the appropriate box or boxes. If you do not mark any of the boxes on the items of business, your proxy may vote as he or she chooses. If you mark more than one box on an item your vote on that item will be invalid.

### APPOINTMENT OF A SECOND PROXY

You are entitled to appoint up to two persons as proxies to attend the Meeting and vote on a poll. If you wish to appoint a second proxy, an additional Proxy Form may be obtained by telephoning the Company's share registry or you may copy this form and return them both together.

To appoint a second proxy you must:

- on each of the first Proxy Form and the second Proxy Form state the percentage of your voting rights or number of shares applicable to that form. If the appointments do not specify the percentage or number of votes that each proxy may exercise, each proxy may exercise half your votes. Fractions of votes will be disregarded; and
- return both forms together.

### SIGNING INSTRUCTIONS

You must sign this form as follows in the spaces provided:

**Individual:** where the holding is in one name, the holder must sign.

**Joint Holding:** where the holding is in more than one name, either shareholder may sign.

**Power of Attorney:** to sign under Power of Attorney, you must lodge the Power of Attorney with the registry. If you have not previously lodged this document for notation, please attach a certified photocopy of the Power of Attorney to this form when you return it.

**Companies:** where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the *Corporations Act 2001*) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary. Please indicate the office held by signing in the appropriate place.

### CORPORATE REPRESENTATIVES

If a representative of the corporation is to attend the Meeting the appropriate "Certificate of Appointment of Corporate Representative" should be produced prior to admission in accordance with the Notice of Meeting. A form of the certificate may be obtained from the Company's share registry or online at [www.linkmarketservices.com.au](http://www.linkmarketservices.com.au).

**IF YOU WOULD LIKE TO ATTEND AND VOTE AT THE ANNUAL GENERAL MEETING, PLEASE BRING THIS FORM WITH YOU.  
THIS WILL ASSIST IN REGISTERING YOUR ATTENDANCE.**

NAME SURNAME  
ADDRESS LINE 1  
ADDRESS LINE 2  
ADDRESS LINE 3  
ADDRESS LINE 4  
ADDRESS LINE 5  
ADDRESS LINE 6



X99999999999

## PROXY FORM

I/We being a member(s) of ERM Power Limited and entitled to attend and vote hereby appoint:

### APPOINT A PROXY

☐ the Chairman of the Meeting (mark box)

**OR** if you are **NOT** appointing the Chairman of the Meeting as your proxy, please write the name of the person or body corporate you are appointing as your proxy

or failing the person or body corporate named, or if no person or body corporate is named, the Chairman of the Meeting, as my/our proxy to act on my/our behalf (including to vote in accordance with the following directions or, if no directions have been given and to the extent permitted by the law, as the proxy sees fit) at the Annual General Meeting of the Company to be held at **9:00am (Brisbane time) on Wednesday, 26 October 2016 at Christie Conference Centre, Caribbean Room, Level 1, 320 Adelaide Street, Brisbane QLD 4000 (the Meeting)** and at any postponement or adjournment of the Meeting.

**Important for Resolutions 1, 5, 6, 7 and 8:** If the Chairman of the Meeting is your proxy, either by appointment or by default, and you have not indicated your voting intention below, you expressly authorise the Chairman of the Meeting to exercise the proxy in respect of Resolutions 1, 5, 6, 7 and 8, even though the Resolutions are connected directly or indirectly with the remuneration of a member of the Company's Key Management Personnel (**KMP**).

**The Chairman of the Meeting intends to vote undirected proxies in favour of each item of business.**

### VOTING DIRECTIONS

Proxies will only be valid and accepted by the Company if they are signed and received no later than 48 hours before the Meeting. Please read the voting instructions overleaf before marking any boxes with an ☒.

#### Resolutions

	For	Against	Abstain*		For	Against	Abstain*
1 Directors' remuneration report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9 Renewal of proportional takeover approval provisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 Election of director – Mr Anthony (Tony) Bellas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
3 Election of director – Mr Wayne St Baker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
4 Election of director – Ms Georganne Hodges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
5 Approval of issue of securities under the Short Term Incentive Share Trust plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
6 Approval of issue of securities under the Long Term Incentive Share Trust plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
7 Approval of issue of securities under the Long Term Incentive Option Trust plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
8 Approval of related party benefits under Long Term Incentive plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				



\* If you mark the Abstain box for a particular Item, you are directing your proxy not to vote on your behalf on a show of hands or on a poll and your votes will not be counted in computing the required majority on a poll.

### SIGNATURE OF SHAREHOLDERS – THIS MUST BE COMPLETED

Shareholder 1 (Individual)

Sole Director and Sole Company Secretary

Joint Shareholder 2 (Individual)

Director/Company Secretary (Delete one)

Joint Shareholder 3 (Individual)

Director

This form should be signed by the shareholder. If a joint holding, either shareholder may sign. If signed by the shareholder's attorney, the power of attorney must have been previously noted by the registry or a certified copy attached to this form. If executed by a company, the form must be executed in accordance with the company's constitution and the *Corporations Act 2001* (Cth).

EPW PRX1601D



ERM Power Limited  
ABN 28 122 259 223

## LODGE YOUR QUESTIONS



### ONLINE

[www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)



### BY MAIL

ERM Power Limited  
C/- Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235 Australia



### BY FAX

+61 2 9287 0309



### BY HAND

Link Market Services Limited  
1A Homebush Bay Drive, Rhodes NSW 2138; or  
Level 12, 680 George Street, Sydney NSW 2000



### ALL ENQUIRIES TO

Telephone: +61 1300 554 474



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Please use this form to submit any questions about ERM Power Limited ("the Company") that you would like us to respond to at the Company's 2016 Annual General Meeting. Your questions should relate to matters that are relevant to the business of the meeting, as outlined in the accompanying Notice of Meeting and Explanatory Memorandum. If your question is for the Company's auditor it should be relevant to the content of the auditor's report, or the conduct of the audit of the financial report.

This form must be received by the Company's share registrar, Link Market Services Limited, by **Wednesday, 19 October 2016**.

Questions will be collated. During the course of the Annual General Meeting, the Chairman of the Meeting will endeavour to address as many of the more frequently raised shareholder topics as possible and, where appropriate, will give a representative of the Company's auditor, the opportunity to answer written questions submitted to the auditor. However, there may not be sufficient time available at the meeting to address all topics raised. Please note that individual responses will not be sent to shareholders.

My question relates to *(please mark the most appropriate box)*

#### Question 1

☐

Performance or financial reports

☐

A resolution being put to the AGM

☐

General suggestion

☐

Remuneration Report

☐

Sustainability/Environment

☐

Other

☐

My question is for the auditor

☐

Future direction


#### Question 2

☐

Performance or financial reports

☐

A resolution being put to the AGM

☐

General suggestion

☐

Remuneration Report

☐

Sustainability/Environment

☐

Other

☐

My question is for the auditor

☐

Future direction


QUESTIONS