



**Australian Government**

**Takeovers Panel**

**Reasons for Decision  
Alara Resources Limited  
[2025] ATP 1**

**Catchwords:**

*Rights issue – effect on control – need for funds – sub-underwriting – fundraising alternatives – dispersion strategy – disclosure – substantial holding notice – conflict of interest – declaration – public interest – costs order*

*Corporations Act 2001 (Cth), sections 602, 671B, 718*

*Australian Securities and Investments Commission Act 2001 (Cth), section 201A*

*Australian Securities and Investments Commission Regulations 2001 (Cth), regulations 13, 18*

*ASX Listing Rules Appendix 7A*

*Guidance Note 1: Unacceptable Circumstances, Guidance Note 4: Remedies General, Guidance Note 17: Rights Issues*

*Takeovers Panel Procedural Guidelines, guidelines 5.1(f), 8(b)*

*Attorney-General of the Commonwealth v Alinta Ltd & Ors [2008] HCA 2*

*Austral Coal Limited 02 [2005] ATP 13, Gondwana Resources Limited [2014] ATP 9, The President’s Club Limited 02 [2016] ATP 1, Thorn Group Limited 01 & 02 [2020] ATP 29, Sementis Limited [2021] ATP 7*

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	YES	YES	YES	YES	NO

**INTRODUCTION**

1. The Panel, Yasmin Allen AM (sitting President), Chris Stavrianou and Philippa Stone made a declaration of unacceptable circumstances in relation to the affairs of Alara. The application concerned an underwritten renounceable rights issue that was sub-underwritten by ATI (Alara’s largest shareholder). The Panel declared the circumstances unacceptable as it considered that (among other things) Alara did not provide sufficient material to demonstrate that there was a clear need for all of the funds sought to be raised, or that it properly explored other fundraising alternatives, or that it properly sought out alternatives to ATI sub-underwriting. Alara ultimately withdrew the rights issue and the Panel made a costs order in favour of the Applicants.

2. In these reasons, the following definitions apply.

- AHIS** Al Hadeetha Investment Services LLC
- AHRL** Al Hadeetha Resources LLC
- Alara** Alara Resources Limited
- Applicants** Mr Kent Bedford, Mr Steven Dahlin, Mr Sean Reeves and Mr Jason Prichard (each of whom are Alara shareholders)

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<b>ASIC Regulations</b>	<i>Australian Securities and Investments Commission Regulations 2001 (Cth)</i>
<b>ATI</b>	Al Tasnim Infrastructure LLC
<b>Ineligible Shareholders</b>	Alara shareholders with a registered address outside of Australia and New Zealand
<b>Mahe Capital</b>	Mahe Capital Pty Ltd
<b>Prospectus</b>	the prospectus for the Rights Issue dated 4 November 2024
<b>Replacement Rights Issue</b>	has the meaning given in paragraph 91
<b>Rights Issue</b>	has the meaning given in paragraph 7
<b>Supplementary Prospectus</b>	the supplementary prospectus for the Rights Issue dated 19 November 2024
<b>Trafigura</b>	Trafigura Pte Ltd

## FACTS

- Alara is an ASX listed company (ASX code: AUQ) involved in the exploration, evaluation and development of mineral projects in Oman. Its main project is the Al Wash-hi Majaza copper-gold mine in Oman, owned and operated by AHRL, a joint venture company in which Alara holds a 51% interest.<sup>1</sup>
- ATI is Alara's largest shareholder, holding 13.88% of its voting shares. It also holds 19% of AHRL directly.
- AHIS holds the remaining 30% of AHRL directly. It also holds 4.39% of Alara's voting shares.
- Approximately 51.36% of Alara shares are held by Ineligible Shareholders.
- On 4 November 2024, Alara announced its intention to undertake an underwritten renounceable 5 for 8 rights issue at an issue price of \$0.034<sup>2</sup> per share to raise up to approximately \$15.3 million (**Rights Issue**). It was intended that the Rights Issue would be fully underwritten by Mahe Capital and sub-underwritten by ATI. It was also intended that for every 2 new shares subscribed for under the Rights Issue, subscribers would receive 1 free attaching option with an exercise price of \$0.05 and a term of 2 years.
- According to the Prospectus:
  - The new shares to be issued under the Rights Issue would constitute 38.46% of Alara's share capital following the Rights Issue.

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<sup>1</sup> Indirectly through Alara Oman Operations Pty Limited, a wholly owned subsidiary of Alara

<sup>2</sup> Representing a discount of 11% to the 30-day VWAP of Alara's shares and a 30.6% discount to Alara's closing price on the last trading day before the Rights Issue

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- (b) Alara intended to use the funds raised under the Rights Issue (1) to install two interim replacement tailings filter presses and a permanent tailings filter press at the Al Wash-hi Majaza copper-gold mine, (2) to make certain “*deferred vendor payments*”, (3) to partially repay a loan owing from Alara to an offtake partner (Trafigura), (4) to undertake exploration at three of Alara’s exploration projects, and (5) as working capital.
  - (c) Shareholders could apply to acquire shares not taken up by other shareholders under the Rights Issue (i.e. ‘shortfall’). Mahe Capital agreed to use best efforts to place shortfall to persons other than ATI, however any shortfall would be first allocated to ATI so that it would obtain voting power of 19.9%.
  - (d) Given “*the small number of Ineligible Shareholders and the cost of complying with applicable regulations outside Australia and New Zealand*”, Alara decided that it would be unreasonable to extend the Rights Issue to Ineligible Shareholders and appointed Mahe Capital as nominee to arrange for the sale of the Ineligible Shareholders’ entitlements.
  - (e) ATI stood to obtain voting power in Alara of up to a maximum of 45.31% following completion of the Rights Issue, assuming that only AHIS (which had agreed to subscribe for shortfall shares equivalent to its entitlement had it held a registered address in Australia or New Zealand) and ATI subscribed for shares.
9. On 8 November 2024, Alara dispatched the Prospectus to eligible shareholders and opened the Rights Issue.
10. On 19 November 2024, Alara released a Supplementary Prospectus which stated that Mr Farrokh Jimmy Masani (an alternate director of Alara for Ms Devaki Khimji) had advised Alara that he would take up his entitlement under the Rights Issue<sup>3</sup> and had agreed to sub-underwrite the Rights Issue for a further 1,150,000 new shares (comprising approximately 0.1% of Alara’s post-Rights Issue share capital). The Supplementary Prospectus also stated that as a result of Mr Masani’s sub-underwriting commitment, ATI now stood to obtain a maximum voting power in Alara of 44.175% (if new shares were only issued to ATI, AHIS and Mr Masani).
11. Also on 19 November 2024, the Rights Issue closed with a significant shortfall, and it was expected that ATI would obtain voting power of 41.8% of Alara pursuant to its sub-underwriting arrangements.

## APPLICATION

12. By application submitted on 20 November 2024 (after the Rights Issue had closed), the Applicants sought a declaration of unacceptable circumstances. The Applicants submitted that the following circumstances (among others) were unacceptable:

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<sup>3</sup> It was noted that having changed his address on Alara’s register to an address in Australia since the Prospectus was lodged, Mr Masani was an eligible shareholder on the record date

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- (a) the control effect of the Rights Issue exceeded what was reasonably necessary for Alara’s fundraising purposes and
- (b) the size, pricing and structure of the Rights Issue appeared to be designed to exacerbate that control effect.

### Interim orders sought

13. The Applicants sought interim orders to (among other things):
- (a) restrain the issue of new shares pursuant to the Rights Issue or any other capital raising pending the outcome of the application and
  - (b) require Alara to provide evidence justifying the proposed use of funds detailed in the Prospectus and the rationale for the Rights Issue’s 5-for-8 ratio.

### Final orders sought

14. The Applicants sought final orders in effect:
- (a) replacing the Rights Issue with a rights issue at a 1-for-5 ratio unless Alara demonstrated a genuine need to conduct the Rights Issue at a higher ratio
  - (b) requiring that all shareholders, including ATI, be treated equally in the allocation of shortfall shares
  - (c) preventing ATI from increasing its shareholding in Alara beyond 19.9% pursuant to the Rights Issue (whether amended or not)
  - (d) requiring shareholder approval as a precondition to any rights issue sought by Alara within 2 years of the final orders
  - (e) requiring shareholder approval as a precondition to any placement of shares by Alara to an existing shareholder or related party
  - (f) preventing any shareholder from increasing their shareholding in Alara beyond 19.9% pursuant to a rights issue or placement within 2 years of the final orders and
  - (g) requiring Alara to pay the Applicants’ reasonable costs.

## DISCUSSION

15. We have considered all the material, but address specifically only that part of the material we consider necessary to explain our reasoning.

### Consideration of interim orders

16. In light of the timetable for the Rights Issue, the Acting President of the Panel considered interim orders sought by the Applicants on an urgent basis and interested persons were invited to make submissions.
17. Alara submitted that:

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- (a) it was prepared to give an undertaking that it would not, without the Panel's consent, issue any securities pursuant to the Rights Issue or otherwise until the earliest of interim orders by the Panel, determination of the proceedings and 1 month from the date of its undertaking<sup>4</sup>
  - (b) it was not necessary to make any interim orders relating to information to be provided to the Panel, and such orders would not be consistent with the purpose of interim orders (i.e. to preserve the status quo). Should a decision be made to conduct proceedings and a brief issued, then Alara could provide evidence as required and
  - (c) considering the above, no interim orders should be made.
18. The Applicants made submissions reiterating the necessity of the interim orders sought in their application.
19. Having regard to the submissions received, in lieu of interim orders, the Acting President accepted an undertaking (see Annexure A) from Alara to:
- (a) not issue or allot any new securities under the Rights Issue without the prior approval of the Panel and
  - (b) hold any money received by Alara as subscriptions for new securities under the Rights Issue:
    - (i) separately from all other Alara funds (other than monies received from Alara's directors into an Omani bank account)<sup>5</sup> and
    - (ii) on trust for the subscribers.
20. The Acting President also agreed with Alara's submissions that an interim order relating to information to be provided to the Panel by Alara would be premature and unnecessary to preserve the status quo. Consequently, the Acting President did not consider it necessary to make any interim orders.

### Decision to conduct proceedings

21. On 25 November 2024, Alara made preliminary submissions in response to the application, submitting that we should decline to conduct proceedings because, among other things:
- (a) the Applicants had made various incorrect assumptions about Alara's financial position and proposed use of funds

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<sup>4</sup> Alara noted that the issue of securities under the Rights Issue is subject to the timetable in Appendix 7A of the ASX Listing Rules, including that the entitlement shares must be issued within 5 business days of the closing date (i.e. by no later than 26 November 2024) and that the underwritten shortfall shares must be issued within 15 business days of the closing date (i.e. by no later than 10 December 2024). However, Alara advised that ASX had indicated to Alara that, in the circumstances, these dates could be extended without waiver

<sup>5</sup> The carve-out for monies received from Alara's directors into an Omani bank account was necessary because two of Alara's directors had already transferred their applications funds directly into an Omani bank account held by Alara Oman Operations Pty Limited, a wholly-owned subsidiary of Alara

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- (b) Alara’s decision to raise \$15.26 million was reasonable and supported by rational reasons, and the Applicants had failed to establish that deeper inquiry may be warranted. In support of this and the above submission, Alara provided a cash flow forecast for AHRL covering the period from November 2024 to October 2025
  - (c) Alara adopted all of the dispersion strategies referred to in Guidance Note 17 and the effect of the rights issue on control of Alara was clearly set out in the Prospectus and
  - (d) the application was brought after the Rights Issue had closed, and significant changes to the Rights Issue are unlikely to be achievable before February 2025 – by which time payments for the replacement tailings filter presses would already be due.
22. In our view, the application raised concerns that warranted further enquiry, including in relation to Alara’s need for funds, the potential control effect of the Rights Issue, disclosure to Alara shareholders and the management of director conflicts of interest. Accordingly, we decided to conduct proceedings.

#### **Extensions of time requested by Alara and withdrawal of the Rights Issue**

23. We issued a brief that outlined various questions and requested specific materials in connection with our concerns. Submissions were initially due by 3 December 2024. At Alara’s request, we extended the deadline to 5 December 2024 and subsequently to 6 December 2024. Despite these extensions, Alara failed to provide its submissions by the final deadline.<sup>6</sup>
24. On 9 December 2024, Alara informed us that ATI had advised Alara that it no longer supported the Rights Issue, and as a result, the Rights Issue would be withdrawn. Alara also advised us on 9 December 2024 that it had appointed new lawyers. Alara ultimately provided its submissions on the brief on 11 December 2024.<sup>7</sup> We found Alara’s delay in providing its submissions unsatisfactory – particularly given the Panel’s obligation to act in a timely manner, considering the time available before a decision must be made.<sup>8</sup>
25. Also on 11 December 2024, Alara announced to ASX that it had determined to withdraw the Rights Issue *“in the context of the termination of the Underwriting Agreement and the agreement under which Al Tasnim Infrastructure LLC (ATI) agreed to fully sub-underwrite the issue”*. The announcement also stated that, *“Alara is engaged with ATI to endeavour to reach agreement for it to act as underwriter for a new rights issue to replace the Rights Issue”*.
26. Alara offered to give an undertaking that it would not conduct an alternative entitlement offer within three months of the date of the undertaking unless certain

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<sup>6</sup> We do note, however, that responses to three of our questions which had an earlier deadline compared to the rest were submitted by Alara on time

<sup>7</sup> We consented to a further extension to allow new lawyers for Alara to review the materials, seek instructions and prepare submissions

<sup>8</sup> Regulation 13 of the ASIC Regulations. See also guideline 5.1(f) of the Procedural Guidelines

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conditions were met. However, this proposal was not acceptable because it did not address several of our concerns with the withdrawn Rights Issue (see paragraphs 92 to 94).

#### Need for funds

27. As stated in Guidance Note 17, in determining whether a rights issue gives rise to unacceptable circumstances, the Panel considers the issuer's need for the funds to be raised.<sup>9</sup> In this regard, Guidance Note 17 also states that "*A company undertaking a large rights issue may need to more clearly demonstrate its need for those funds.*"<sup>10</sup>
28. The Rights Issue was large<sup>11</sup> and in the circumstances, we consider that Alara did not provide sufficient material to satisfy us that there was a clear need for all of the funds sought to be raised. This lack of material was particularly concerning given Alara submitted that the idea of raising funds was first discussed in January 2024. While Alara may have a need to raise funds, it did not clearly demonstrate an urgent need for all of those funds that would justify the potential control effect of the Rights Issue.
29. The main points of contention in relation to Alara's need for funds are set out below.

#### *Replacement tailings filter presses*

30. According to the Prospectus:
  - (a) Production at the concentrator plant at the Al Wash-hi Majaza copper-gold mine (51% owned by Alara through its interest in AHRL) has been slower than its design capacity due to the poor performance of a key component – the tailings filter press. This component failed to meet its specifications, limiting production to approximately 40% of design capacity at the commencement of operations.
  - (b) To address this, Alara has ordered two interim replacement tailings filter presses from China, which are expected to increase production to 80-85% of rated capacity once installed. As a long-term solution, AHRL has also ordered a permanent filter press, which will serve as the plant's primary tailings filter press once delivered.
  - (c) Alara plans to allocate \$1.7 million of the funds raised towards the installation of the two interim replacement tailings filter presses and an additional \$3.6 million towards the permanent tailings filter press.
31. In their application, the Applicants submitted (among other matters) that Alara appears to be sole funding AHRL's replacement tailings filter presses. This amounts to \$5.3 million of the funds to be raised, even though, based on its 51% ownership of AHRL, Alara should only be required to fund 51% of this expenditure.
32. Alara submitted that it is sole funding AHRL's replacement tailings filter presses because:

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<sup>9</sup> Guidance Note 17: Rights Issues at [6] (footnotes omitted)

<sup>10</sup> Ibid at [17]

<sup>11</sup> As noted above, the new shares would have represented 38.46% of Alara's share capital post-issuance

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- (a) AHIS and ATI have agreed to defer payment of approximately \$43 million of trade payables owing by AHRL to them *“on the basis that Alara provides sufficient funding (by way of a shareholder loan to AHRL) to fund the procurement, manufacture and installation of the temporary and permanent [tailings filter presses], being a total of A\$ 5.3 million, and to enable AHRL to pay down A\$ 2.554 million of the deferred trade payables”* and
- (b) the Al Wash-hi Majaza copper-gold mine is *“limited to below 50% capacity”* and *“struggling to reach 50% of name plate capacity”*, and if funding is not provided to AHRL to implement the works described above, *“it is unlikely that production will improve to nameplate capacity or to a point where the [Al Wash-hi Majaza copper-gold mine] can be operated sustainably. Given the operational issues and projected cash requirements, without further funding (including from Alara) it is doubtful the [Al Wash-hi Majaza copper-gold mine] will be able to be operated until a permanent [tailings filter press] is able to be installed”*.
33. Alara also submitted that *“AHRL needs to have certainty of funding to enter into agreements with suppliers to provide for both the temporary and permanent [tailings filter presses]”*.
34. After reviewing Alara’s preliminary submissions and its responses to our initial brief, we considered AHRL’s financial arrangements were still unclear, particularly in connection with Alara’s sole funding of the replacement tailings filter presses – the largest expense in the proposed use of funds.
35. Additionally, there seemed to be some inconsistencies with Alara’s submissions and its previous positive trading disclosures made to the ASX. In their rebuttal submissions, the Applicants submitted that:
- (a) Alara’s submissions that the Al Wash-hi Majaza copper-gold mine is *“limited to below 50% capacity”* and *“struggling to reach 50% of name plate capacity”* are inconsistent with Alara’s ASX announcements on 26 November 2024, 12 November 2024 and 31 October 2024. These announcements report the last four shipments of concentrate as 1168, 1252, 1256, and 1263 WMT, equating to an annualised production rate of 32,192 WMT. This is 92% of the mine’s average annual concentrate production of 35,000 WMT, as disclosed on Alara’s website and
- (b) Alara’s submission that *“AHRL needs to have certainty of funding to enter into agreements with suppliers to provide for both the temporary and permanent [tailings filter presses]”* is inconsistent with Alara’s ASX announcements on 31 July 2024 and 5 August 2024 which indicate that AHRL had already entered into agreements for the temporary and permanent tailings filter presses.
36. In our supplementary brief, we asked Alara to clarify these matters. Alara submitted:
- (a) the Applicants’ methodology for calculating the Al Wash-hi Majaza copper-gold mine’s production is incorrect and unreasonable, noting that, for example, the dispatch quantity of October 2024 and November 2024 included blending of inventory produced in August and September 2024 and



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- (b) there are no inconsistencies between Alara’s submissions and its ASX announcements regarding the current status of the replacement tailings filter presses.
37. Alara also provided a copy of a shareholders’ loan agreement between AHRL and its shareholders, which clarified some matters in relation to AHRL’s funding arrangements. However, we were concerned about the delay in Alara providing this information and the lack of clarity in the overall funding structure for AHRL, especially given the multiple questions and follow up inquiries from us on this specific matter which gave Alara ample opportunity to clarify the details. This made it difficult to fully assess the reasonableness of the allocation of funds towards the replacement tailings filter presses, especially given this expense had a significant impact on the overall size of the Rights Issue and hence on the potential control effect of the Rights Issue.

#### *Exploration*

38. In their application, the Applicants submitted that \$3.75 million of the funds to be raised are allocated to exploration projects for which Alara has not yet secured the necessary agreements and authorisations to proceed.
39. Alara submitted that it reasonably expects the requisite authorisations to be granted “within the short-term” and that expenditure of at least \$3.75 million will be required in the 12 months following the issue of the authorisations to safeguard against potential revocation by the Ministry of Energy and Minerals in Oman. Alara also submitted that continuing to undertake exploration activities on its undeveloped assets remains an important part of its operations, as prudent management of any mining operation requires proper management of available reserves and resources, including conducting continued exploration where possible.
40. Guidance Note 17 indicates that the Panel is likely to accept the directors’ decision in relation to the company’s need for funds if the decision appears to be reasonable and supported by rational reasons.<sup>12</sup> However, in the circumstances, we consider Alara did not provide sufficient material to demonstrate that its directors’ decision to allocate \$3.75 million for exploration meets this standard. While Alara may soon need to raise funds for exploration, its applications for the relevant authorisations have been pending for some time. As a result, this need has not crystallised to a degree that justifies the control effect of the Rights Issue.

#### *Funds alleged to be already available to Alara*

41. In their application, the Applicants submitted that:
- (a) Alara’s Quarterly Activities Report for the period ending 30 September 2024 showed that Alara had a bank balance of \$3.716 million and undrawn finance facilities of \$7.601 million, meaning Alara had \$11.317 million in funds already available and

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<sup>12</sup> Guidance Note 17: Rights Issues at [11]

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- (b) Alara is owed \$21.378 million by AHRL pursuant to a loan given by Alara to AHRL 12 years ago, and based on the loan terms, it is reasonable to expect repayment of this loan to Alara over the next 12 months.
42. In response, Alara made the following submissions:
- (a) Regarding the \$11.317 million in funds already available to Alara (as submitted by the Applicants):
- (i) the \$7.601 million in undrawn finance facilities consists of:
- (A) \$5.655 million under facilities from Sohar International Bank, which are restricted for specific purposes under the bank's terms and cannot be used for Alara's immediate needs and
- (B) \$1.946 million under a loan from AHIL, which cannot be accessed until personal and corporate guarantees given by AHIL for the Wash-hi project are discharged and
- (ii) the \$3.723 million cash balance has already been allocated to meet operational needs and contingencies of various Alara group companies and cannot be redirected for the uses set out in the Prospectus.
- (b) AHRL is not in a position to repay shareholder loans, including the loan owing to Alara, and this will not happen for at least the next 12 months. In addition, this loan is subordinated to Sohar International Bank and hence cannot be recalled or partly recalled until the loans of Sohar International Bank are settled.
43. We accept Alara's submissions that the cited funding would not be accessible for the purposes specified in the Prospectus. However, we were nevertheless concerned that this had not been disclosed in the Prospectus (see paragraph 74).

#### *Loan repayments to Trafigura*

44. In their application, the Applicants submitted that \$2 million of the funds to be raised are allocated towards repaying the loan to Trafigura. However, the first of sixteen equal quarterly principal repayments (approximately US\$215,625 each) is not due until September 2025. They also noted Alara's potential for cash generation from shipments of concentrate.
45. In response, Alara submitted that the Applicants were incorrect in asserting that interest payments commence with the principal repayments in September 2025. Alara submitted that the first interest payment is due in December 2024, with subsequent payments due quarterly. The \$2 million allocated to the 'Trafigura loan repayment' covers both principal and interest payments for the 13-month period ending December 2025. While this submission appeared reasonable, we were again of the view that this information should have been disclosed in the Prospectus (see paragraph 74).

#### *'Cash runway'*

46. Alara submitted that in addition to uses of funds detailed in the Prospectus, "Alara is seeking to ensure it has sufficient funds available to it to meet its forecast obligations over a

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*12-month period after launch of the Rights Issue (13 months in the case of Trafigura Loan payments). In this regard, the Rights Issue has been structured in such a manner to provide Alara with a sufficient ‘cash runway’ to meet its disclosed business objectives over a reasonable period. This approach seeks to minimize costs associated with needing to repeatedly raise funds from shareholders in circumstances where Alara does not currently generate returns to fund on-going development.” In support of this submission, Alara cited Sementis Limited.<sup>13</sup>*

47. We have some sympathy for this submission, and also appreciate that companies commonly legitimately seek to raise sufficient funding for their immediately foreseeable needs, including to avoid being seen as being ‘cum issue’, with associated potential pressure on share price. However, we consider that the present circumstances differ in several key respects from those in *Sementis Limited*, including:
- (a) the entitlement offer in *Sementis Limited* did not have as significant a control effect
  - (b) the Panel in *Sementis Limited* found that the applicant had not provided sufficient material to justify a deeper inquiry into the directors’ decision regarding the issuer’s funding needs and
  - (c) the issuer in *Sementis Limited* was unlisted and therefore did not have the same ability to raise capital as most ASX-listed companies.

#### **Steps to mitigate the potential control effect of the Rights Issue**

##### *Control effect*

48. As noted, the Supplementary Prospectus stated that ATI stood to increase its voting power in Alara from 13.88% to a maximum of 44.175% following completion of the Rights Issue (assuming new shares were only issued to ATI, AHIS and Mr Masani). As the Rights Issue had closed, we asked Alara to confirm the expected increase in ATI’s voting power. Based on current applications, Alara indicated that ATI’s voting power was expected to rise to 41.8% following completion of the Rights Issue.
49. Additionally, for every 2 new shares subscribed for, ATI would receive 1 free attaching option with an exercise price of \$0.05 and a term of 2 years. In our view, this increased the control potential of the Rights Issue because it would allow Alara to ‘bank’ creep by exercising its options in tranches utilising the 3% creep exception.
50. Accordingly, we consider that the Rights Issue could have had a material effect on control of Alara. A potential increase in voting power of this magnitude exceeds levels previously found by the Panel to have an unacceptable effect on control. For instance, the Panel has previously considered that a potential increase in voting power from 30.57% to approximately 39.5% was “likely to have a substantial effect on

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<sup>13</sup> [2021] ATP 7 at [26]

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*control and constitute the acquisition of a substantial interest*<sup>14</sup> and *“would likely be decisive at shareholder meetings”*.<sup>15</sup>

51. We also note that, importantly, approximately 51.36% of Alara shares are held by Ineligible Shareholders. In their application, the Applicants submitted this meant that 51.36% of the new shares issued would ‘automatically’ become shortfall shares, increasing the control effect of the Rights Issue.
52. In our brief, we asked Alara to explain the efforts it took to reduce the number of Ineligible Shareholders. In response, Alara submitted that:
  - (a) approximately 51.4% of Alara’s issued shares are held by 25 individual Ineligible Shareholders (including 11 in India collectively holding 18.61% in aggregate and 8 in Oman collectively holding 21.08%) and
  - (b) given this “*small number*” of international shareholders, Alara determined it was more prudent both legally and commercially to approach each shareholder individually rather than expand the jurisdictions of the Rights Issue, and these shareholders were directly invited to participate in the shortfall.
53. We acknowledge that there are often legitimate reasons for companies to not extend rights issues to overseas shareholders (and in our experience, it is not uncommon for ASX listed companies comparable to Alara to do so). However, in the circumstances, we consider the significant proportion of shares held by Ineligible Shareholders to be a factor weighing in favour of unacceptability.

#### *Alternatives to ATI sub-underwriting the Rights Issue*

54. We asked Alara to confirm whether it sought out alternative underwriters and sub-underwriters to Mahe Capital and ATI (including professional underwriters and sub-underwriters), and in particular, whether Alara approached broking houses in Western Australia experienced at small-cap mining company equity raises or other investors with potential interest.
55. Alara submitted that it did not canvas or seek out an alternative underwriter to Mahe Capital for the following reasons:
  - (a) it considered that Mahe Capital had substantial experience in underwriting rights issues of this nature and scale, and therefore, engaging another underwriter with similar or greater experience would not provide any substantial benefit
  - (b) Mahe Capital’s principal informed Alara that he had followed the company closely since Mahe Capital’s involvement in Alara’s previous rights issue in 2015. Given Mahe Capital’s familiarity with Alara’s history and plans, Alara believed there was a distinct advantage in using Mahe Capital over another underwriter

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<sup>14</sup> *Thorn Group Limited 01 & 02* [2020] ATP 29 at [71]

<sup>15</sup> *Ibid* at [77]. See also, for example, *Gondwana Resources Limited* [2014] ATP 9, where the Panel concluded that a major shareholder’s increase in voting power from 11.84% to a maximum of 43.75% as a result of underwriting a rights issue had an unacceptable effect on control

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- (c) Mahe Capital’s principal told Alara that Mahe Capital had a substantial network of investors interested in ASX-listed, junior resource companies. This gave Alara confidence that Mahe Capital would itself take up shares and/or secure investors to take up a significant portion of any shortfall from the Rights Issue and
- (d) during a discussion in August 2024, Mahe Capital’s principal expressed concerns about the size of the Rights Issue and initially informed Alara that Mahe Capital would not proceed with underwriting the proposed Rights Issue. Alara considered that, given Mahe Capital’s detailed knowledge of its affairs and prior in-principle support for underwriting a capital raising, Mahe Capital’s withdrawal signaled significant challenges in securing another underwriter in the near future. Mahe Capital later agreed to manage and underwrite the Rights Issue only after ATI made a proposal to Alara to fully sub-underwrite the Rights Issue.
56. Alara also indicated it did not consider any sub-underwriter other than ATI because it did not consider it likely that any alternative sub-underwriter could be found. It submitted: *“It is normally the underwriter’s role to identify and reach agreements with potential sub-underwriters, where the underwriter does not wish to take up all of any shortfall itself. It is within the role of a professional underwriter to be aware of a wide range of potential investors who are likely to be interested in taking a significant stake of companies in various sizes and kinds in capital raisings. It followed from Mahe’s lack of confidence in identifying significant investor support for the rights issue that there was an even lower likelihood of the Company itself identifying any investor, and ATI was prepared to do so.”*
57. In our view, Alara’s rationale for not considering alternative sub-underwriters was inadequate and demonstrated a lack of diligence in exploring all viable options to mitigate the potential control effects of the Rights Issue. While Alara may have reasonably believed that identifying an alternative sub-underwriter was unlikely, it did not take any meaningful steps to confirm this assumption. Alara did not approach other broking houses, particularly those in Western Australia with expertise in small-cap mining equity raisings, nor did it seek advice from other financial advisors or professional underwriters who typically have broad networks of potential sub-underwriters and investors. Further, Alara appeared to rely heavily on Mahe Capital’s lack of confidence in securing additional investor support as justification for not pursuing alternatives, without independently testing the market or consulting other potential underwriters to validate this position.
58. We note that Guidance Note 17 provides pertinent guidance in situations such as this:
- “For many companies, a related party or major shareholder is the only realistic source of underwriting (sub-underwriting). Underwriting (sub-underwriting) by a related party or major shareholder does not, of itself, give rise to unacceptable circumstances. However, greater care is needed to mitigate the potential control effects if a related party or major shareholder underwrites (sub-underwrites). The failure of directors to properly canvass*

## Takeovers Panel

### Reasons – Alara Resources Limited [2025] ATP 1

*professional underwriters or seek out alternatives to a related party or major shareholder underwriter (subunderwriter) may increase the likelihood of unacceptable circumstances.”<sup>16</sup>*

59. Considering Alara’s submissions and having regard to Guidance Note 17, we were not satisfied that Alara properly sought out alternatives to ATI sub-underwriting the Rights Issue.

#### *Funding alternatives to the Rights Issue*

60. In considering whether a rights issue gives rise to unacceptable circumstances, the Panel will also consider, among other factors, whether the company has explored other fundraising alternatives.<sup>17</sup>
61. In our brief, we asked Alara to explain whether it had considered any alternatives to the Rights Issue (for example, debt financing or forward selling of future production). We also requested Alara to provide (among other materials) all board (and board subcommittee) agendas, papers and minutes which considered (1) the decision to use equity funding rather than other alternatives (2) the Rights Issue (3) the underwriting and sub-underwriting arrangements and (4) any other capital raising initiative, funding or other proposal considered by the Alara board at or about the time of consideration of the Rights Issue.
62. Alara submitted that:
- (a) it had made extensive efforts to secure debt financing, but its lack of suitable assets to offer as security had been a significant barrier and
  - (b) term sheets received from two private equity institutions, and Mahe Capital, were thoroughly evaluated. However, these options were not viable due to high costs and unfavourable terms, making them financially unfeasible for Alara.
63. As supporting material, Alara provided one set of board minutes giving final approval for the Rights Issue, a short pricing recommendation from Mahe Capital for the Rights Issue and a cash flow model for the Alara group.
64. This was insufficient material to satisfy us that Alara properly explored other fundraising alternatives, particularly considering Alara’s delays in providing this information and Alara’s abovementioned submission that the idea of raising funds was first raised in January 2024. In our supplementary brief, we expressed a preliminary view to this effect and invited submissions from the parties on this position.
65. In response, Alara provided the term sheets received by the two financial investors and an additional set of board minutes dated 3 September 2024 which included discussion of (among other matters) the unfeasibility of the transactions the subject of these term sheets as a fundraising source.
66. We agreed with Alara’s submission that the offers made in the term sheets were not commercially attractive. However, we are not persuaded that Alara’s receipt of the

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<sup>16</sup> Guidance Note 17: Rights Issues at [25] (footnotes omitted)

<sup>17</sup> Ibid at [6]

## Takeovers Panel

### Reasons – Alara Resources Limited [2025] ATP 1

term sheets constituted a genuine exploration of alternative fundraising sources. The term sheets, which proposed ‘at-the-market’ (ATM) financing facilities, appear to have been passively received by Alara without any indication of further inquiry in relation to other funding options. We were concerned by the absence of supporting material demonstrating that Alara actively sought out or engaged with a broader range of potential financiers beyond these term sheets.

#### *Allocation policy*

67. Shareholders could apply for additional shortfall under the Rights Issue and Mahe Capital had agreed to use best efforts to place shortfall to persons other than ATI. However, the shortfall allocation policy provided that Mahe Capital must:
- “(a) firstly, allocate that number of Shortfall Shares to ATI so that it will hold 19.9% of the Company’s issued share capital following the issue of all Shortfall Shares;*
- (b) secondly, to Shareholders other than ATI;*
- (c) thirdly, to persons other than ATI; and*
- (d) finally, to ATI.”*
68. We consider the fact that ATI was granted priority in the shortfall facility up to 19.9% reduced the efficacy of the shortfall facility as a dispersion strategy. This approach is also inconsistent with Guidance Note 17, which recommends that to mitigate potential control effects of a rights issue, a company may consider allowing shareholders or others to *“apply to take extra shares in advance of determining the shortfall available to the underwriter”*<sup>18</sup> (emphasis added).
69. We therefore asked Alara to explain (1) what steps, if any, it took to negotiate the terms of ATI’s sub-underwriting, and (2) the rationale for ATI being given priority to other shareholders in the shortfall facility (including Ineligible Shareholders).
70. In response, Alara submitted the following:
- (a) it engaged in comprehensive negotiations with ATI regarding the terms of the proposed sub-underwriting. As part of these negotiations, ATI agreed to waive any sub-underwriting fees and not oppose the renounceability of the Rights Issue and
- (b) the only condition proposed by ATI was to be granted priority in the shortfall facility up to 19.9%. Alara considered this condition acceptable in light of ATI’s concessions mentioned above and the fact that ATI was the only realistic sub-underwriter.
71. While we acknowledge that giving ATI priority up to 19.9% in the shortfall may have been the result of commercial negotiations and that in other cases giving priority to a sub-underwriter may not be problematic, here we consider doing so in the circumstances of the Rights Issue limited the effectiveness of the shortfall facility and contributed to the unacceptable circumstances.

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<sup>18</sup> Ibid at [7]

## Takeovers Panel

### Reasons – Alara Resources Limited [2025] ATP 1

#### *Renounceability*

72. While the renounceability of the Rights Issue is a factor weighing against unacceptability, we assign little weight to this consideration in the current circumstances. Guidance Note 17 makes clear that renounceability is not a safe harbour and that making a rights issue renounceable is more likely to mitigate control effects where an active market for the rights is likely.<sup>19</sup> Here, trading of Alara shares is relatively thin and in the circumstances, an active market for the rights appeared unlikely. Furthermore, in response to our initial brief, Alara confirmed that (to the best of its knowledge) there was limited rights trading before the Rights Issue closed.

#### **Disclosure deficiencies**

73. As stated in Guidance Note 17, “the Panel would expect more disclosure in relation to a rights issue that has more potential control effects (eg, increase in a person’s voting power from 10% to 40%, compared to increase in a person’s voting power from 51% to 55%).”<sup>20</sup>

#### *Prospectus*

74. Having regard to the control effect of the Rights Issue, we consider that the Prospectus does not contain adequate disclosure regarding Alara’s need for funds. Specifically, among other matters, we would have expected more detailed information regarding:

- (a) the rationale for Alara sole funding the replacement filter presses and information concerning AHRL’s financial arrangements generally<sup>21</sup>
- (b) the nature and details of the “deferred trade payables”
- (c) the status of Alara’s mining licence applications and why they may be revoked after issuance unless certain expenditures are made<sup>22</sup>
- (d) the \$11.317 million in funds already apparently available to Alara and why those funds cannot be used for the uses described in the Prospectus<sup>23</sup>
- (e) the \$21.378 million loan owed by AHRL to Alara and why repayment is not expected within the next 12 months<sup>24</sup> and
- (f) the terms of the loan owed by Alara to Trafigura.<sup>25</sup>

75. Additionally, it was not disclosed in the Prospectus (1) that one of Alara’s non-executive directors, Ms Devaki Khimji, is the Managing Director of ATI<sup>26</sup> and, as of

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<sup>19</sup> Ibid

<sup>20</sup> Ibid at [30]

<sup>21</sup> See paragraphs 30 to 43

<sup>22</sup> See paragraphs 38 to 40

<sup>23</sup> See paragraphs 41 to 43

<sup>24</sup> Ibid

<sup>25</sup> See paragraphs 44 to 45

<sup>26</sup> The Prospectus disclosed that Ms Khimji was ATI’s nominee director on the Alara board and that Mr Masani is an alternative director for Ms Khimji



## Takeovers Panel

### Reasons – Alara Resources Limited [2025] ATP 1

31 January 2022, holds a 34% shareholding in ATI,<sup>27</sup> (2) that Ms Khimji's alternate director, Mr Farrokh Jimmy Masani, is the Chief Operating Officer of ATI or (3) how the Alara board of directors had managed and was proposing to manage conflicts arising from ATI sub-underwriting the Rights Issue. We would have expected these matters to be included in the Prospectus.

76. We are also concerned that the Pro Forma Statement of Financial Position in the Prospectus erroneously double counts \$43,014,202 as a non-current liability, making Alara's financial position appear very materially worse than it is. This error may have discouraged investors from taking up their entitlements and/or participating in the shortfall facility.

#### *Information about ATI's substantial holding*

77. ATI, despite acquiring a substantial holding in Alara on 25 November 2020, had never provided Alara with the required information about its substantial holding as required by section 671B.<sup>28</sup> Accordingly, we consider the holders of shares in Alara did not know the identity of persons who had acquired a substantial interest in Alara.
78. In our proposed orders to the parties, we therefore included an order that ATI must provide to Alara and the ASX a substantial holder notice disclosing all the information required by an ASIC Form 603 in respect of ATI and its associates.
79. On 24 December 2024,<sup>29</sup> ATI subsequently gave to Alara a notice of initial substantial holder and two notices of change of interests of substantial holder, which disclosed (among other things) that:
- (a) ATI became a substantial holder on 25 November 2020 with a 5.26% voting power in Alara
  - (b) ATI's voting power in Alara increased to 10% on 2 March 2021 and reached 14.13% on 26 April 2021 and
  - (c) certain additional persons hold a substantial holding in Alara by virtue of holding voting interests above 20% in ATI.
80. The main objective of the substantial holding provisions is to disclose to the market the whereabouts of shares which might affect control<sup>30</sup> and is summarised in the Eggleston Report as follows:

*"...in the case of companies whose shares are traded on stock exchanges, shareholders are entitled to know whether there are in existence substantial holdings of shares which might enable a single individual or corporation, or a small group, to control the destinies of the*

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<sup>27</sup> According to Ms Khimji's Appendix 3X – Initial Director's Interest Notice dated 31 January 2022

<sup>28</sup> Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

<sup>29</sup> The notices were released to Alara's ASX market announcements platform on 27 December 2024

<sup>30</sup> *Austral Coal Limited 02* [2005] ATP 13 at [159]

## Takeovers Panel

### Reasons – Alara Resources Limited [2025] ATP 1

*company and if such a situation does exist, to know who are the persons on whose exercise of voting power the future of the company may depend.”<sup>31</sup>*

81. Having regard to the above, the more than four-year delay by ATI (a shareholder which proposed to obtain a maximum voting power in Alara of 44.175%) in disclosing its substantial holding constituted, in our view, a significant contravention of section 671B. This delay was a contributing factor in our consideration of the matter, noting that the market only became informed on 27 December 2024 of the identities of the persons holding a substantial interest in Alara through ATI.

#### Management of conflicts of interest

82. Noting the issues regarding the non-independence of Ms Khimji and Mr Masani,<sup>32</sup> we asked Alara to explain how conflicts of interest by members of its board were managed, and requested:
- (a) copies of any board meeting minutes or board papers that discussed whether there are any conflicts of interest by members of the board in relation to the Rights Issue and how these conflicts are being managed and
  - (b) protocols dealing with conflicts of interest.
83. Alara submitted that:
- (a) potential conflicts of interest were identified early in the Rights Issue process, specifically in relation to Ms Khimji and Mr Masani and
  - (b) in terms of processes implemented to manage those conflicts:
    - (i) directors with identified conflicts of interest were excluded from all discussions, deliberations, and decisions related to the Rights Issue that could be relevant to their conflict – in particular decisions concerning the terms of the sub-underwriting
    - (ii) decisions regarding ATI’s participation in the Rights Issue were made exclusively by non-conflicted directors, with all deliberations and resolutions clearly documented and
    - (iii) to ensure independence, a sub-committee of non-conflicted directors was formed to oversee matters involving ATI.
84. However, as supporting material, Alara only provided the previously mentioned set of board minutes giving final approval for the Rights Issue<sup>33</sup> and a ‘Conflict of Interest and Duty Policy’ dated in 2018.
85. While we do not reach a definitive conclusion that the material provided was insufficient to satisfy us that Alara took appropriate measures to manage potential conflicts of interest concerning certain members of its board, the limited material

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<sup>31</sup> Company Law Advisory Committee to the Standing Committee of Attorneys-General Second Interim Report, Canberra 1969

<sup>32</sup> See paragraph 75

<sup>33</sup> The board minutes included an explanation of Ms Khimji and Mr Masani’s conflicts of interest and showed that they did not attend the board meeting

raised concerns about the robustness and transparency of the processes implemented. In the circumstances, we would have expected Alara to provide a more comprehensive suite of supporting materials, including, for example, detailed board meeting minutes or papers demonstrating deliberation on the identification and management of conflicts and records of specific steps taken to mitigate those conflicts.

### Other issues

#### *Timing of the Rights Issue*

86. The Rights Issue was announced shortly after Alara released its notice of annual general meeting.<sup>34</sup> The meeting was scheduled for 29 November 2024, with the new shares initially proposed to be issued on 26 November 2024, enabling them to be voted at the meeting. In their application, the Applicants submitted that the timing of the Rights Issue appeared to be deliberately arranged to enable the new shares to participate in voting at Alara’s annual general meeting.
87. Given that Alara undertook not to issue or allot any new securities under the Rights Issue without the prior approval of the Panel (before ultimately withdrawing the Rights Issue altogether), and the annual general meeting occurred on 29 November 2024 without any new shares being issued, we do not consider this issue to have any bearing on our assessment of the matter.

#### *Applicants’ delay in submitting their application*

88. Although the application was submitted after the Rights Issue had closed, we do not consider this delay to have a significant bearing on our assessment of the matter for the following reasons:
- (a) there were several factors to support a finding that the Rights Issue was unacceptable (including its size and control effect)
  - (b) the Applicants were self-represented and indicated they had no prior experience with Takeovers Panel proceedings. The delay in submitting the application appeared neither intentional nor motivated by any ulterior purpose
  - (c) while the issue of securities under the Rights Issue was subject to the timetable in Appendix 7A of the ASX Listing Rules,<sup>35</sup> ASX had indicated to Alara that the dates for issuing the shares (including the shortfall shares) could be extended without requiring a waiver and
  - (d) Alara had undertaken not to issue or allot any new securities under the Rights Issue without the prior approval of the Panel (see Annexure A).

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<sup>34</sup> The resolutions proposed at the Alara annual general meeting were (1) adoption of the 2024 Remuneration Report (we note Alara did not receive a ‘first strike’ at its previous annual general meeting), (2) approval of an additional 10% placement capacity, and (3) re-election of a director

<sup>35</sup> Including that the entitlement shares must be issued within 5 business days of the closing date (i.e. by no later than 26 November 2024) and that the underwritten shortfall shares must be issued within 15 business days of the closing date (i.e. by no later than 10 December 2024)

## DECISION

### Declaration

89. It appears to us that the circumstances are unacceptable circumstances:
- (a) having regard to the effect that we are satisfied they have had on:
    - (i) the potential control of Alara or
    - (ii) the proposed acquisition by a person of a substantial interest in Alara
  - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602
  - (c) in the further alternative, because they constituted a contravention of a provision of Chapter 6C.
90. Accordingly, we made the declaration set out in Annexure B and consider that it is not against the public interest to do so. We had regard to the matters in section 657A(3).

### Proposed undertaking

91. As noted, although Alara withdrew the Rights Issue, it had announced to ASX on 11 December 2024 that it *“is engaged with ATI to endeavour to reach agreement for it to act as underwriter for a new rights issue to replace the Rights Issue”* (**Replacement Rights Issue**).
92. Alara subsequently offered to give an undertaking that it would not conduct an alternative entitlement offer within three months of the date of the undertaking unless:
- (a) the alternative entitlement offer is offered under a new prospectus lodged with ASIC under section 718
  - (b) the alternative entitlement offer seeks to raise the same quantum of funds as the original Rights Issue and is fully underwritten by ATI
  - (c) subject to obtaining relevant foreign securities law advice, the alternative entitlement offer is extended into Oman, India, China, the United Arab Emirates, and Saudi Arabia, and, to the extent it is not reasonable for Alara to extend the offer into one or more of these jurisdictions, Alara will offer shareholders resident in such jurisdictions the opportunity to acquire what would have been their pro-rata entitlement had they been eligible shareholders before any shortfall securities are acquired by ATI
  - (d) the allocation policy in respect of the shortfall securities provides that any Alara shareholder who applies for shortfall securities will be issued such securities in priority to ATI
  - (e) the alternative entitlement offer does not include an offer of free attaching options and
  - (f) the issue price for securities under the alternative entitlement offer is determined based on market conditions at the time the offer is announced.

## Takeovers Panel

### Reasons – Alara Resources Limited [2025] ATP 1

93. Alara submitted “*that the potential unacceptable circumstances in connection with the Rights Issue may be effectively resolved in the public interest through the undertakings proposed*”. We did not agree. While the Panel is generally willing to consider undertakings to resolve a matter<sup>36</sup> and the undertakings referred to in paragraphs 92(c), (d) and (e) above were helpful, Alara’s proposed undertaking was not acceptable, including because it did not adequately address our concerns in relation to Alara’s need for funds,<sup>37</sup> the sub-underwriting arrangements,<sup>38</sup> disclosure to Alara shareholders and the management of conflicts of interest.
94. Although Alara withdrew the Rights Issue, we considered in this instance that there remained a public interest in making a declaration of unacceptable circumstances, including the maintenance of standards set by statutes,<sup>39</sup> the signal that our decision may send the market and the wider investing community<sup>40</sup> and matters relevant to the market, corporate behaviour and the interests of stakeholders.<sup>41</sup>

### Orders

#### *Referral to ASIC and orders in relation to future rights issues*

95. We were concerned that the issues identified with the withdrawn Rights Issue might not be adequately addressed in the Replacement Rights Issue, particularly since Alara’s proposed undertaking did not address all of our concerns. We considered several options, including referring the matter to ASIC under regulation 18 of the ASIC Regulations for ASIC to consider whether to make an application to the Panel in relation to any future rights issue by Alara (including the Replacement Rights Issue). Ultimately, we decided not to (1) refer this matter to ASIC under regulation 18 of the ASIC Regulations or (2) otherwise make orders in relation to the Replacement Rights Issue or any other future rights issue, including because:
- (a) a new application can be made by any person whose interests are affected in response to a future capital raising by Alara once the details of such a capital raising have been disclosed and
  - (b) we expect that Alara should have regard to this decision in designing any rights issue proposed by Alara in the future, and note that:
    - (i) Alara submitted “*it will take all reasonable steps to mitigate the control impact of any future rights issue*” and accordingly
    - (ii) we will have significant concerns if any such future rights issue does not comply with the Panel’s guidance in Guidance Note 17 and Chapter 6D.

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<sup>36</sup> Guideline 8(b) of the Procedural Guidelines

<sup>37</sup> As set out above, it was a condition of Alara’s proposed alternative entitlement offer that it would seek to raise the same quantum of funds as the original Rights Issue

<sup>38</sup> As set out above, it was a condition of Alara’s proposed alternative entitlement offer that it would be fully underwritten by ATI

<sup>39</sup> *Attorney-General of the Commonwealth v Alinta Ltd & Ors* [2008] HCA 2 at [167] per Crennan and Kieffel JJ

<sup>40</sup> Guidance Note 1: Unacceptable Circumstances at [14]

<sup>41</sup> *Attorney-General of the Commonwealth v Alinta Ltd & Ors* [2008] HCA 2 at [168] per Crennan and Kieffel JJ; *The President’s Club Limited* 02 [2016] ATP 1 at [203]

## Takeovers Panel

### Reasons – Alara Resources Limited [2025] ATP 1

#### *Information about ATI's substantial holding*

96. As noted above, in our proposed orders to the parties, we included an order that ATI must provide to Alara and the ASX a substantial holder notice disclosing all the information required by an ASIC Form 603 in respect of ATI and its associates. This was no longer required after ATI subsequently gave to Alara a notice of initial substantial holder and two notices of change of interests of substantial holder. However, the more than four-year delay by ATI in disclosing its substantial holding was a contributing factor in our consideration of this matter (see paragraphs 77 to 81).

#### *Costs*

97. In this case, we consider the circumstances were clearly unacceptable, and it would be unfair for the Applicants to bear the burden of fair and reasonable costs incurred by them in connection with the proceedings. In addition, we consider that Alara delayed proceedings in providing a very late submission in response to our initial brief (see paragraphs 23 and 24),<sup>42</sup> further inconveniencing the Applicants. Accordingly, we made the costs order set out in Annexure C in favour of the Applicants, covering their application fee.<sup>43</sup>

**Yasmin Allen AM**

**President of the sitting Panel**

**Decision dated 13 January 2025**

**Reasons given to parties 13 February 2025**

**Reasons published 19 February 2025**

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<sup>42</sup> See Guidance Note 4: Remedies General at [29]

<sup>43</sup> In response to our supplementary brief on this proposed order, the Applicants did not identify any other fair and reasonable costs incurred in connection with these proceedings that should be included in our costs order

## Takeovers Panel

Reasons - Alara Resources Limited  
[2025] ATP 1

### Advisers

Party	Advisers
Mr Kent Bedford, Mr Steven Dahlin, Mr Sean Reeves and Mr Jason Prichard	-
Alara Resources Limited	Gilbert + Tobin (from on or about 9 December 2024)



**Australian Government**

**Takeovers Panel**

**Annexure A**

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

**ALARA RESOURCES LIMITED**

Alara Resources Limited undertakes to the Panel to:

1. not issue or allot any new securities under the rights issue announced by Alara Resources Limited on 4 November 2024 without the prior approval of the Panel and
2. hold any money received by Alara Resources Limited as subscriptions for new securities under the rights issue:
  - (a) separately from all other Alara Resources Limited funds (other than monies received from Alara Resources Limited's directors into an Omani bank account); and
  - (b) on trust for the subscribers.

This undertaking has effect until the earliest of:

1. further order of the Acting President or the Panel
2. the determination of the proceedings and
3. 2 months from the date of this undertaking.

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**Signed by Stephen Gethin, Director  
Alara Resources Limited  
Dated 22 November 2024**





**Australian Government**

**Takeovers Panel**

**Annexure B**

**CORPORATIONS ACT  
SECTION 657A**

**DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

**ALARA RESOURCES LIMITED**

**CIRCUMSTANCES**

1. Alara Resources Limited (**Alara**) is an ASX listed company.
2. Al Tasnim Infrastructure LLC (**ATI**) holds 13.88% of Alara.
3. Al Hadeetha Resources LLC (**AHRL**) is a joint venture company 51% owned by Alara.<sup>1</sup> Al Hadeetha Investment Services LLC (**AHIS**) holds 30% of AHRL directly and 4.39% of Alara. ATI holds 19% of AHRL directly.
4. Approximately 51.36% of Alara shares are held by shareholders with a registered address outside of Australia and New Zealand (**Ineligible Shareholders**).
5. On 4 November 2024, Alara announced its intention to undertake an underwritten renounceable 5 for 8 rights issue at an issue price of \$0.034 per share<sup>2</sup> to raise up to approximately \$15.3 million (**Offer**). It was intended that the Offer would be fully underwritten by Mahe Capital Pty Limited (**Mahe**) and sub-underwritten by ATI. It was also intended that for every 2 new shares subscribed for under the Offer, shareholders would receive 1 free attaching option with an exercise price of \$0.05 and a term of 2 years.
6. According to the prospectus issued in relation to the Offer dated 1 November 2024 (**Offer Prospectus**):
  - (a) The new shares to be issued under the Offer would constitute 38.46% of Alara's share capital following the Offer.
  - (b) Alara intended to use the funds raised under the Offer (1) to install two interim replacement tailings filter presses and a permanent tailings filter press at the Wash-hi Majaza copper-gold mine in Oman (owned by AHRL), (2) to make certain "*deferred vendor payments*", (3) to partially repay a loan owing from Alara

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<sup>1</sup> Indirectly through Alara Oman Operations Pty Limited, a wholly owned subsidiary of Alara

<sup>2</sup> Representing a discount of 11% to the 30-day VWAP of Alara's shares and a 30.6% discount to the last closing price

## Takeovers Panel

### Reasons – Alara Resources Limited [2025] ATP 1

to Trafigura Pte Ltd, (4) to undertake exploration at three of Alara’s exploration projects, and (5) as working capital.

- (c) Shareholders could apply for additional shortfall under the Offer and Mahe had agreed to use best efforts to place shortfall to persons other than ATI. However, any shortfall would be first allocated to ATI so that it would obtain voting power of 19.9%.
  - (d) Given “*the small number of Ineligible Shareholders and the cost of complying with applicable regulations outside Australia and New Zealand*”, Alara decided that it would be unreasonable to extend the Offer to Ineligible Shareholders and appointed Mahe as nominee to arrange for the sale of the Ineligible Shareholders’ entitlements.
  - (e) ATI stood to obtain voting power in Alara of up to a maximum of 45.31% following completion of the Offer, assuming that only AHIS (which had agreed to subscribe for shortfall shares equivalent to its entitlement had it held a registered address in Australia or New Zealand) and ATI subscribed for shares.
7. It was not disclosed in the Offer Prospectus (1) that one of Alara’s non-executive directors, Ms Devaki Khimji, is the Managing Director of ATI<sup>3</sup> and, as of 31 January 2022, holds a 34% shareholding in ATI<sup>4</sup>, (2) that Ms Khimji’s alternate director, Mr Farrokh Jimmy Masani, is the Chief Operating Officer of ATI or (3) how Alara had managed and was proposing to manage conflicts arising from ATI sub-underwriting the Offer.
8. On 19 November 2024, Alara released a Supplementary Prospectus which stated that Mr Masani had advised Alara that he would take up his entitlement under the Offer<sup>5</sup> and had agreed to sub-underwrite the Offer for a further 1,150,000 new shares (comprising approximately 0.1% of Alara’s post-Offer share capital). The Supplementary Prospectus also stated that as a result of Mr Masani’s sub-underwriting commitment, ATI now stood to obtain a maximum voting power in Alara of 44.175% (if new shares were only issued to ATI, AHIS and Mr Masani).
9. Also on 19 November 2024, the Offer closed with a significant shortfall, and it was expected that ATI would obtain voting power of 41.8% of Alara pursuant to its sub-underwriting arrangements.
10. On 11 December 2024 (after the Panel decided to conduct proceedings), Alara announced that it had determined to withdraw the Offer “*in the context of the termination of the Underwriting Agreement and the agreement under which Al Tasnim*

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<sup>3</sup> The Offer Prospectus disclosed that Ms Khimji was ATI’s nominee director on the Alara board and that Mr Masani is an alternative director for Ms Khimji

<sup>4</sup> According to Ms Khimji’s Appendix 3X – Initial Director’s Interest Notice dated 31 January 2022

<sup>5</sup> It was noted that having changed his address on Alara’s register to an address in Australia since the Offer Prospectus was lodged, Mr Masani was an eligible shareholder on the record date

## Takeovers Panel

### Reasons – Alara Resources Limited [2025] ATP 1

*Infrastructure LLC (ATI) agreed to fully sub-underwrite the issue.”. The announcement also stated that, “Alara is engaged with ATI to endeavour to reach agreement for it to act as underwriter for a new rights issue to replace the [Offer]”.*

11. On 24 December 2024,<sup>6</sup> ATI gave to Alara a notice of initial substantial holder and two notices of change of interests of substantial holder, which disclosed (among other things) that:
  - (a) ATI became a substantial holder on 25 November 2020 with a 5.26% voting power in Alara
  - (b) ATI’s voting power in Alara increased to 10% on 2 March 2021 and reached 14.13% on 26 April 2021 and
  - (c) certain additional persons hold a substantial holding in Alara by virtue of holding voting interests above 20% in ATI.
12. The Panel considers that, in the circumstances:
  - (a) Alara did not provide sufficient material to satisfy the Panel that:
    - (i) there was a clear need for all of the funds sought to be raised under the Offer
    - (ii) it properly explored other fundraising alternatives or
    - (iii) it properly sought out alternatives to ATI sub-underwriting the Offer.
  - (b) The Offer Prospectus did not adequately disclose (1) Alara’s need for funds, (2) the financial position of Alara and AHRL, and (3) the matters referred to in paragraph 7. In addition, there was a material error in Alara’s pro forma statement of financial position disclosed in the Offer Prospectus.
  - (c) Alara did not take sufficient steps to mitigate the potential control effect of the Offer.
13. In addition, the Panel considered that the delay in ATI disclosing its substantial holding contravened section 671B of the *Corporations Act 2001* (Cth) (**Act**).

#### **EFFECT**

14. As a result of the foregoing, the potential acquisition of control over voting shares in Alara would not have taken place in an efficient, competitive and informed market and all Alara shareholders would not have had a reasonable and equal opportunity to participate in any benefits accruing to ATI under the Offer.

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<sup>6</sup> The notices were released to Alara’s ASX market announcements platform on 27 December 2024

## Takeovers Panel

### Reasons – Alara Resources Limited [2025] ATP 1

15. It also appears to the Panel that the holders of shares in Alara did not know the identity of persons who had acquired a substantial interest in Alara.

#### CONCLUSION

16. It appears to the Panel that the circumstances are unacceptable circumstances:
- (a) having regard to the effect that the Panel is satisfied they have had on:
    - (i) the potential control of Alara or
    - (ii) the proposed acquisition by a person of a substantial interest in Alara
  - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the Act
  - (c) in the further alternative, because they constituted a contravention of a provision of Chapter 6C of the Act.
17. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3) of the Act.

#### DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Alara.

**Allan Bulman**  
**Acting General Counsel**  
**with authority of Yasmin Allen AM**  
**President of the sitting Panel**  
**Dated 13 January 2025**



**Australian Government**

**Takeovers Panel**

**Annexure C**  
**CORPORATIONS ACT**  
**SECTION 657D**  
**ORDER**

**ALARA RESOURCES LIMITED**

The Panel made a declaration of unacceptable circumstances on 13 January 2025.

**THE PANEL ORDERS**

1. By no later than 15 business days from the date of this order, Alara Resources Limited must pay \$2,400.00 excluding GST to an account nominated by the Applicants, representing the fair and reasonable costs incurred by the Applicants in connection with these proceedings.

Definitions

2. In this order the following terms apply:

**Applicants**

Mr Kent Bedford, Mr Steven Dahlin, Mr Sean Reeves and Mr Jason Prichard

**Allan Bulman**  
**Acting General Counsel**  
**with authority of Yasmin Allen AM**  
**President of the sitting Panel**  
**Dated 13 January 2025**