

In the matter of Consolidated Minerals Limited**[2007] ATP 20****Catchwords:**

deadline statements, 7 August letter, allegations of impropriety or improper motive, ambiguous statements, analyst presentation, BDO Report, conditional equity commitments, corrective statement, decline to commence proceedings, disclosure in letter to shareholders, disclosure of valuation methodology, efficient market, "holding letter", intentions of substantial holder, hearsay, last and final statements, Long Term Share Plan, market sensitive statements to media rather than via ASX, material omission of information; media canvassing undertaking, motives of directors, most recent share price, NTA valuation, post-merger valuation, publication of valuation, reliance document, reports on ASX, qualified statements, share entitlements of managing director; Snowden Report, statements of intention to revise or vary an offer, "supportive of its initiative", supporting valuation, valuation using quoted market prices;

Corporations Act 2001 (Cth) sections 631, 657A, 657D and 657E

[Normandy 01 \[2001\] ATP 27, General Property Trust \[2004\] ATP 30](#)

BDO Consultants (WA) Pty Ltd, Consolidated Minerals Limited, DCM DECOMetal, Pallinghurst Resources Australia Limited, Palmary Enterprises Ltd, Snowden Mining Industry Consultants Pty Ltd, Territory Resources Limited

These are the Panel's reasons for making a declaration of unacceptable circumstances in relation to the affairs of Consolidated Minerals. The circumstances relate to statements made by Territory Resources, to the media and in letters to Consolidated Minerals shareholders, concerning its proposed takeover bid for Consolidated Minerals and the existing takeover bid by Pallinghurst Resources for Consolidated Minerals. The Panel ordered Territory Resources to make correcting statements.

SUMMARY

1. These reasons relate to an application (the **Application**) to the Panel from Pallinghurst Resources Australia Limited (**Pallinghurst**) on 13 August 2007 in relation to the affairs of Consolidated Minerals Limited (**Consolidated Minerals**).
2. The Panel made a declaration of unacceptable circumstances in relation to the affairs of Consolidated Minerals. Pallinghurst had made a cash offer for all Consolidated Minerals shares (**Pallinghurst Offer**). Territory Resources Limited (**Territory**) had announced that it intended to make a takeover bid for Consolidated Minerals (**Proposed Territory Offer**), but had not lodged a bidder's statement at the time of the Panel's decision.
3. The Panel considered that various statements made by Territory, or its Chairman, including in relation to the value of Territory shares, the value of the Proposed Territory Offer, share entitlements of the managing director of Consolidated Minerals and the support of a substantial holder, were likely to adversely affect the efficient competitive and informed market for Consolidated Minerals shares. The Panel determined not to commence proceedings in respect of two elements of the application, see below under "Statements about timing" and "Statements about consideration".

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

4. The Panel declared the following circumstances to be unacceptable circumstances (**Circumstances**).
 - (a) Territory's failure to clarify the meaning of its statements to the media that Palmary Enterprises Ltd (or the controllers of Palmary) (**Palmary**), as a 13% shareholder in Consolidated Minerals, is "*supportive of its [Territory's] initiative*";
 - (b) the Territory Chairman's representation in the analyst presentation at Kalgoorlie on 7 August 2007 of Palmary's support for the Proposed Territory Offer; and
 - (c) statements by the Territory Chairman in a media conference and an analyst presentation at Kalgoorlie on 7 August 2007 relating to share entitlements of the Consolidated Minerals managing director under the Consolidated Minerals Managing Director's Long Term Share Plan.
 - (d) Territory's use of the 16 July 2007 closing market price of Territory shares when representing the value of the Proposed Territory Offer in the letter Territory sent to Consolidated Minerals shareholders dated 7 August (**7 August letter**), without also stating the value of the Proposed Territory Offer by reference to the most recently available Territory share price at 7 August;
 - (e) the use of the valuation of \$0.98 to \$1.08 per Territory share from the 31 July 2007 valuation report from BDO Consultants (WA) Pty Ltd (**BDO Report** and **BDO** respectively), in the 7 August letter without clearly disclosing the methodology that BDO had used to derive the valuation (being a "Quoted Market Price Basis" methodology), and the other lower values which BDO had derived in its consideration of the value of Territory shares;
 - (f) the reference in the 7 August letter to the 26 July 2007 report by Snowden Mining Industry Consultants Pty Ltd (**Snowden Report** and **Snowden** respectively) as "supporting" the \$0.98 to \$1.08 BDO valuation referred to above, when it did not provide that support; and
 - (g) the reference in the 7 August letter to the Snowden Report without clearly setting out the use BDO had made of the value derived from the Snowden Report, and disclosing the value per Territory share derived from the Snowden Report, which was lower than the \$0.98 to \$1.08 BDO valuation referred to in the 7 August letter.
5. The Panel ordered that Territory:
 - (a) make a corrective statement on ASX Limited (**ASX**) before 10.00 a.m. AEST on Wednesday 29 August 2007 in relation to circumstances (a) to (c) above;
 - (b) make further corrective statements in Territory's bidder's statement in relation to circumstances (a) to (g) above.
6. Territory complied with the Panel's orders.

7. The Panel's reasons for its decision are set out below.

THE PANEL & PROCESS

8. The President of the Panel appointed John Keeves, Alice McCleary and Simon Withers as the sitting Panel (the **Panel**) for the proceedings (the **Proceedings**) arising from the Application.
9. The Panel adopted the Panel's published procedural rules for the purposes of the Proceedings.
10. The Panel consented to the parties being legally represented by their commercial lawyers in the Proceedings.

APPLICATION

Background

Pallinghurst Offer

11. On 27 July 2007, Pallinghurst made the all-cash off-market Pallinghurst Offer at \$3.30 for all the shares in Consolidated Minerals (with a minimum acceptance condition of 50.1%).
12. Prior to making its takeover bid for Consolidated Minerals Pallinghurst had agreed on 22 February 2007 to acquire all of the shares in Consolidated Minerals by way of a scheme of arrangement¹. The cash amount proposed under the scheme was increased on 25 June 2007. On 20 July 2007, Pallinghurst announced that it intended to make the Pallinghurst Offer, and Consolidated Minerals subsequently announced that the scheme meetings would not proceed.

Proposed Territory Offer

13. On 17 July 2007, Territory announced its intention to make the Proposed Territory Offer at a price of \$2.00 plus 1.5 Territory shares per Consolidated Minerals share (with a proposed minimum acceptance condition of 90%), but it had not lodged a bidder's statement at the time of the Panel's decision. On 28 June 2007, Territory had announced a conditional, indicative proposal to make a takeover bid for Consolidated Minerals at a price of \$1.50 plus 1.5 Territory shares per Consolidated Minerals share. Territory made its takeover announcement following a number of further announcements by Territory and Consolidated Minerals and being granted access to a due diligence review of aspects of Consolidated Minerals.

Palmary's position

14. On 30 July 2007, Palmary announced that on 27 July 2007 it had become a substantial holder of CSM with voting power of 12.2%.

¹ As announced to the market on 23 February 2007, the intention was to create a new ASX listed entity by way of three schemes of arrangement. The new vehicle would be owned 60% by Pallinghurst and AMCI, and 40% by existing CSM shareholders. CSM shareholders were to receive \$1.38 in cash per share and 2 shares in the new company for every 5 CSM shares held.

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

15. Between 30 July 2007 and 15 August 2007, in response to media speculation that the Palmary stake would block the Proposed Territory Offer, Territory made a number of statements to the media concerning the "support" of Palmary for the Territory "initiative". Territory was generally reported to have said Palmary / Privat "*is supportive of the Territory initiative.*"² Territory's statements were widely reported in the media.
16. On 15 August 2007, Territory made an announcement to ASX that it had met with representatives of Palmary:

"Territory wishes to clarify statements reported in today's media.

Michael Kiernan has met with representatives of Privat and been informed that they are supportive of the Territory initiative. As with all shareholders of Consolidated Minerals Limited, Privat will have the right to consider the takeover offer announced by Territory in full once Territory's Bidder's Statement is sent to all shareholders of Consolidated Minerals Limited."

Territory's valuation statements

17. On 3 August 2007, Territory announced to ASX that it had received an updated independent valuation report from BDO supported by an updated technical report from Snowden in relation to Territory. Territory stated:

The BDO report implies Territory's current offer for Consolidated Minerals (ASX:CSM) is worth between \$3.47 and \$3.62 per share.
18. The reports themselves were not released to ASX but the announcement provided links to the reports on Territory's website.
19. On 7 August 2007, Territory conducted an analyst briefing in relation to the Proposed Territory Offer. In addition, Territory also conducted a press conference on that day. Pallinghurst provided a copy of the transcript of the press conference with its application and a transcript of the analyst briefing with its submissions. The Territory Chairman made a number of statements at the analyst briefing and the media conference about the entitlement of the managing director of Consolidated Minerals to shares under the Consolidated Minerals Managing Director's Long Term Share Plan (**MDLTSP**).
20. On 7 August 2007, Territory released to ASX the 7 August Letter it was sending to Consolidated Minerals shareholders concerning the value of the Proposed Territory Offer.

Declaration and orders sought in the Application

21. Pallinghurst's application related to:
 - (a) Statements made by Territory about revised consideration under the Proposed Territory Offer which Pallinghurst asserted to be 'last and final' statements under ASIC RG 25. **The Panel determined not to commence proceedings in relation to this aspect of the Application.**

² In at least one report Territory's chairman was quoted as saying: "*They are very supportive of our initiative*".

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

- (b) Other statements made by Territory about consideration under the Proposed Territory Offer which Pallinghurst asserted to be misleading and confusing. **The Panel determined not to commence proceedings in relation to this aspect of the Application.**
- (c) Statements made by, or attributed to Territory about the position of Palmary Enterprises Limited (a substantial shareholder in CSM) in respect of the Proposed Territory Offer, which Pallinghurst asserted to be misleading. **The Panel decided to commence proceedings in relation to this issue.**
- (d) Statements made by Territory about the implied value of the Proposed Territory Offer and value of Territory shares in correspondence to CSM shareholders dated 7 August 2007, which Pallinghurst asserted to be misleading. **The Panel decided to commence proceedings in relation to this issue.**
- (e) Statements made by, or attributed to Territory about the long term incentive arrangements of the CSM managing director, which Pallinghurst asserted to be misleading. **The Panel decided to commence proceedings in relation to this aspect of the Application.**

Undertaking / Interim orders sought

- 22. Subsequent to the Application, Pallinghurst sought an undertaking from Territory in that Territory, and specifically Territory's Chairman, would not make any statement to the media in relation to matters that were the subject of the Application until the Panel had determined the matter (without restricting Territory's right to comply with its continuous disclosure obligations via formal announcements to ASX). In the alternative, Pallinghurst sought interim orders under section 657E³ to the effect of the undertaking sought.
- 23. Territory advised that it, and its Chairman, would make no statements to the media until after Territory's Chairman returned to Australia on 22 August 2007, and after that would comply, like any other party, with the undertaking it gave to the Panel in relation to media canvassing.
- 24. The Panel accepted Territory's response, and advised the parties generally that it would be concerned if a party took a narrow approach to the media canvassing undertaking.

Declaration and orders sought

- 25. Pallinghurst sought a declaration of unacceptable circumstances under either or both sections 657A(2)(a) and (b).
- 26. Pallinghurst sought orders under section 657D that:
 - (a) as soon as practical after the Panel's final determination of the application, Territory make an ASX announcement (or, if relevant, issue a bidder's statement or supplementary bidder's statement) which prominently and clearly states either:

³ Unless otherwise expressed, all statutory references are to the *Corporations Act (Cth)* 2001.

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

- (i) each of the following matters:
 - (A) it will vary the consideration offered or to be offered under the Proposed Territory Offer; and
 - (B) the nature of the variation in the consideration; and
 - (C) when the variation in the consideration will take effect; or
 - (ii) the consideration offered or to be offered under the Proposed Territory Offer will not be varied, (**Statement of Intention**);
- (b) Territory not do anything inconsistent with the Statement of Intention;
 - (c) as soon as practical after the Panel's final determination of the application, Territory make an announcement to ASX (or, if relevant, issue a bidder's statement or supplementary bidder's statement) which corrects the other misleading statements and omissions referred to in the Pallinghurst Application, in terms approved by the Panel, and Territory send a copy of that announcement, bidder's statement or supplementary bidder's statement to all Consolidated Minerals shareholders; and
 - (d) such other orders as the Panel considers appropriate.

DISCUSSION

Statements about timing of revised consideration under Proposed Territory Offer

- 27. Pallinghurst submitted that from 28 June 2007, when Territory first announced the possibility of making a bid for Consolidated Minerals, to the date of the Application on 15 August 2007, Territory had made a number of statements to the media, and a number of statements were attributed to it in the media (which Territory had not denied or corrected). The statements of which Pallinghurst complained included statements that Territory would announce a decision about a potential variation of the consideration to be offered under the Proposed Territory Offer by various specified dates (**Deadline Statements**). Pallinghurst submitted that on each occasion, Territory had failed to announce such a decision.
- 28. The Panel considered that the Deadline Statements did not amount to a firm commitment but rather were statements of Territory's intentions or aspirations.
- 29. The Panel accepts that Pallinghurst may have felt frustrated that Consolidated Minerals shareholders may have been postponing decisions on whether or not to accept the Pallinghurst Offer. However, it considered that the Deadline Statements were appropriately qualified as to timing and did not give rise to unacceptable circumstances because of any uncertainty for Consolidated Minerals shareholders. The Panel considered that the Deadline Statements were made within the time frame that was considered reasonable by the legislature for a person to finalise and make a takeover bid i.e. 2 months as specified in section 631. On that basis, the Panel declined to commence proceedings on this issue.

Takeovers Panel

Reasons for Decision - Consolidated Minerals Limited

30. The Panel considered it had sufficient information to make this decision based on Pallinghurst's submissions in the Application.

Statements about Proposed Territory Offer consideration

31. Pallinghurst submitted that since announcing the Proposed Territory Offer on 17 July 2007, Territory had made a number of statements to the media in relation to the substance of possible variations to the consideration to be offered under the Proposed Territory Offer.
32. It appears to the Panel that the Chairman of Territory had made numerous statements to the media fostering the proposition that Territory was reviewing its offer and the consideration offered. However, few if any, of the statements by the Territory Chairman were made by announcement to ASX. Therefore, there was a real risk that not all Consolidated Minerals shareholders were made aware of the Territory Chairman's statements and the information in them.
33. However:
- (a) in the absence of any firm evidence that Territory was not actually seeking to refinance or vary the Proposed Territory Offer to make it more attractive than the all cash Pallinghurst Offer; and
 - (b) given that the statements were very largely made with a caution that the outcome was not certain,

the Panel did not consider that there was a real possibility that it would find that the statements gave rise to unacceptable circumstances, and so declined to commence proceedings on this issue.

34. The Panel considered it had sufficient information to make this decision based on Pallinghurst's submissions in the Application.

Statements about position of substantial shareholder

35. Following the substantial holding notice from Palmary on 30 July 2007, Territory, and its Chairman, made a number of statements by way of announcements to ASX and in media calls or conferences. One common statement was that Palmary / Privat "*is supportive of the Territory initiative.*" Territory first started making these statements on 31 July 2007, the day after Palmary announced its substantial holding in Consolidated Minerals.
36. Territory submitted that its statements were made in response to media speculation (that Territory described as "intense") that the Palmary stake had been acquired to block the Proposed Territory Offer. Territory also submitted that the managing director of Consolidated Minerals had, at that time, made a statement to the media that the Palmary stake was acquired to thwart the Proposed Territory Offer.

Territory's reporting of DECOMetal's statements

37. Territory submitted that until 13 August 2007 the only person with whom it had had direct communication concerning Palmary's views was DCM DECOMetal (a metal trader who did business with Palmary). Territory submitted that a

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

representative of DCM DECOMetal “*relayed a conversation she had had with a representative of Privat to the effect that Privat was supportive of Territory's initiative*”.

38. Territory submitted that it first spoke directly with Palmary on 13 August 2007.
39. The Territory Chairman met with Palmary on 13 August 2007, and conducted a number of media conferences or interviews subsequently. On 15 August 2007, Territory made its first announcement on ASX in relation to Palmary. It stated “*Territory wishes to clarify statements reported in today's media*.”

Michael Kiernan has met with representatives of Privat and been informed that they are supportive of the Territory initiative. As with all shareholders of Consolidated Minerals Limited, Privat will have the right to consider the takeover offer announced by Territory in full once Territory's Bidder's Statement is sent to all shareholders of Consolidated Minerals Limited.”
40. The initial statements to the media by Territory appear to have been clearly qualified as being second-hand i.e. that DCM DECOMetal had said to the Territory Chairman that Palmary had told DCM DECOMetal that Palmary was “*supportive of its initiative*”.
41. Territory submitted to the Panel that it had received only one communication from DCM DECOMetal as to Palmary being “*supportive of its [Territory's] initiative*” on 31 July 2007. Territory did not make it clear to the market, over the following two weeks, that Territory was still relying on the single report from DCM DECOMetal.
42. It appears that Territory and the Territory Chairman usually did refer to the fact that its statements about Palmary being “*supportive of its [Territory's] initiative*” were only reporting DCM DECOMetal's statement to Territory. However, a number of media reports appear not to have made the distinction carefully, and merely reported Palmary as supporting Territory's initiative or supporting Territory's bid, or alternatively as the Territory Chairman saying that Palmary was supportive of Territory's initiative or Territory's bid. Territory submitted that it did not consider it necessary to seek to correct them.

“*supportive of its initiative*”
43. There was some contention within the proceedings as to:
 - (a) what Consolidated Minerals shareholders should understand “*supportive of its [Territory's] initiative*” to mean; and
 - (b) whether Territory and the Territory Chairman had consistently referred only to Palmary being “*supportive of its [Territory's] initiative*” or whether Territory had, at times, stated that Palmary supported the Proposed Territory Offer and that Palmary would accept into the Proposed Territory Offer.
44. Territory submitted that “*supportive of its [Territory's] initiative*” could mean nothing other than that Palmary was supportive of Territory's announcement of a takeover bid.

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

45. Territory did not make clear in any of its statements to the media what it believed was meant by "*supportive of its [Territory's] initiative*", or whose interpretation that was.
46. The Panel considered that the expression "*supportive of its [Territory's] initiative*" was ambiguous and that Consolidated Minerals shareholders would be uncertain as to its meaning. The Panel considered that Territory's interpretation of the statement was not clear from media reports of the Territory Chairman's interviews, and was not an interpretation that a reasonable Consolidated Minerals shareholder would be likely to take.
47. On that basis it is likely that from 31 July 2007, when Territory made its first statement to the media that Palmary [Privat] was "*supportive of its [Territory's] initiative*" until 15 August 2007 when Territory made its clarifying announcement to ASX, the market and Consolidated Minerals shareholders were likely to have understood Territory and the Territory Chairman to have been saying that Palmary was supportive of the Proposed Territory Offer and that Palmary was likely to accept into the Proposed Territory Offer. Territory had announced that achieving the 90% minimum acceptance condition was important to its bid. Palmary therefore held the power to defeat the Proposed Territory Offer and statements about its intentions or views were clearly price sensitive, as Territory acknowledged in its submissions.
48. The Panel considered that where a person chooses to make statements concerning the position of a substantial holder that person should ensure that the statements are clear and unambiguous, and not open to widely different interpretation. For example, once Territory chose to make a public statement about Palmary, it would have been preferable if Territory had:
 - (a) made the statement on ASX⁴ rather than through media conferences. This would have ensured maximum exposure, not been subject to reporters' interpretation, and been observable for a longer period than daily media reports;
 - (b) clearly explained the source and basis of the statement;
 - (c) clearly explained what Territory understood was meant by "*supportive of its [Territory's] initiative*"; and
 - (d) expressed clearly any knowledge, or lack of knowledge, by Territory of Palmary's intentions as to accepting the Pallinghurst Offer or the Proposed Territory Offer.
49. The Panel considered that Territory's announcement to ASX on 15 August 2007 went a long way to ensuring Consolidated Minerals shareholders were not misled as to the level of Palmary's support for the Proposed Territory Offer. However, the Panel considers that:
 - (a) statements concerning the intentions of Palmary were price sensitive and material to the market in Consolidated Minerals shares; and

⁴ Which Territory eventually did, on 15 August 2007.

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

- (b) Territory's earlier statements i.e. from 31 July to 15 August 2007 misrepresented Palmary's intentions.

Accordingly, the Panel infers that the market in Consolidated Minerals shares was uninformed for the period from 31 July 2007 to 15 August 2007.

7 August statements concerning Palmary

50. At the analyst briefing and the media conference on 7 August 2007, the Territory Chairman made a series of statements concerning the position of Palmary that went beyond the statements that had been made to the media previously by the Territory Chairman. For example, the Territory Chairman said in the analysts briefing:

"They have indicated continually that they support our bid."

"I'm not sure whether the Ukrainians will go all the way, they play their cards pretty close to their chest, but certainly the Ukrainians, if you want to call it, are in our camp."

Later in the briefing he said:

"If I was a betting man, I think that they would be ...happier ... with us managing it, running it. What I've got to do is bring them into our camp. If they are not in our camp we will fail. I've got to explain to them if we fail it will fall I just know that the Ukrainians, they just don't like to put anything to risk.."

He also cast aspersions on the motives of members of the Consolidated Minerals board.

51. The Territory Chairman did not make similar statements of support by Palmary at the media conference, but did make similar statements that Palmary had not yet decided how to respond to either bid.
52. The Panel considered that the Territory Chairman appeared to have made firmer statements in the analyst presentation than was warranted by the information that Territory submitted to the Panel that it had on 7 August 2007 concerning Palmary's intentions. However, the Panel notes the cautionary statements that the Territory Chairman went on to make in both situations.

7 August Letter

53. The 7 August Letter from Territory to Consolidated Minerals shareholders did two things. It started off with a series of statements about the value of Territory shares, the value of the Proposed Territory Offer and the relative values of the Pallinghurst Offer and the Proposed Territory Offer. It then asked Consolidated Minerals shareholders to wait before deciding whether or not to accept either bid until they had received all information (including the bidder's statements and target's statements for both the Pallinghurst Offer and the Proposed Territory Offer).
54. Territory sent the 7 August Letter to Consolidated Minerals shareholders while it was reviewing the possibility of improving the consideration under the

Takeovers Panel

Reasons for Decision - Consolidated Minerals Limited

Proposed Territory Offer. The market was digesting the news of the substantial holding notice by Palmary, and the Pallinghurst Offer had been dispatched to Consolidated Minerals shareholders for almost a week.

55. The Panel had a number of concerns with the 7 August Letter.

16 July closing price

56. Territory started the 7 August Letter with a statement that the value of the Proposed Territory Offer when announced on 17 July 2007 was \$3.65 per Consolidated Minerals share, without stating its present value (based on the trading price of Territory shares as at the close of trade on the preceding day). In fact, based on the closing price of Territory shares on 6 August 2007 (\$0.89), the value of the Proposed Territory Offer would have been approximately \$3.34.
57. The Panel decided that if Territory wished to make a statement concerning the value of the Proposed Territory Offer it should have used the most recently available Territory share price⁵. While the Panel would not object to Territory also disclosing the value of the Proposed Territory Offer based on the closing price of Territory shares on 16 July 2007, it considered it unacceptable not to clearly draw Consolidated Minerals' shareholders' attention to the most recent price. In addition, if Territory wished to use a value based on another date for Territory's share price it should have clearly disclosed the reason for putting the other date forward. In this case, Territory was merely referring to the share price at the time of the announcement of the Proposed Territory Offer, so that price should have been given less prominence than the most recent price.

20 July closing price

58. In the 7 August Letter, Territory criticised the Consolidated Minerals board for recommending the Pallinghurst Offer on 20 July 2007 when the closing price of Consolidated Minerals shares on 20 July was \$3.46, \$0.16 above the Pallinghurst Offer.
59. The Panel considers it inappropriate for Territory to have made the comparison without making it clear that the price it was referring to was one which occurred after Consolidated Minerals had made its decision. If it wished to make a comparison it should have used the closing price of \$3.50 per Consolidated Minerals share on 19 July 2007, of which the Consolidated Minerals board would have been aware when it made its recommendation.
60. While reasons were given as to why the Pallinghurst Offer was considered superior to the Proposed Territory Offer, it would have been desirable for Consolidated Minerals to have explained to Consolidated Minerals shareholders in its announcement of 20 July 2007 why it considered accepting the Pallinghurst Offer at \$3.30 was appropriate when both the Proposed

⁵ See also the Panel's decisions in [Normandy 01 \[2001\] ATP 27](#) and [General Property Trust \[2004\] ATP 30](#)

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

Territory Offer and the Consolidated Minerals share price were higher than \$3.30⁶.

BDO Report

61. Territory submitted that it put forward the BDO “independent valuation report” as a response to statements by Consolidated Minerals that Territory characterised as attacking the value of Territory shares.
62. BDO valued a Territory share in a range from \$0.98 to \$1.08, based on a Quoted Market Price⁷ (QMP) methodology i.e. a volume weighted average of market prices from 27 July 2006 to 26 July 2007. It calculated that the NTA per Territory share was in a range from \$0.40 to \$0.94, with a preferred value of \$0.66, based on Snowden’s updated market values of Territory’s mineral assets. BDO made no adjustments to the valuation to take into account the NTA, explaining only that it “*preferred the quoted market price over net asset value, as we feel that it best reflects the value that is being offered to [Consolidated Minerals] shareholders.*” BDO did not mention either Territory’s future maintainable earnings or its future cash flows.
63. Territory gave a value of the Proposed Territory Offer (\$3.47 - \$3.62) based on the value of a Territory share given by BDO.
64. Territory did not disclose:
 - (a) BDO’s reliance on the QMP methodology;
 - (b) that BDO had used prices of Territory shares up to 26 July 2007 (subsequent to the announcement of the Proposed Territory Offer);
 - (c) that BDO had not considered the future maintainable earnings or discounted cash flows of Territory in valuing a Territory share;
 - (d) BDO’s preferred NTA value for a Territory share of \$0.66; or
 - (e) the value of Territory’s mineral assets that the Snowden Report provided.
65. Territory stated that the Snowden Report “supported” the BDO Report. It is difficult to see how the Snowden Report “supported” the BDO valuation.
66. The 7 August Letter stated that Territory had “released” copies of the BDO and Snowden Reports on its website. However, unlike Territory’s 3 August 2007 ASX announcement, Territory did not provide a link to either report in the 7 August Letter nor did it describe how Consolidated Minerals shareholders could obtain copies of the reports.

Equity commitments

67. Territory stated in the 7 August Letter that the BDO valuation was further reinforced by the fact of “*equity commitments from Noble Group, DCM DECOMetal and Lehman Brothers at \$1 per Territory share.*” (**Equity Commitments**). Territory did not advise Consolidated Minerals shareholders

⁶ The significance being that the Proposed Territory Offer comprised \$2.00 cash plus 1.5 Territory shares per CSM share.

⁷ Essentially a VWAP.

Takeovers Panel

Reasons for Decision - Consolidated Minerals Limited

that the Equity Commitments were conditional on the Proposed Territory Offer succeeding and that there was no commitment to subscribe for the shares during the bid or if the bid failed.

68. The 7 August Letter did not make it clear whether BDO's valuation of Territory shares was on a stand-alone entity basis or on a merged Territory/Consolidated Minerals entity basis.

Conclusions on 7 August Letter

69. The Panel did not accept Territory's submission that it was unable to attach the BDO and Snowden Reports to either the 3 August 2007 ASX announcement or the 7 August Letter when published on ASX due to internal ASX procedures regarding valuation reports. Territory's position does not accord with the Panel's understanding of ASX's approach to allowing companies to annex valuation reports relating to current control transactions, to letters and other documents published on ASX, in contrast to permitting companies to publish analyst reports on ASX.
70. Had the reports been published on ASX, rather than solely on Territory's website, the full content of the reports would have been drawn more effectively to the attention of market participants and Consolidated Minerals shareholders.
71. However, the Panel did not consider that Territory should have posted copies of both reports to Territory shareholders with the letter, or that by doing so it would have remedied the misleading description of those reports in the 7 August Letter.
72. The Panel accepts that the conditional nature of the Equity Commitments had been disclosed to Consolidated Minerals shareholders on 17 July 2007 when the Proposed Territory Offer was announced. The Panel also accepts that on the basis of the conditions of the Proposed Territory Offer, Consolidated Minerals shareholders would only ever receive shares of the merged entity, as would the equity investors.
73. However, the Panel considers that Territory should have:
 - (a) noted the conditional nature of the Equity Commitments;
 - (b) explained that the equity investors had committed to subscribe for shares in the merged entity and not in Territory as a stand-alone entity; and
 - (c) explained the relationship of the value of a merged entity share (for which the equity investors were willing to subscribe \$1.00) with the value of a Territory share prior to the Proposed Territory Offer succeeding, derived by BDO by other methods.
74. The Panel accepts that the 7 August Letter was a "holding letter" and that its primary purpose was to advise Consolidated Minerals shareholders to wait for all of the information in the bidder's statement and target's statement for each of the Pallinghurst Offer and Proposed Territory Offer. The Panel accepts that a "holding letter" may be shorter and not go into all the detail expected in a bidder's statement or target's statement.

Takeovers Panel

Reasons for Decision - Consolidated Minerals Limited

75. Territory submitted that the 7 August Letter was not a "reliance document". The Panel does not accept this. Any document published to shareholders must be capable of being relied upon. Communications prior to a bidder's statement or target's statement should maintain the same standards as any other statement in a takeover, even if they do not contain the detail required in formal bid documents.
76. In the absence of fair disclosure, the Panel considered that sending the 7 August Letter meant that the market for Consolidated Minerals shares was not efficient or informed.

Statements about long term incentive arrangements of Consolidated Minerals managing director

77. The Territory Chairman made a series of statements in a media conference and an analyst presentation at Kalgoorlie on 7 August 2007 relating to share entitlements of the managing director of Consolidated Minerals under the Consolidated Minerals Managing Director's Long Term Share Plan (**MDLTSP**).
78. The Panel was provided with transcripts of the Territory Chairman's statements. They indicated that the Territory Chairman had clearly stated that:
 - (a) the managing director of Consolidated Minerals would be likely to receive 3 million Consolidated Minerals shares under the MDLTSP if the Pallinghurst Offer was successful;
 - (b) this fact influenced both the managing director and the board of Consolidated Minerals in their recommendations to Consolidated Minerals shareholders; and
 - (c) Consolidated Minerals had hidden these facts from Territory and Consolidated Minerals shareholders.
79. The MDLTSP was approved at the Consolidated Minerals annual general meeting on 26 October 2006. The terms of the MDLTSP were set out in the notice of meeting, which was published on ASX. The maximum number of shares that may be issued under the MDLTSP is one million shares over the three year period of the MDLTSP.
80. The terms of the MDLTSP were not included in the booklet for the scheme of arrangement under which Pallinghurst and Consolidated Minerals had originally proposed to merge, and the Territory Chairman noted this in his statements, in part as evidence that the award had been hidden from Consolidated Minerals shareholders.
81. The Territory Chairman claimed that he based his statements on relevant sections in the Pallinghurst bidder's statement and that Territory took advice from legal and other advisors. The Pallinghurst bidder's statement refers to the share entitlements of the Consolidated Minerals managing director at paragraphs 2.6 and 6.8. (See Annexure C).
82. The Pallinghurst bidder's statement erroneously referred to the shares to which the Consolidated Minerals managing director might become entitled under the

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

heading **CSM Executive Long Term Incentive Plan (CSM ELTIP)** rather than under **Consolidated Minerals Managing Director's Long Term Share Plan (MDLTSP)**. Consolidated Minerals corrected this in the Consolidated Minerals target's statement in relation to the Pallinghurst Offer on 14 August 2007. However, this does not appear relevant to the view expressed by the Territory Chairman on 7 August 2007 that the Consolidated Minerals managing director would be entitled to 3 million Consolidated Minerals shares rather than one million over the three year period of the MDLTSP.

83. The Panel accepts the naming error in the Pallinghurst Offer bidder's statement, the failure to provide details of the MDLTSP in the scheme booklet and some abbreviation of description in the Pallinghurst Offer bidder's statement may have caused some confusion concerning the terms of the MDLTSP. However, if Territory had:
 - (a) compared the statements under 2.6 and 6.8 of the Pallinghurst Offer bidder's statement, or
 - (b) noted the fact that the Pallinghurst Offer bidder's statement stated that Consolidated Minerals shareholders had authorised the issue of up to one million shares, or
 - (c) gone back to the explanatory memorandum for the 2006 AGM resolutions, it would have been on notice that:
 - (d) the maximum number of shares under the plan was one million, not three million,
 - (e) the plan had been fully disclosed to and approved by Consolidated Minerals shareholders,
 - (f) the plan was not derived in connection with the Pallinghurst Offer, and
 - (g) under the MDLTSP Consolidated Minerals has a discretion to issue shares where, in its opinion, it would be unfair not to issue or acquire shares (as opposed to the entitlement being triggered by specific events, such as the Pallinghurst Offer).
84. The Territory Chairman used strong language in a public media conference and a well attended analyst briefing. He made serious allegations against the propriety and motives of the managing director and board of Consolidated Minerals.
85. The Panel accepted Territory's readiness to withdraw the allegations unreservedly once the facts were pointed out.
86. However the Panel reiterates that statements made concerning companies the subject of control transactions in all public forums, including more informal public environments such as the annual Diggers and Dealers conference in Kalgoorlie, need to be made with the appropriate degree of care and diligence that shareholders and the market have the right to expect. This is particularly important if, for example, improper motives are attributed to individuals involved in takeover activity.

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

BDO Report

87. Following the submissions in response to the Panel's Brief, the Panel requested further submissions from parties on the methodology in the BDO Report.
88. BDO described its report on the valuation of Territory shares as an "*independent valuation report setting out the value of a Territory share*". BDO made repeated references to its Independent Expert's Report of 12 April 2007 (in which BDO issued, as part of that report, an opinion on the value of a Territory share as at that date), creating the impression that its report was an update to, and therefore formed part of, its Independent Expert's Report. As previously noted, BDO used a QMP as the primary methodology for deriving the valuation of Territory shares and Territory cited that value in the 7 August Letter. In its report BDO also referred to the Net Asset Valuation of Territory shares based on the book value of Territory's assets updated for the values from the Snowden Report for Territory's mineral assets, but said that it preferred the QMP value⁸. BDO also referred to the Equity Commitments as evidence of the value of Territory shares to support its QMP valuation range.
89. The Panel sought responses on a number of issues, including:
 - (a) the level of analysis which the market expects in a valuation put forward in a takeover context as an Independent Expert Report;
 - (b) whether the QMP was an adequate valuation method;
 - (c) whether BDO had disclosed adequately in its report:
 - (i) the fact that its valuation was based primarily on the QMP; and
 - (ii) its methodology in arriving at the \$0.98 - \$1.08 range.
90. Although the Panel concluded that, on balance, the circumstances of the BDO Report did not warrant a declaration of unacceptable circumstances, the Panel had some concerns about the methodologies used and the level of disclosure in the BDO Report.
91. The Panel considered that there is a common set of expectations in the Australian market about what the term "Independent Expert's Report" means and the level of analysis that will be carried out in an Independent Expert's Report to determine the value of a company or its securities. The Panel considered that the BDO Report was likely to be perceived by Consolidated Minerals shareholders to be an Independent Expert's Report. Accordingly, a valuation of Territory shares based effectively solely on a QMP did not meet those expectations.
92. In particular, market participants generally expect an Independent Expert's Report on the value of shares to be based on break-up values or capitalisation of either future maintainable earnings (FME) or discounted future cash flows (DCF) methods. If experts are using other methodologies as the primary or sole basis for a share valuation, care should be taken to properly explain the

⁸ BDO did state at section 7.4 of the BDO Report that it "*preferred the quoted market price over the net asset value as we feel it best reflects the value that is being offered to CSM shareholders.*"

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

significance of those methodologies in the context of the report and the reasons for using them. This applies equally to any summary provided to shareholders by the party commissioning the report, and to the description of the report itself.

93. The Panel considered that both BDO and Territory should have clearly explained, in a prominent place, that the BDO Report was not an Independent Expert's Report (if it was not), and was primarily based on the QMP and not on "fundamental" valuation methods. The Panel considered that BDO should have clearly stated the limitations of the QMP methodology⁹ and the reasons why it considered other "fundamental" valuation methodologies were not appropriate.¹⁰
94. The Panel also considered that BDO should have prominently and clearly stated that the Net Asset Valuation (using Snowden's recent market valuation of Territory's mineral assets) was materially lower than the QMP value which BDO preferred. The Panel considered it inappropriate that the summary of the BDO Report on its front page did not state that the valuation was based on the QMP of Territory shares or refer to the Net Asset Valuation using the recent Snowden values.¹¹
95. The Panel considered there were a number of other areas where BDO's processes, assumptions and methodology limitations were not adequately explained in the BDO Report (even though BDO's submissions to the Panel provided adequate explanations of many of the relevant issues). The issues included:
 - (a) the limitations of the QMP methodology, especially:
 - (i) where the market price incorporated into the QMP was likely to be affected by Territory's announcement of its intention to bid for Consolidated Minerals;
 - (ii) the effect on market prices of Territory shares of a post bid market overhang if Territory's scrip bid were successful; and
 - (iii) that it is the computation of a weighted average share price over a trading period. It is not a "valuation" as the term is commonly understood in the context of an Independent Expert's Report;
 - (b) BDO's methodology in deriving the \$0.98-\$1.08 range from the data in the BDO Report;

⁹ Especially where the shares being valued constitute part of the consideration in a scrip bid (like the Proposed Territory Offer), as the value of the scrip forms a key part of the bid value.

¹⁰ As previously noted, BDO did state at section 7.4 of the BDO Report that it "*preferred the quoted market price over the net asset value as we feel it best reflects the value that is being offered to CSM shareholders.*"

¹¹ The Panel did not consider it adequate that the Net Asset Valuation was included in section 7.4 of the BDO Report and the summary and opinion on the front page of the BDO Report had a cross reference to section 7.4.

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

- (c) the reasons BDO considered the QMP preferable to the Net Asset Valuation¹² and why the Net Asset Valuation should be apparently discounted simply because it was less than the QMP valuation; and
 - (d) which market prices reflected the value of Territory shares unrelated to the Proposed Territory Offer and which were affected by the announcement of the Proposed Territory Offer, and how to reconcile the differences.
96. The Panel was also concerned that BDO did not make it clear whether its valuation was the value of Territory shares on (i) an ordinary trading basis, or (ii) taking into account the Proposed Territory Offer, or (iii) on the assumption that the Proposed Territory Offer was completed and Territory shares were shares in a merged entity combining Territory and Consolidated Minerals. The Panel considered that it was BDO's intention that the valuation be on an ordinary trading basis, but:
- (a) the QMP calculation included share prices both before and after the announcement of the Proposed Territory Offer; and
 - (b) the valuation relied, in part, on the \$1.00 per share price of the Equity Commitments which related to Territory shares which would be issued only if the takeover was successful i.e. shares in the merged entity.
97. The Panel considered submissions from parties concerning whether the market for Territory shares was sufficiently liquid for a QMP to be a valid methodology. The Panel found no indication that BDO had made a manifest error in considering that the market for Territory shares was sufficiently liquid to use a QMP methodology. The Panel noted Pallinghurst's submission on the issue but considered that the subject was open to differing views by competent experts.

CIRCUMSTANCES UNACCEPTABLE

98. The Panel considers that the Circumstances set out in paragraph 4 above were likely to affect the efficient, competitive and informed market for Consolidated Minerals shares, and meant that Consolidated Minerals shareholders did not have enough, accurate information to assess the merits of either the Pallinghurst Offer or the Proposed Territory Offer.
99. It appeared to the Panel that the Circumstances were unacceptable having regard to:
- (a) the effect that the Panel was satisfied that the Circumstances have had, were having, or were likely to have, on:
 - (i) the control or potential control of Consolidated Minerals; or

¹² Especially where the Net Asset Valuation was based on Snowden's current market valuations of Territory's mineral assets rather than book values of those assets.

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

- (ii) the acquisition or proposed acquisition by Pallinghurst or Territory of a substantial interest in Consolidated Minerals; and
- (b) the purposes of Chapter 6 as set out in section 602, in that:
 - (i) the acquisition of control over Consolidated Minerals shares would not take place in an efficient, competitive and informed market; and
 - (ii) Consolidated Minerals shareholders and the directors of Consolidated Minerals were not given enough accurate information to enable them to assess the merits of the Pallinghurst Offer or the Proposed Territory Offer.

Public interest

- 100. The Panel considered that it was not against the public interest to make a declaration of unacceptable circumstances in relation to the circumstances and the affairs of Consolidated Minerals because:
 - (a) shareholders in listed entities such as Consolidated Minerals should be given clear, accurate, reasonably complete, and not misleading information on which to base decisions to hold or dispose of quoted voting shares;
 - (b) Territory's statements, in the media, in the 7 August Letter and at the 7 August analysts briefing and media conference, had the effects referred to in these reasons; and
 - (c) orders, which create new rights, were available to the Panel. The orders would not unfairly prejudice any person.
- 101. In deciding to make a declaration of unacceptable circumstances the Panel had regard to the matters in section 657A(3).
- 102. Under section 657A, the Takeovers Panel declared that the Circumstances constituted unacceptable circumstances in relation to the affairs of Consolidated Minerals. (See Annexure A)

Orders

- 103. The Panel considered that disclosure orders would be most appropriate to protect the rights and interests of Consolidated Minerals shareholders and to ensure that the Pallinghurst Offer and the Proposed Territory Offer proceeded as if the unacceptable circumstances had not occurred.
- 104. The Panel invited submissions from the parties on the Panel's proposed orders, and considered those submissions.
- 105. The Panel was not satisfied that its orders would unfairly prejudice any person.
- 106. The Panel considered:
 - (a) that the orders most appropriately:
 - (i) addressed the effects of the unacceptable circumstances on Consolidated Minerals shareholders or other persons; and

Takeovers Panel
Reasons for Decision - Consolidated Minerals Limited

- (ii) ensured that the Pallinghurst Offer and Proposed Territory Offer proceeded as if the unacceptable circumstances had not occurred;
- (b) the effects of any proposed orders on any person to whom the orders are directed or any other person were not excessive when compared to the magnitude of the effects of the unacceptable circumstances on Consolidated Minerals shareholders or other person; and
- (c) that it did not need to take any steps to mitigate any adverse effects of any proposed orders.

107. The Panel made the orders set out at Annexure B.

John Keeves
President of the Sitting Panel
Decision dated 26 August 2007
Reasons published 18 October 2007



Annexure A

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

In the matter of CONSOLIDATED MINERALS LTD.

WHEREAS

Background

1. Consolidated Minerals Ltd is a listed public company. It is the subject of an off market takeover bid (**Pallinghurst Offer**) by Pallinghurst Resources Ltd (**Pallinghurst**).
2. On 17 July 2007, Territory Resources Ltd (**Territory**) announced to Australian Securities Exchange Ltd (**ASX**) a proposed conditional takeover bid for all the Consolidated Minerals Shares (**Proposed Territory Offer**). Territory had not lodged a bidder's statement for the Proposed Territory Offer at the date of this declaration.
3. The consideration to be offered under the Proposed Territory Offer was stated to be \$2 plus 1.5 Territory shares per Consolidated Minerals Share. The Proposed Territory Offer was to be subject to a number of defeating conditions, set out in an announcement to ASX that Territory published on 17 July 2007, including a 90% minimum acceptance condition.
4. Pallinghurst lodged its bidder's statement on 27 July 2007 in respect of the Pallinghurst Offer (**Pallinghurst Bidder's Statement**). The Pallinghurst Offer is currently due to close on 8 September 2007.
5. On 30 July 2007, Palmary Enterprises Limited (**Palmary**) announced that on 27 July 2007 it had become a substantial holder of Consolidated Minerals with voting power of 12.1843%.
6. On 3 August 2007, Territory announced to ASX that it had received updated reports from:
 - (a) BDO Consultants (WA) Pty Ltd (**BDO** and **BDO Report** respectively) dated 31 July 2007, providing a valuation of Territory shares; and
 - (b) Snowden Mining Industry Consultants Pty Ltd (**Snowden report**) dated 26 July 2007, in relation to the valuation of the mineral assets of Territory.
7. The BDO and Snowden Reports themselves were not published on ASX but posted to Territory's website with a hyperlink from the 3 August announcement on ASX to the two reports.
8. On 7 August 2007, Territory conducted an analyst briefing in relation to the Proposed Territory Offer. In addition, Territory also conducted a press conference on that day. At the briefing and media conference, the Chairman of Territory made various statements concerning:

Declaration of unacceptable circumstances - Consolidated Minerals Limited

- (a) the support of Palmary for the Proposed Territory Offer; and
 - (b) share entitlements of the Consolidated Minerals Managing Director under the Consolidated Minerals Long Term Share Plan.
9. On 7 August 2007, Territory published on ASX a letter it was sending to Consolidated Minerals shareholders (**7 August letter**).

Statements concerning Palmary and Privat

10. Following the substantial holding notice lodged by Palmary on 31 July 2007, the Territory Chairman held a number of media interviews in which he made a number of statements including:
- (a) "*Privat indicated that they were supportive of the Territory initiative,*";
 - (b) "*It is 12 per cent that will support us*";
 - (c) "*They are very supportive of our initiative,*".
11. On 7 August 2007, the Territory Chairman made a series of statements concerning the support of Privat for the Proposed Territory Offer at an analyst briefing and at a media conference.
12. On 13 August 2007 the Territory Chairman is quoted as saying:
- 'With Privat, Ukraine people stepping into the frame, one would have to ascertain what is in their minds.' I am certainly travelling on the way to Europe to meet with the Privat people who are aware of our group.'*
13. On 15 August 2007, Territory published on ASX a letter setting out some information concerning a meeting between the Territory Chairman and "Privat" an entity connected to Palmary, in which Territory stated that
- "Michael Kiernan has met with representatives of Privat and been informed that they are supportive of the Territory initiative. As with all shareholders of Consolidated Minerals Limited, Privat will have the right to consider the takeover offer announced by Territory in full once Territory's Bidder's Statement is sent to all shareholders of Consolidated Minerals Limited."*

7 August Letter

14. In the 7 August Letter Territory represented the value of the Proposed Territory Offer as being \$3.65 per Consolidated Minerals share. This was based on the market price of Territory shares on 17 July 2007, the date on which it was announced.
15. Territory did not include a value of the Proposed Territory Offer based on the most recently available market price of Territory shares, which was \$0.90 giving a value of the Proposed Territory Offer of \$3.35.
16. In the 7 August Letter Territory represented the value of the Proposed Territory Offer as being between \$3.47 and \$3.62 per Consolidated Minerals share. This was based on a value of Territory shares of between \$0.98 and \$1.08 Territory shares from the BDO Report.
17. Territory did not disclose in the 7 August Letter:
- (a) the methodology that BDO had used to derive the valuation; or

Declaration of unacceptable circumstances - Consolidated Minerals Limited

- (b) the other values which BDO had derived in its consideration of the value of Territory shares.
- 18. In the 7 August Letter Territory represented that the BDO Report was supported by the Snowden report.
- 19. Territory did not disclose in the 7 August Letter the value of Territory shares that BDO had derived from the Snowden Report.

Managing Director's Long Term Share Plan statements

- 20. The Territory Chairman made a series of statements in a media conference and an analyst presentation at Kalgoorlie on 7 August 2007 relating to share entitlements of the Managing Director of Consolidated Minerals under the Consolidated Minerals Managing Director's Long Term Share Plan (**MDLTSP**).
- 21. Transcripts of the Territory Chairman's statements included:
 - (a) *"I could never understand why they were recommending their bid so quickly. It was not quite collusion between the board of ConsMin and Paladin. It certainly was an **unholy alliance**"*
 - (b) *"they've actually said in there "if this bid is successful, the board of ConsMin have the right to issue up to 3 million shares in ConsMin"* [to the Managing Director of Consolidated Minerals];
 - (c) *"I can now understand why these guys were within milliseconds accepting the bid".*
- 22. The Territory Chairman stated that he based his statements on statements in the Pallinghurst bidder's statement. The Pallinghurst bidder's statement refers to the share entitlements of the Consolidated Minerals managing director at paragraphs 2.6 and 6.8.
- 23. The MDLTSP was approved at the Consolidated Minerals annual general meeting on 26 October 2006. The terms of the MDLSTP were set out in the notice of meeting, which is published on ASX. The maximum number of shares that may be issued under the MDLTSP is one million shares over the three year period of the MDLTSP.

Circumstances unacceptable

- 24. 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 Territory of a substantial interest in Consolidated Minerals; or
 - (b) the purposes of Chapter 6 of the Corporations Act 2001 (*Cth*) (**Act**) as set out in section 602 of the Act.

Declaration of unacceptable circumstances - Consolidated Minerals Limited

25. 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.
26. The Panel has had regard to the matters in section 657A(3) of the Act.

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 26 August 2007



Annexure B

**Corporations Act
Section 657D
Orders**

IN THE MATTER OF CONSOLIDATED MINERALS LIMITED

PURSUANT TO:

1. A declaration of unacceptable circumstances (**Declaration**) in relation to the affairs of Consolidated Minerals made by the Takeovers Panel (**Panel**) on 26 August 2007 under section 657A of the Act ; and
2. Section 657D of the Act,

THE PANEL ORDERS THAT:

3. Territory Resources Ltd (**Territory**)
 - (a) make corrective disclosure (the form and content of which is to be approved by the Panel) to the market before the close of trading on ASX Ltd (**ASX**) on Monday August 27 2007 (or such later time as may be permitted by the Panel), in respect of paragraphs 10 to 13, and 20 to 22, of the Declaration and noting that further corrective disclosure will be required by the Panel in the bidder's statement relating to the takeover offer announced by Territory on 17 July 2007 (**Proposed Territory Offer bidder's statement**). For paragraphs 10 to 13, the disclosure must make clear what Territory knows of the intentions of Palmary Enterprises Ltd with respect to accepting or rejecting takeover offers by either of Territory and Pallinghurst Resources Australia Ltd and what it does not. For paragraphs 20 to 22 of the Declaration, the disclosure must unconditionally retract the statements made; and
 - (b) make corrective statements (the form and content of which are to be approved by the Panel) in the Proposed Territory Offer bidder's statement, in relation to paragraphs 10 to 22 of the Declaration. The disclosure must meet the requirements set out in the Panel's Guidance Note 16.

John Keeves

President of the Sitting Panel

Dated 27 August 2007

Extracts from sections 2.6 and 6.8 of the Pallinghurst Bidder's statement**2.6 CSM Executive Long Term Incentive Plan (CSM ELTIP)**

Pallinghurst understands that CSM operates an incentive plan known as the CSM Executive Long Term Incentive Plan (**CSM ELTIP**). The CSM ELTIP commenced on 1 July 2005. Eligible participants under the CSM ELTIP include executive directors and senior executives of CSM or any associated body corporate (being a related body corporate, a body corporate entitled to 20% or more of the voting shares of CSM, or a body corporate in which CSM is entitled to 20% of the voting shares). Participants must be approved by the CSM Board.

Under the CSM ELTIP rules, eligible participants nominated by the CSM Board may receive CSM Shares or a cash equivalent if they meet certain performance hurdles as determined by the CSM Board each year. Pallinghurst understands that CSM pays all transaction costs of the CSM ELTIP, including brokerage, commission and stamp duty. The CSM Board may terminate or suspend the operation of the CSM ELTIP at any time without notice to the participants.

It is Pallinghurst's understanding that although the CSM Board has not yet allocated awards to any executive directors or senior executives under the CSM ELTIP, CSM Shareholders have authorised the CSM Board to issue up to 1 million CSM Shares to Mr Rodney Baxter, Managing Director of CSM, under the CSM ELTIP. Under the terms of the CSM ELTIP and the relevant CSM Shareholder resolution, the CSM Board has a discretion to award CSM Shares to Mr Baxter at the end of each year of a three year period commencing on 1 July 2006, although any CSM Shares awarded will not vest and will not be issued until the end of that three year period. However, under the CSM ELTIP the CSM Board has a discretion to issue all or part of any awarded but unvested CSM Shares prior to the end of that three year period upon the occurrence of certain events, including the announcement of a takeover bid or the receipt by CSM of a bidder's statement in respect of CSM. This would include the announcement of the Offer and the service of this Bidder's Statement.

Based on statements made by CSM in the Scheme Booklet, Pallinghurst understands that no awards of CSM Shares have been made to Mr Baxter under the CSM ELTIP. However, if any awards have been made or are made to Mr Baxter or to any other participant under the CSM ELTIP prior to the Offer becoming unconditional, the CSM Board already has or immediately would have (as appropriate) a discretion to vest and issue any CSM Shares awarded.

6.8 CSM ELTIP

On the basis of documents lodged by CSM with ASX, Pallinghurst understands that the CSM Board has not yet allocated awards to any executive directors or senior executives under the CSM ELTIP. However, Pallinghurst is aware that the CSM Shareholders have authorised the CSM Board to issue up to 1 million CSM Shares to Rodney Baxter under the CSM ELTIP (see section 2.6). If any CSM Shares are awarded or issued before the end of the Offer Period, this would constitute a breach of the prescribed occurrences conditions of the Offer (see sections 7.6(h) and 7.6(i)) and entitle Pallinghurst to withdraw the Offer. If such a breach did occur, Pallinghurst would also have the option to waive the condition (or that breach). See section 6.10 as to when Pallinghurst may make a decision in this regard.