



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP20/56

Friday, 18 September 2020

Molopo Energy Limited 03R, 04R & 05R Variation – Variation of Orders

On the application of Aurora Funds Management Ltd as responsible entity for the Aurora Fortitude Absolute Return Fund and Aurora Global Income Trust (**Aurora**), the Panel has varied the Panel's orders in *Molopo Energy Limited 03R, 04R & 05R*.¹ Among other things, the orders vested certain shares in Molopo Energy Limited (**Molopo**) held by Aurora and Keybridge Capital Limited (**Keybridge**) in ASIC for sale.

The vesting orders were previously stayed by the Federal Court pending the judicial review of the Panel's decision in *Molopo Energy Limited 03R, 04R & 05R*. The stay was lifted upon the dismissal of the review on 17 April 2020.²

Molopo's shares have been suspended since 27 July 2017. Molopo is currently pursuing legal action in the Supreme Court of Victoria in relation to transactions entered into by former directors of Molopo.³

Aurora sought a variation of the vesting orders either to obtain back its Molopo shares on the basis that it could have acquired such shares under the 'creep' provisions during the time since the orders were originally made, to obtain back its Molopo shares using the 'creep' provisions on a going forward basis or to stay the sale of the vested shares pending the outcome of the Court proceedings against the former Molopo directors.

In the Panel's view, there was nothing in the change in circumstances that undermined the basis for the original orders and therefore warranted a variation that allowed Aurora to take back the vested shares.

However, the Panel varied the orders to stay the sale of the vested shares until the Court proceedings are resolved and any appeal rights have lapsed. It considered

¹ [2017] ATP 12

² *Aurora Funds Management Limited v Australian Government Takeovers Panel (Judicial Review)* [2020] FCA 496

³ These transactions were the subject of other Panel proceedings, see *Molopo Energy Limited 10 & 11* [2018] ATP 12 and *Molopo Energy Limited 12R* [2018] ATP 19

that there were exceptional circumstances here (including but not limited to the uncertainty around the valuation of Molopo shares pending the resolution of the Court proceedings) that meant to proceed with the sale of the vested shares at this time was unfairly prejudicial to Aurora (and Keybridge).

The Panel also varied the orders to include the right of any party and ASIC to apply for further orders in relation to the orders. Given the continuing impact of the orders on voting,⁴ the Panel considered that any concerns regarding voting at any future meetings involving a Chapter 6 transaction or changes to the composition of the Molopo board could be brought back to the Panel.

The variation to the orders is set out in Annexure A.

The sitting Panel was Michelle Jablko (sitting President), Christian Johnston and Tara Page.

The Panel will publish its reasons for the decision in due course on its website.

Allan Bulman
Director, Takeovers Panel
Level 16, 530 Collins Street
Melbourne VIC 3000
Ph: +61 3 9655 3500
takeovers@takeovers.gov.au

⁴ The orders prevent the exercise of voting rights attaching to the vested shares by Aurora, Keybridge and any of their respective associates. In addition, ASIC does not (as a matter of practice) exercise any rights attaching to vested shares



Australian Government

Takeovers Panel

ANNEXURE A

**CORPORATIONS ACT
SECTION 657D
VARIATION OF ORDERS**

MOLOPO ENERGY LIMITED 03R, 04R & 05R VARIATION

The Panel in *Molopo Energy Limited 03R, 04R & 05R* made a declaration of unacceptable circumstances on 30 June 2017 and final orders on 7 July 2017.

Pursuant to section 657D(3) of the *Corporations Act 2001* (Cth)

THE PANEL ORDERS

The final orders made on 7 July 2017 are varied by:

1. Staying Orders 2 and 3 until the Court Proceedings are resolved (whether by settlement, judgement or otherwise) and any appeal rights have lapsed.
2. Including the following in Order 12:

Court Proceedings The Supreme Court of Victoria proceedings brought by the Company against its former directors (Case numbers S ECI 2018 00120, S ECI 2019 01336 and S ECI 2020 01566)

Variation Panel The Panel as constituted for the purposes of considering the order variation request made by Aurora dated 14 July 2020 or, if one or more of that Panel's members are unavailable, a Panel constituted under section 184 of the *Australian Securities and Investments Commission Act 2001* (Cth)

3. Including new Orders 13 and 14 as follows:

"Other

13. The Company shall notify the parties, ASIC and the Panel executive, as soon as practicable and within no later than 3 business days, when the Court Proceedings have resolved.

14. Any party (including the Company on the action of any two directors) and ASIC each have the liberty to apply to the Variation Panel for further orders in relation to these orders (as varied)."

Tania Mattei
Counsel
with authority of Michelle Jablko
President of the sitting Panel
Dated 18 September 2020