



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP17/26

Wednesday, 31 May 2017

Molopo Energy Limited 01 & 02 – Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (Annexure A) following applications dated 11 April 2017 by ASIC and Molopo Energy Limited in relation to the affairs of Molopo (see [TP17/16](#) and [TP17/17](#)).

Background

Keybridge Capital Limited and Aurora Funds Management Limited¹ are shareholders in Molopo. Keybridge previously owned Aurora. Keybridge sold Aurora to Seventh Orion Pty Ltd, as trustee of the Aurora Investment Unit Trust (**the trust**), on 30 June 2016. Mr John Patton is a director and 50% shareholder of Seventh Orion and holds 26.1% of the units in the trust. Mr Nicholas Bolton holds 49.9% of the units in the trust.

Mr Bolton was managing director of Keybridge until December 2015 when he resigned after he was disqualified from managing a corporation.² Mr Bolton is a consultant to Keybridge and has provided Aurora with advice and assistance in relation to its investments, including in relation to its investment in Molopo. Mr Patton was appointed as a non-executive director of Keybridge on 10 August 2016 and appointed executive Chairman of Keybridge on 13 October 2016. Mr Patton is also the managing director of Aurora (other aspects of Mr Bolton's and Mr Patton's roles are described in the declaration).

Since 1 July 2016, Keybridge and Aurora have increased their respective shareholdings in Molopo from 18.48% and 1.88% to 19.95% and 17.92% respectively. On 12 March 2017, Keybridge requisitioned a meeting of Molopo shareholders under s249D³ to consider resolutions for the removal of Molopo's directors and appointment of three directors nominated by Keybridge. The consideration of these

¹ as responsible entity for Aurora Global Income Trust and Aurora Fortitude Absolute Return Fund

² ASIC's decision to disqualify Mr Bolton from managing a corporation is the subject of a pending appeal to the Administrative Appeals Tribunal

³ unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

resolutions (and a resolution to appoint an Aurora nominee) will be considered at Molopo's annual general meeting scheduled for 20 June 2017.⁴

The Panel considered that the involvement of Mr Bolton (or Mr Bolton together with Mr Patton) in Keybridge and Aurora gives rise to unacceptable circumstances in relation to the affairs of Molopo. This was the case despite the Panel not finding, given the material before it, that Keybridge and Aurora were associates in relation to Molopo.

The Panel extended time for ASIC and Molopo to make their applications under s657C(3) and obtained an extension of time from the court under s657B to make a declaration.⁵ 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 is considering what, if any, final orders to make and will publish details in due course. The undertakings provided by Keybridge and Aurora (not to dispose of or acquire any shares in Molopo without the Panel being given two clear business days' notice of any such proposed disposal or acquisition) continue to apply until the conclusion of Panel proceedings (see [TP17/19](#)).

The sitting Panel was Shirley In't Veld, Karen Phin and John Sheahan QC (sitting President).

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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⁴ on 26 May 2017, ASIC granted an extension of time for Molopo to hold its annual general meeting from 30 May 2017 to 20 June 2017

⁵ See *Takeovers Panel v Keybridge Capital Limited, in the matter of Molopo Energy Limited* [2017] FCA 469



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Annexure A

CORPORATIONS ACT

SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

MOLOPO ENERGY LIMITED 01 AND 02

CIRCUMSTANCES

1. Keybridge Capital Limited (**Keybridge**) currently has a relevant interest in 19.95% of Molopo Energy Limited (**Molopo**). Australian Style Group Pty Ltd (**ASG**) holds 21.16% of Keybridge. ASG is wholly owned by a company whose shareholders are Mr Nicholas Bolton (1%) and Ms Georgia Bolton, Mr Bolton's sister (99%).
2. Aurora Funds Management Limited (**Aurora**)⁶ currently has a relevant interest in 17.89% of Molopo.
3. On or about 30 June 2016, Seventh Orion Pty Ltd (**Seventh Orion**)⁷ acquired Aurora from Keybridge. At the time, Aurora had a relevant interest in approximately 1.88% of Molopo.
4. The shares in Aurora are held on trust for Aurora Investment Unit Trust, whose unit holders include:
 - (a) Mr John Patton (26.1%) and
 - (b) Mr Bolton (49.9%).
5. Mr Bolton was managing director of Keybridge until December 2015 when he resigned after he was disqualified from managing a corporation.
6. Mr Bolton is a consultant to Keybridge, providing Keybridge with advice and assistance in relation to its investments, including in Molopo.
7. Mr Bolton also provides Aurora with advice and assistance in relation to its investments, including describing himself as a consultant to introduce Aurora to existing Molopo shareholders who might consider selling their Molopo shares.
8. Based on its commercial experience, from the material before it, the Panel considers that:
 - (a) Mr Bolton effectively controls or has substantial influence over the relevant affairs of ASG

⁶ as responsible entity for Aurora Global Income Trust and Aurora Fortitude Absolute Return Fund

⁷ as trustee for Aurora Investment Unit Trust

- (b) Mr Bolton, either alone or together with Mr Patton, effectively controls or has substantial influence over the relevant affairs of Aurora and
 - (c) Mr Bolton plays a significant role in the relevant affairs of Keybridge.
9. On or about 30 June 2016, Mr Patton was appointed as managing director of Aurora.
 10. On 10 August 2016, Mr Patton was appointed as a non-executive director of Keybridge, nominated by ASG.
 11. On 20 September 2016, Keybridge filed a substantial holder notice stating that it had acquired 1,682,763 Molopo shares and had voting power of 19.15% in Molopo. Mr Patton was initially tasked with managing the acquisition of those shares on behalf of Keybridge. Ultimately, another Keybridge director instructed Keybridge's broker to acquire the relevant Molopo shares.
 12. From 7 October 2016 to 31 October 2016, Aurora acquired shares in Molopo, with its total interest increasing to approximately 3.5% of Molopo's issued capital.⁸ Mr Patton was consulted, or at the very least informed, in relation to these acquisitions.
 13. On 13 October 2016, Mr Patton was appointed executive Chairman of Keybridge.
 14. On 26 October 2016, Keybridge held a strategy meeting where its strategy in relation to Molopo was discussed. Mr Patton and Mr Bolton were both present at that meeting.
 15. Mr Patton is conflicted in his role at Keybridge in relation to the acquisition or use of Molopo shares given his role at Aurora. Information barriers were established in Keybridge to address such conflicts, but, in the Panel's view, were established late and have not been fully effective.
 16. In early November 2016, at Mr Patton's request, an Aurora investment paper was prepared proposing that Aurora purchase up to 19.9% in Molopo. From 1 November 2016 to 17 March 2017, Aurora acquired shares in Molopo, resulting in its then relevant interest in 17.89% of Molopo's issued capital. The Panel considers that Mr Bolton and Mr Patton have influenced Aurora's acquisition of a substantial interest in Molopo.
 17. On 13 March 2017, Keybridge requisitioned a meeting of Molopo shareholders under s249D⁹ to consider:
 - (a) resolutions for the removal of all the directors of Molopo and
 - (b) the appointment of three new directors nominated by Keybridge.
 18. On 22 March 2017, Mr Patton on behalf of Aurora wrote to the Chair of Molopo seeking that one or more of Aurora's nominees be put to shareholders for election to the Molopo board. Aurora ultimately nominated one director, Mr Ben Norman, to be put to shareholders for election to the Molopo board.

⁸ Aurora had previously acquired 418,385 Molopo shares on or about 20 July 2016 as a result of the unwinding of an equity derivative

⁹ unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

19. The Panel considers that Aurora and Keybridge are pursuing consistent strategies in relation to Molopo.
20. The Panel considers that as Mr Bolton:
- (a) is the largest unitholder in the Aurora Investment Unit Trust and effectively controls or has substantial influence over the relevant affairs of Aurora
 - (b) effectively controls or has substantial influence over the relevant affairs of Keybridge's largest shareholder, ASG
 - (c) has significant knowledge of the investment strategies of each of Keybridge and Aurora in relation to Molopo and
 - (d) has the capacity to influence significantly the investment strategies of each of Keybridge and Aurora in relation to Molopo,

the involvement of Mr Bolton, alternatively the involvement of Mr Bolton together with Mr Patton, in Keybridge and Aurora gives rise to unacceptable circumstances in relation to the affairs of Molopo.

EFFECT

21. It appears to the Panel that:
- (a) the acquisition of control over voting shares in Molopo has not taken place in an efficient, competitive and informed market and
 - (b) the holders of shares in Molopo do not know the identity of persons who have acquired a substantial interest in Molopo.

CONCLUSION

22. It appears to the Panel that the circumstances are unacceptable circumstances
- (a) having regard to the effect that the Panel is satisfied they are having, will have or are likely to have on the control, or potential control, of Molopo and
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602.
23. 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).

DECLARATION

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

Bruce Dyer
Counsel
with authority of John Sheahan QC
President of the sitting Panel
Dated 30 May 2017