

**Form 604**  
Corporations Act 2001  
Section 671B

## Notice of change of interests of substantial holder

To Company Name/Scheme Resource Generation Limited (RES)

ACN/ARSN 059 950 337

### 1. Details of substantial holder (1)

Name Shinto Torii Inc (Shinto), Cadogan Investment Holding Limited (Cadogan), and Altius Investment Holdings (Pty) Ltd (Altius) and the entities listed in Annexure A (Altius Parties)

ACN/ARSN (if applicable) \_\_\_\_\_

There was a change in the interests of the

substantial holder on 25/08/2015 (pursuant to the Declaration, as defined below)

The previous notice was given to the company on 23/10/2013

The previous notice was dated 22/10/2013

### 2. Previous and present voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in when last required, and when now required, to give a substantial holding notice to the company or scheme, are as follows:

Class of securities (4)	Previous notice		Present notice	
	Person's votes	Voting power (5)	Person's votes	Voting power (5)
Ordinary shares	62,124,089	10.69%	141,734,022	24.38%

### 3. Changes in relevant interests

Particulars of each change in, or change in the nature of, a relevant interest of the substantial holder or an associate in voting securities of the company or scheme, since the substantial holder was last required to give a substantial holding notice to the company or scheme are as follows:

Date of change	Person whose relevant interest changed	Nature of change (6)	Consideration given in relation to change (7)	Class and number of securities affected	Person's votes affected
22/10/2014	Cadogan	Altius transferred 49 shares in Shinto to Cadogan representing 49% of the issue share capital of Shinto, resulting in Cadogan being taken to hold a relevant interest in the shares held by Shinto pursuant to section 608(3)(a) of the Corporations Act 2001 (Cth) (Corporations Act)	US\$49.00	62,124,089	62,124,089 (10.69%)

### 4. Present relevant interests

Particulars of each relevant interest of the substantial holder in voting securities after the change are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered	Nature of relevant interest (6)	Class and number of securities	Person's votes
Shinto	Shinto	Shinto	Taken to hold a relevant interest pursuant to section 608(1)(a) of the Corporations Act.	62,124,089	62,124,089 (10.69%)
Altius			Taken to hold a relevant interest pursuant to sections 608(3)(a) and 608(3)(b) of the Corporations Act.		
Cadogan			Taken to hold a relevant interest pursuant to section 608(3)(a) of the Corporations Act.		

## 5. Changes in association

The persons who have become associates (2) of, ceased to be associates of, or have changed the nature of their association (9) with, the substantial holder in relation to voting interests in the company or scheme are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
<p>Noble Resources International Pte Ltd Noble Group Limited (<b>Noble</b>)</p>	<p>On 12 October 2015, RES made an application to the Takeovers Panel (<b>Panel</b>) alleging, among other things, an association between Noble, Shinto, Altius and the Public Investment Corporation SOC Limited (<b>PIC</b>) in relation to the composition of the board of RES, and the general meeting requisitioned by Shinto that is scheduled to be held on Thursday, 26 November 2015 (refer to Panel media release <a href="#">TP15/55</a>).</p> <p>On 18 November 2015, the Panel made a declaration of unacceptable circumstances and found that since 25 August 2015, Altius, Shinto and Noble have had a relevant agreement or are acting in concert for the purpose of controlling or influencing the composition of the board of RES and are therefore associates pursuant to section 12(2)(b) and 12(2)(c) of the Corporations Act (<b>Declaration</b>).</p> <p>The Declaration was based on, among other things, the following events:</p> <ul style="list-style-type: none"> <li>from about July 2015, Noble and Altius began to have discussions regarding the performance and composition of the board of RES;</li> <li>on 25 August 2015, Altius sent an email to PIC describing a proposal by Altius that it would like, with the support of Noble, to have one non executive director appointed to the board of RES by each of PIC, Noble and Altius;</li> <li>on 8 September 2015, Altius delivered a presentation to PIC regarding Altius' proposal, at which Noble representatives were present;</li> <li>on 14 September 2015, RES received an email from Altius requesting board representation for Altius and Noble;</li> <li>on 28 September 2015, Shinto requisitioned a general meeting of RES to remove and replace the current 4 directors with 6 new directors; and</li> <li>on 9 October 2015, Noble, Altius and PIC met and discussed, among other things, what candidates Altius had in mind for changes to management if Shinto was successful with its requisitioned meeting.</li> </ul> <p>The Panel's media release in relation to the Declaration is attached to this notice as Annexure B. The relevant circumstances that form the basis of the Declaration are set out in Annexure A of the media release.</p> <p>Further details regarding the Declaration will also be available on the Panel's website (<a href="http://takeovers.gov.au">takeovers.gov.au</a>) when it publishes its reasons for the Declaration.</p> <p>Noble holds 79,609,933 shares in RES, representing 13.69% of the issued capital of RES.</p> <p>Based on the Declaration, the voting power of Altius and Noble is deemed to have increased to 24.38% by virtue of the application of section 610 of the Corporations Act.</p> <p>Altius and Shinto do not have the power to exercise, or control the exercise of, the right to vote attached to the shares held by Noble in RES.</p> <p>There is no agreement, arrangement or understanding between Shinto and Noble in relation to the exercise of the votes attached to their respective shareholdings in RES.</p>

## 6. Addresses

The addresses of persons named in this form are as follows:

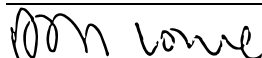
Name	Address
Shinto	c/o AAA Global Services Ltd, 1 <sup>st</sup> Floor, The Exchange, 18 Cyberville, Ebene Mauritius
Cadogan	171 Main Street, Road Town, Tortola, VG110, British Virgin Islands
Altius	110 Gunners Circle, Epping, Cape Town, South Africa, 7475
Altius Parties	c/o Altius Investment Holdings (Pty) Ltd, 110 Gunners Circle, Epping, Cape Town, South Africa, 7475

## Signature

print name Robert Lowe

capacity Authorised representative

sign here



date 19/11/2015

## DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 6 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (6) Include details of:
  - a. any relevant agreement or other circumstances because of which the change in relevant interest occurred. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
  - b. any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (7) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included on any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown".
- (9) Give details, if appropriate, of the present association and any change in that association since the last substantial holding notice.

**This is Annexure A of 1 page referred to in the Form 604 (Notice of change of interests of substantial holder)**

Name of substantial holder


Altius Corporate Information Services Proprietary Limited

Altius Wealth Proprietary Limited

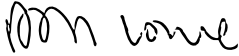
Crimson King Properties 111 Proprietary Limited

NuWater South Africa Proprietary Limited

Olivewood Trade and Invest 47 Proprietary Limited

print name	Robert Lowe	capacity	Authorised representative
sign here		date	19/11/2015

# This is Annexure B of 6 pages referred to in the Form 604 (Notice of change of interests of substantial holder)

print name	Robert Lowe	capacity	Authorised representative
sign here		date	19/11/2015



Australian Government

Takeovers Panel

## MEDIA RELEASE

No: TP15/63

Thursday, 19 November 2015

### Resource Generation Limited - Declaration of Unacceptable Circumstances, Orders and Review Application

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 12 October 2015 by Resource Generation Limited in relation to its affairs (see [TP15/55](#)).

#### Background

Resource Generation Limited is a company listed on ASX (ASX code: RES) and JSE (JSE code: RSG).

Resource Generation's substantial holders include Noble Group Limited, through its subsidiary Noble Resources International Pte Ltd, holding 13.69% and Altius Investment Holdings (Pty) Limited, through its subsidiary Shinto Torii Inc., holding 10.69%.

On 28 September 2015, Resource Generation received a letter from Altius containing a notice from Shinto requisitioning a general meeting pursuant to s249D,<sup>1</sup> to remove and replace the current four directors on the Resource Generation board with six new directors.

Resource Generation applied to the Panel for a declaration of unacceptable circumstances and submitted, among other things, that certain shareholders, including Noble and Altius, are associates and have failed to disclose their association.

The Panel considered that, since 25 August 2015, Noble and Altius are associated under s12(2)(b) for the purpose of controlling or influencing the composition of the board of Resource Generation or s12(2)(c) in relation to the affairs of Resource Generation, in respect of controlling or influencing the composition of Resource Generation's board.

As a result of the association, the voting power of each of Noble and Altius in Resource Generation's shares aggregates to 24.38%.

<sup>1</sup> References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

The Panel considered that the failure of Noble and Altius to disclose their association resulted in RES shareholders being unaware ahead of the requisitioned meeting that Noble and Altius are associates.

The Panel did not consider that it had been provided with sufficient evidence of a voting agreement to make a finding that Noble and Altius had acquired a relevant interest in each other's Resource Generation shares that would result in a contravention of s606.

### **Declaration**

The Panel considered that the circumstances were unacceptable:

- (a) having regard to the purposes of Chapter 6 set out in section 602 or
- (b) because they constitute or give rise to a contravention of section 671B.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3).

### **Orders**

The Panel has made orders that Noble and Altius each provide a notice of change of interest of substantial holder disclosing the existence and nature of their association. It also ordered that they disclose their association in any communication Noble or Altius has with RES shareholders or the media in respect of Shinto's requisitioned meeting.

The sitting Panel was Stephanie Charles, David Friedlander and Nora Scheinkestel (sitting President).

The Panel will publish its reasons for the decision in due course on its website [www.takeovers.gov.au](http://www.takeovers.gov.au).

### **Review**

The Panel has received a review application from Resource Generation seeking a review of the Panel's decision.

A review Panel has not been appointed at this stage and no decision has been made whether to conduct review proceedings. The Panel makes no comment on the merits of the review application.

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**Australian Government**

**Takeovers Panel**

**ANNEXURE A  
CORPORATIONS ACT  
SECTION 657A**

**DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

**RESOURCE GENERATION LIMITED**

**CIRCUMSTANCES**

1. Resource Generation Limited (**RES**) is a company listed on ASX (ASX code: RES) and JSE (JSE code: RSG).
2. RES's substantial holders include:
  - (a) Noble Resources International Pte Ltd, a subsidiary of Noble Group Limited (together, **Noble**) – 13.69% and
  - (b) Shinto Torii Inc. (**Shinto**), a subsidiary of Altius Investment Holdings (Pty) Limited (together, **Altius**) – 10.69%.
3. Altius has previously described itself as Noble's South African black empowerment enterprise (or 'BEE') partner. Noble and Altius are 60:40 joint venture partners in Africa Commodities Group.
4. Noble provided the funding for Shinto to buy its RES shares, with a guarantee from Altius regarding the funds.
5. On 10 March 2014, a debt club was established with the aim of funding RES's Boikarabelo coal project in the Waterberg region of South Africa. The process was to be managed by Noble and Altius. The debt club included Noble, Public Investment Corporation SOC Limited (**PIC**), a holder of 19.49% of RES, and two banks. Debt club negotiations continued for over a year but RES and the debt club were unable to agree on the terms for financing the project.
6. From about July 2015, Noble and Altius began to have discussions regarding the composition of the board of RES.
7. On 25 August 2015, Altius sent an email describing a proposal by Altius "*[w]ith the support of Noble...to table resolutions at the next ResGen AGM, due in October, under which each of PIC, Noble and Altius would appoint one non executive director to the board of ResGen*" and requesting a meeting with PIC to discuss and secure PIC's support to the proposal. That meeting occurred on 8 September 2015. Altius, with Noble representatives in attendance, delivered a presentation to PIC which described, among other things, Altius' proposal to "*South Africanize the project*", the "*voting block*" of Noble, Altius and PIC and a "*New South African Board*" with PIC to be invited to nominate two directors and Noble and Altius to nominate one director each.

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8. On 14 September 2015, RES received an email from Altius requesting board representation for Altius and Noble.
  9. On 17 September 2015, Noble wrote to RES requesting the appointment of two additional directors. RES declined to make these appointments referring to the debt club negotiations and stating that the appointment of additional directors by parties with potentially conflicting interests would not be in the interests of the company and its shareholders at that time.
  10. Upon receiving RES's response, Noble emailed Altius saying "*[a]s expected...I think it is now important to send your letter noting the reason why Noble not appropriate*".
  11. On 28 September 2015, RES received a letter from Altius containing a notice from Shinto requisitioning a general meeting pursuant to section 249D<sup>2</sup>, to remove and replace the current four directors with six new directors.
  12. On 9 October 2015, Noble, Altius and PIC met and discussed, among other things, what candidates Altius had in mind for changes to management if Shinto was successful with its section 249D requisition.
  13. The Panel considers that since 25 August 2015 Noble and Altius:
    - (a) have a relevant agreement for the purpose of controlling or influencing the composition of the board of RES and are associated with each other under section 12(2)(b) or
    - (b) are acting in concert in relation to the affairs of RES, for the purpose of controlling or influencing the composition of the RES board, and are associated with each other under section 12(2)(c).
  14. As a result of the association between Noble and Altius, the voting power of each of Noble and Altius in RES shares has increased to 24.38%.
  15. No change in substantial holding notice has been lodged by Noble or Altius disclosing their association. The Panel considers that the failure of each of Noble and Altius to disclose their association in a substantial holding notice constitutes or gives rise to a contravention of section 671B. As a result of the failure to disclose their association, RES shareholders are not aware that Noble and Altius are associates for the purpose of controlling or influencing the composition of the RES board ahead of the requisitioned meeting.
  16. It appears to the Panel that the circumstances are unacceptable:
    - (a) having regard to the purposes of Chapter 6 set out in section 602 or
    - (b) because they constitute or give rise to a contravention of section 671B.
  17. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3).

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<sup>2</sup> References are to the *Corporations Act 2001* (Cth) unless otherwise indicated



## **DECLARATION**

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of RES.

**Alan Shaw**  
**Counsel**  
**with authority of Nora Scheinkestel**  
**President of the sitting Panel**  
**Dated 18 November 2015**

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**Australian Government**

**Takeovers Panel**

**ANNEXURE B  
CORPORATIONS ACT  
SECTION 657D  
ORDERS**

**RESOURCE GENERATION LIMITED**

The Panel made a declaration of unacceptable circumstances on 18 November 2015.

**THE PANEL ORDERS**

1. By no later than 10.00am (Melbourne time) on Friday, 20 November 2015, each of the Associated Parties must provide to RES and the ASX a notice in the form of ASIC Form 604 "Notice of change of interests of substantial holder", in a form acceptable to the Panel, disclosing:
  - 1.1. all the information required by a Form 604 in respect of each of the Associated Parties and their respective associates and
  - 1.2. the existence and nature of the association between the Associated Parties.
2. Each Associated Party must disclose the association between the Associated Parties in any communication by the Associated Party with RES shareholders or the media in respect of the requisitioned meeting.
3. In this order the following terms apply:

<b>Altius</b>	Altius Investment Holdings (Pty) Limited and its subsidiary Shinto Torii Inc.
<b>Associated Parties</b>	Noble and Altius
<b>Noble</b>	Noble Group Limited and its subsidiary Noble Resources International Pte Ltd
<b>Requisitioned meeting</b>	The general meeting of shareholders of RES requisitioned by Shinto Torii Inc. pursuant to section 249D of the Corporations Act 2001 (Cth) on 28 September 2015
<b>RES</b>	Resource Generation Limited

**Alan Shaw**  
**Counsel**  
**with authority of Nora Scheinkestel**  
**President of the sitting Panel**  
**Dated 18 November 2015**

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