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Wednesday, 31 October 2007

**Consolidated Minerals Limited 03 – Panel Decision**

The Panel advises that it has made a declaration of unacceptable circumstances and currently proposes to make final orders in relation to an application dated 15 October 2007 by Palmary Enterprises Limited (**Palmary**) in relation to the affairs of Consolidated Minerals Limited (**Consolidated Minerals**) ([TP07-76](#)).

On 12 October 2007 at 2.16pm Pallinghurst Resources Australia Limited (**Pallinghurst**) lodged with ASX its second supplementary bidder's statement in relation to its off market takeover bid for Consolidated Minerals (**Pallinghurst Offer**). This provided for the addition to the existing \$4.50 cash offer consideration of an alternative form of consideration of \$4.50 cash plus a Top-up note.

Pallinghurst's second supplementary bidder's statement also provided that Pallinghurst would not increase the Pallinghurst Offer in the absence of a higher all-cash (or all-cash alternative) offer (**First Statement**).

Subsequently, at 4.32pm on 12 October, Pallinghurst said that it would not increase the Pallinghurst Offer in the absence of a higher offer, whether or not it was all-cash or contained an all-cash alternative (**Second Statement**).

Pallinghurst's second supplementary bidder's statement also provided that:

*"The offer period under the Pallinghurst Offer is being extended until 7.00pm (Melbourne time) on 24 October 2007. Pallinghurst has, however, declared that there will be no further voluntary extensions beyond this date."* (**No Extension Statement**)

Palmary sought a declaration of unacceptable circumstances, and orders that:

- (a) Pallinghurst be bound by its First Statement; and
- (b) Pallinghurst withdraw the \$4.50 cash and Top-up note alternative consideration and treat any acceptances or deemed acceptances of that alternative consideration as null and void.

The Panel has made a declaration of unacceptable circumstances. The Panel considered that the circumstances of the Top-up note and the No Extension Statement are unacceptable on the basis that:

- (a) the Top-up note is likely to have an effect on the control or potential control of Consolidated Minerals, and on the efficient, competitive and informed market for control of Consolidated Minerals shares which would be contrary to the purposes of the Takeovers Chapter as set out in section

602 of the Corporations Act. Specifically, the Panel considered that the Top-up note is likely to discourage competing bids because (among other things) it has the effect that a competing bid (that triggered the top-up) could never “beat” the Pallinghurst offer; and

- (b) the No Extension Statement was misleading because it stated that there would be no *voluntary* extension of the offer period of the Pallinghurst Offer without advising that Pallinghurst could trigger an automatic extension of the offer period without “voluntarily extending” it. For example, Pallinghurst could choose (in certain circumstances) to increase the bid consideration in the last week of the offer period, thus itself triggering an automatic extension of the Pallinghurst Offer under subsection 624(2) of the Corporations Act 2001 (Cth).

The Panel did not make a declaration of unacceptable circumstances in relation to the Second Statement’s departure from the First Statement.

The Panel has advised the parties of the orders that it proposes to make following the declaration of unacceptable circumstances and is currently waiting for parties' submissions on the Panel's proposed orders.

Pallinghurst has informed the Panel that intends to seek a review of the decision and that it will be seeking interim orders from the Panel in relation to that review (including a stay of the Panel’s orders).

The President of the Panel appointed John Keeves, Alice McCleary and Simon Withers to form the Panel to consider the application.

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

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**Corporations Act  
Section 657A  
Declaration of Unacceptable Circumstances**

**In the matter of CONSOLIDATED MINERALS LIMITED 03**

**WHEREAS**

**Top-up note**

1. Consolidated Minerals Limited is a listed public company (**Consolidated Minerals**). It is the subject of an off market takeover bid (**Pallinghurst Offer**) by Pallinghurst Resources Australia Limited (**Pallinghurst**) and an off market takeover bid (**Palmary Offer**) by Palmary Enterprises (Australia) Pty Limited (**Palmary**).
2. On 12 October 2007 at 2.16pm Pallinghurst lodged with ASX its second supplementary bidder's statement in relation to the Pallinghurst Offer. This provided for the addition to the existing \$4.50 cash offer consideration of an alternative form of consideration of \$4.50 cash plus a Top-up note.
3. Under the terms of the revised Pallinghurst Offer, Consolidated Minerals' shareholders will only receive the Top-up note if they elect to receive the alternative consideration of \$4.50 cash plus a Top-up note.
4. The Top-up note operates to provide electing shareholders with a potential additional cash payment that would match the offer price for Consolidated Minerals shares under the Palmary Offer, subject to the conditions set out Pallinghurst's second supplementary bidder's statement. The cash payment under the Top-up note (if any) is payable even after the Pallinghurst Offer has closed.

**No Extension Statement**

5. Pallinghurst's second supplementary bidder's statement also provided that:  
*"The offer period under the Pallinghurst Offer is being extended until 7.00pm (Melbourne time) on 24 October 2007. Pallinghurst has, however, declared that there will be no further voluntary extensions beyond this date."* (**No Extension Statement**)
6. The No Extension Statement was misleading because it stated that there would be no *voluntary* extension of the offer period of the Pallinghurst Offer. However, Pallinghurst could choose (in certain circumstances) to increase the bid consideration in the last week of the offer period, thus itself triggering an

automatic extension of the Pallinghurst Offer under subsection 624(2) of the Act.

**Circumstances are unacceptable**

7. It appears to the Panel that the circumstances referred to above (**Circumstances**) are unacceptable having regard to:
  - (a) the effect that the Panel is satisfied that the Circumstances have had, are having, or are likely to have, on:
    - (i) the control or potential control of Consolidated Minerals; or
    - (ii) the acquisition or proposed acquisition by Pallinghurst or Palmary of a substantial interest in Consolidated Minerals; or
  - (b) the purposes of Chapter 6 of the Act as set out in section 602 of the Act.
8. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances in relation to the Circumstances and the affairs of Consolidated Minerals.
9. The Panel has had regard to the matters in subsection 657A(3) of the Act, but has not had regard to whether the Circumstances constitute, will constitute or are likely to constitute or give rise to a contravention of Chapters 6, 6A, 6B or 6C of the Act.

**DECLARATION**

Under section 657A of the Act, the Takeovers Panel declares that the Circumstances constitute unacceptable circumstances in relation to the affairs of Consolidated Minerals.

**John Keeves**

**President of the Sitting Panel**

Dated 30 October 2007