



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/62

Tuesday, 29 November 2022

Lincoln Minerals Limited 02 & 03 – Panel Declines to Make a Declaration

The Panel has declined to make a declaration of unacceptable circumstances in response to applications dated 27 October 2022 and 31 October 2022 from Olary Holdings Limited and Quantum Graphite Limited (respectively) in relation to the affairs of Lincoln Minerals Limited (**Lincoln**).

The applications concerned Lincoln's pro-rata rights issue (**Rights Issue**) to eligible shareholders of 67 new shares for every 50 shares held at an issue price of \$0.006 per new share to raise approximately \$4.6 million (see [TP22/57](#) and [TP22/59](#)).

Lincoln is also currently the subject of a takeover bid by Quantum Graphite Limited.

The Panel was not minded to second guess the Lincoln board's view that it was in the best interests of Lincoln shareholders for Lincoln to be re-listed on the ASX. It considered that the Rights Issue is necessary to avoid a materially adverse financial consequence, which mitigated against the Rights Issue being unacceptable on the grounds that it is a frustrating action.¹ The Panel also considered that the proposed shortfall facility and the discretion of the underwriter and sub-underwriter to obtain further sub-underwriting are likely to mitigate against any possible control effect.

The Panel was concerned that a statement in Lincoln's first supplementary target's statement that rejection statements received from shareholders "*are not intended to be forward looking, or statements as to the likely future actions of any individual rejecting shareholder*" was ambiguous and was also concerned about undervalue statements in Lincoln's target statement made without the reasons for those undervalue statements being clearly disclosed. Lincoln offered to clarify these matters in a second supplementary target's statement.

¹ The Panel also considered that while approval by shareholders of the Rights Issue (and in effect the sub-underwriting) at LML's 2021 annual general meeting was for ASX purposes and the disclosure in the notice of meeting was less than adequate for the purposes of an approval under item 7 of s611 of the *Corporations Act 2001* (Cth) or an approval for a frustrating action – the approval did mitigate against the Rights Issue being unacceptable.

The Panel considered that Lincoln's second supplementary target's statement sufficiently addressed the circumstances and that it is not against the public interest to decline to make a declaration of unacceptable circumstances.

On the basis of the above, the Panel decided not to make a declaration of unacceptable circumstances.

The sitting Panel was Kristen Jung, Bill Koeck and Tony Osmond (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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