



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP24/42

Thursday, 11 July 2024

Locality Planning Energy Holdings Limited – Panel Accepts Undertakings and Declines to Make Declaration

Following the offering of undertakings by two of the directors of Locality Planning Energy Holdings Limited (ASX:LPE) and companies connected with them, to address concerns of the Panel, the Panel declined to make a declaration of unacceptable circumstances in response to an application dated 28 May 2024 from River Capital Pty Limited¹ in relation to the affairs of Locality (see [TP24/028](#)).

Locality is currently the subject of an off-market takeover bid by River Capital.

The application concerned the acquisition of Locality shares in the period between the announcement of River Capital’s takeover offer and the release by Locality of its target statement which included a profit guidance upgrade (the “Relevant Period”) by companies connected with the directors. The application also alleged that the directors were associated with each other, and with another company, Boutique Capital Pty Ltd as trustee for Tectonic Opportunities Fund, that also acquired Locality shares on-market.

While the Panel was not satisfied that there was sufficient material to find association, it nevertheless had concerns about the trading in Locality’s shares by the companies connected with the directors.

The Panel decided not to make a declaration of unacceptable circumstances on the basis that the directors agreed to address the Panel’s concerns by offering the attached undertakings, which in effect require the directors to accept River Capital’s bid in relation to the shares they acquired during the Relevant Period if those acceptances would result in River Capital obtaining voting power in Locality over 50%.

Copies of the undertakings are attached.

¹ as trustee for River Capital Embedded Network Trust

The Panel considered that declining to make a declaration of unacceptable circumstances was not against the public interest.

The sitting Panel was Michael Borsky KC, Marina Kelman and Karen Phin (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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Takeovers Panel

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A UNDERTAKING

LOCALITY PLANNING ENERGY HOLDINGS LIMITED

Pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) each member of Kolenc Group undertakes jointly and severally that, except with the consent of the Panel, the Subject Shares will be accepted into the River Capital Bid if:

- (a) acceptance into the River Capital Bid of those shares, when aggregated with the shares in Locality acquired by members of the Tilley Group between 23 April 2024 and 21 May 2024 the subject of an undertaking in similar terms by Tilley Group, would result in River Capital obtaining voting power in Locality over 50% and
- (b) prior to the close of the River Capital Bid, River Capital notifies Kolenc Group in writing that paragraph (a) will be satisfied if those shares, when aggregated with the shares in Locality acquired by members of the Tilley Group between 23 April 2024 and 21 May 2024 will result in River Capital obtaining voting power of over 50% of Locality.

Kolenc Group agrees to:

1. provide an email address to River Capital for the purpose of notification under paragraph (b) above
2. do all things necessary to give effect to this undertaking, including, if necessary, transferring the Subject Shares to a nominee of Kolenc Group and directing that nominee to accept into the River Capital Bid and
3. confirm in writing to the Panel when it has satisfied its obligations under this undertaking.

In this undertaking the following terms have their corresponding meaning:

| | |
|----------------------|---|
| Kolenc Group | Mr Stan Kolenc and KIC Advisor Pty Ltd as trustee for the KIC Superannuation Fund |
| Locality | Locality Planning Energy Holdings Limited |
| River Capital | River Capital Pty Ltd as trustee for River Capital Embedded Network Trust |

River Capital Bid

Off-market takeover bid announced on 16 April 2024 by River Capital for all the shares in Locality that River Capital and its related entities does not already own as extended from time to time

Subject Shares

Shares in Locality acquired by any of the Kolenc Group between 23 April 2024 and 21 May 2024

Tilley Group

Mr Simon Tilley and TW Criterion Pty Ltd, Fernsha Pty Limited and Sore Tooth Pty Limited

**Signed by Stanislav Michael Kolenc of [address provided]
with the authority, and on behalf, of each member of the Kolenc Group
Dated 9 July 2024**



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AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A UNDERTAKING

LOCALITY PLANNING ENERGY HOLDINGS LIMITED

Pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) each member of Tilley Group undertakes jointly and severally that, except with the consent of the Panel, the Subject Shares will be accepted into the River Capital Bid if:

- (a) acceptance into the River Capital Bid of those shares, when aggregated with the shares in Locality acquired by members of the Kolenc Group between 23 April 2024 and 21 May 2024 the subject of an undertaking in similar terms by Kolenc Group, would result in River Capital obtaining voting power in Locality over 50% and
- (b) prior to the close of the River Capital Bid, River Capital notifies Tilley Group in writing that paragraph (a) will be satisfied if those shares, when aggregated with the shares in Locality acquired by members of the Kolenc Group between 23 April 2024 and 21 May 2024 will result in River Capital obtaining voting power of over 50% of Locality.

Tilley Group agrees to:

1. provide an email address to River Capital for the purpose of notification under paragraph (b) above
2. do all things necessary to give effect to this undertaking, including, if necessary, transferring the Subject Shares to a nominee of Tilley Group and directing that nominee to accept into the River Capital Bid and
3. confirm in writing to the Panel when it has satisfied its obligations under this undertaking.

In this undertaking the following terms have their corresponding meaning:

| | |
|----------------------|---|
| Kolenc Group | Mr Stan Kolenc and KIC Advisor Pty Ltd as trustee for the KIC Superannuation Fund |
| Locality | Locality Planning Energy Holdings Limited |
| River Capital | River Capital Pty Ltd as trustee for River Capital Embedded Network Trust |

River Capital Bid

Off-market takeover bid announced on 16 April 2024 by River Capital for all the shares in Locality that River Capital and its related entities does not already own as extended from time to time

Subject Shares

Shares in Locality acquired by any of the Tilley Group between 23 April 2024 and 21 May 2024

Tilley Group

Mr Simon Tilley and TW Criterion Pty Ltd, Fernsha Pty Limited and Sore Tooth Pty Limited

**Signed by Simon Tilley of [address provided]
with the authority, and on behalf, of each member of the Tilley Group
Dated 10 July 2024**