



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/49

Thursday, 14 July 2022

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.

Molopo's shares were suspended on 27 July 2017 and Molopo was subsequently delisted from the ASX on 1 April 2021.

Molopo is currently subject to legal action in the Court of Queen's Bench of Alberta in respect to the joint venture activities of Molopo Energy Canada Limited (**Canadian Court Proceedings**).

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on the basis that it could have acquired such shares under the 'creep' provisions during the time since the orders were originally made, to obtain back its Molopo shares using the 'creep' provisions on a going forward basis or to stay the sale of the vested shares pending the outcome of the Canadian Court Proceedings.

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 Canadian Court Proceedings are resolved and any appeal rights have lapsed or Molopo provides notice to shareholders to convene a meeting to pass a resolution to voluntarily wind up the company pursuant to section 491 of the *Corporations Act 2001* (Cth) or undertake any other transaction that will result in the winding up of Molopo (**Winding Up Transaction**).

¹ [2017] ATP 12 as varied in [2020] ATP 18

It considered that there were exceptional circumstances here (including but not limited to the uncertainty around the valuation of Molopo shares pending the resolution of the Canadian 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 transfer of the Sale Shares back to Aurora (and Keybridge) in circumstances where Molopo undertakes a Winding Up Transaction. It considered that the effect of this Order will not undermine the basis of the original orders.

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.

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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.

The Panel's orders were varied on 18 September 2020.

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

THE PANEL ORDERS

The final orders made on 7 July 2017 (as varied on 18 September 2020) are varied by:

1. Staying Orders 2 and 3 until the earlier of the date:
 - (a) that is 6 months after the Court Proceedings and the Canadian Court Proceedings are resolved (whether by settlement, judgement or otherwise) and any appeal rights have lapsed and
 - (b) when Order 16 takes effect.
2. Including the following in Order 12:

Canadian Court Proceedings	The proceedings in the Court of Queen's Bench of Alberta in respect to the joint venture activities of Molopo Energy Canada Limited.
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3. Including new Orders 15, 16, 17 and 18 as follows:
 15. 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 Canadian Court Proceedings have resolved.
 16. Orders 1, 2 and 3 are revoked, if
 - (a) the Company provides notice to the shareholders to convene a meeting to pass a resolution to voluntarily wind up the Company

pursuant to section 491 of the *Corporations Act 2001* (Cth) or to undertake any other transaction that will result in the winding up of the Company and

- (b) both Aurora and Keybridge request in writing that ASIC transfer the Sale Shares to them
17. The Company and ASIC must do all things necessary to give effect to Order 16, including:
- (a) doing whatever is necessary to ensure that Keybridge and Aurora are registered with title to the Sale Shares in the form approved by ASIC and
 - (b) until Keybridge and Aurora are registered, complying with any request by Keybridge and Aurora in relation to the Sale Shares.

For the avoidance of doubt, Order 5 does not apply to any transaction necessary to give effect to Order 16.

18. If any resolution contemplated by Order 16 is not passed or is withdrawn, Orders 1, 2 and 3 are reinstated with effect from the date that is 2 months after the shareholder meeting, and for the avoidance of doubt Order 4 applies, with effect from the same date.

Allan Bulman
Chief Executive
with authority of Michelle Jablko
President of the sitting Panel
Dated 14 July 2022