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Thursday, 01 November 2007

**Consolidated Minerals Limited 03 – Panel Orders**

The Panel advises that following a declaration of unacceptable circumstances it made on Wednesday 30 October, 2007, it has made final orders in relation to an application dated 15 October 2007 by Palmary Enterprises Limited (**Palmary**) in relation to the affairs of Consolidated Minerals Limited (**Consolidated Minerals**) ([TP07-76](#) [TP07-85](#)).

**Orders**

The Panel has made orders including to the following effect (See full Orders at Annexure A to this Media Release):

- (a) the Top-up Notes offered by Pallinghurst Resources Australia Limited (**Pallinghurst**) as part consideration under its takeover bid for Consolidated Minerals (**Pallinghurst Offer**) are cancelled;
- (b) Consolidated Minerals shareholders who both:
  - (i) accepted the Pallinghurst Offer after the dispatch of Pallinghurst's second supplementary bidder's statement; and
  - (ii) accepted the consideration alternative of \$4.50 and one Top-up note; have a right to withdraw their acceptance;
- (c) Pallinghurst must advise Affected Consolidated Minerals Shareholders of their withdrawal rights, and the effects of the orders on other Consolidated Minerals shareholders as soon as practicable;
- (d) Pallinghurst may withdraw either or both of its "no increase in price" and "no voluntary extension" statements made on 12 October 2007, by making an announcement in a supplementary bidder's statement on the day following these orders;
- (e) the Pallinghurst Offer be extended until 16 November 2007.

**Review application**

Pallinghurst has lodged a notice of appeal under section 657EA of the Corporations Act seeking review of the decision of the Panel in Consolidated Minerals 03. The President of the Panel is currently assembling a review Panel to consider the review.

The Panel has stayed the operation of its orders, except the order extending the offer period of the Pallinghurst Offer, until further order, to allow the review Panel to consider the review application.

## Takeovers Panel

### Media Release – Consolidated Minerals 03

#### Background

On 12 October 2007 at 2.16pm Pallinghurst lodged with ASX its second supplementary bidder's statement in relation to the Pallinghurst Offer. This provided for the addition to the existing \$4.50 cash offer consideration of an alternative form of consideration of \$4.50 cash plus a Top-up note.

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

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

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

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

The Panel made a declaration of unacceptable circumstances on 30 October, 2007 (See Annexure B to this Media Release).

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

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

The President of the Panel has appointed Robert Johanson, Simon Mordant and Norman O'Bryan SC (sitting President) to hear the review application.

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

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**Annexure A**  
**Corporations Act**  
**Section 657D**  
**Order**

In the matter of CONSOLIDATED MINERALS LIMITED 03

**PURSUANT TO:**

2. A declaration of unacceptable circumstances (**Declaration**) in relation to the affairs of Consolidated Minerals Limited (**Consolidated Minerals**) made by the Takeovers Panel (**Panel**) on 30 October 2007 under section 657A of the Corporations Act 2001 (Cth) (**Act**); and
3. Section 657D of the Act,

**THE PANEL ORDERS THAT**

4. As soon as practicable after the date of this order, Pallinghurst Resources Australia Limited (**Pallinghurst**) withdraw from its off market takeover bid for Consolidated Minerals (**Pallinghurst Offer**) the alternative consideration of \$4.50 cash and one Top-up note by issuing a supplementary bidder's statement;
5. All Top-up notes issued by Pallinghurst pursuant to the Pallinghurst Offer be cancelled;
6. Each Consolidated Minerals shareholder who did both of the following:
  - (a) accepted the Pallinghurst Offer after the dispatch of Pallinghurst's second supplementary bidder's statement; and
  - (b) accepted the consideration alternative of \$4.50 and one Top-up note;**(Affected Consolidated Minerals Shareholder)**

has a right to withdraw their acceptance, which is equivalent to the right conferred by section 650E of the Corporations Act (except that the period of notice in paragraph 650E(2)(a) of the Corporations Act shall be 10 business days after Pallinghurst sends the letter referred to in paragraph 7).

7. Pallinghurst as soon as practicable sends:
  - (a) a letter (in a form acceptable to the Panel) to each Affected Consolidated Minerals Shareholder informing them of their withdrawal rights and clearly setting out what the shareholder must do to exercise those withdrawal rights; and

## **Takeovers Panel**

### **Orders – Consolidated Minerals Limited 03**

- (b) a letter (in a form acceptable to the Panel) to each shareholder who accepted the Pallinghurst Offer before the dispatch of Pallinghurst's second supplementary bidder's statement and subsequently elected to receive the consideration alternative of \$4.50 and one Top-up note informing them of the effect of these orders on the alternative.
8. Pallinghurst may withdraw its statement of 12 October 2007 that it has declared the \$4.50 cash component of the Pallinghurst Offer final in the absence of a competing higher offer. If Pallinghurst chooses to withdraw its statement, it must do so by issuing a supplementary bidder's statement no later than 4.00 pm (Melbourne time) on the day after the date of these orders;
  9. Pallinghurst may withdraw its statement of 12 October 2007 that there will be no further voluntary extension of the Pallinghurst Offer. If Pallinghurst chooses to withdraw its statement, it must do so by issuing a supplementary bidder's statement no later than 4.00 pm (Melbourne time) on the day after the date of these orders;
  10. If Pallinghurst does not withdraw the statement referred to in paragraph 9 above, Pallinghurst must fully disclose to the market all the circumstances in which the offer period could be extended. Pallinghurst must do so by no later than 4.00 pm (Melbourne time) on the day after the orders are made;
  11. As soon as practicable after the date of this order, Pallinghurst extend the offer period in relation to the Pallinghurst Offer in accordance with the Corporations Act to close on a date not earlier than 7.00 pm (Melbourne time) on 16 November 2007.
  12. If the date of issue of the supplementary bidder's statement is after 9 November 2007, Pallinghurst must further extend its offer until the date 7 days after the day that it issues the supplementary bidder's statement.

**John Keeves**

**President of the Sitting Panel**

Dated 1 November 2007



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

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

**WHEREAS**

**Top-up note**

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

**No Extension Statement**

5. Pallinghurst's second supplementary bidder's statement also provided that:  
*"The offer period under the Pallinghurst Offer is being extended until 7.00pm (Melbourne time) on 24 October 2007. Pallinghurst has, however, declared that there will be no further voluntary extensions beyond this date."* (**No Extension Statement**)
6. The No Extension Statement was misleading because it stated that there would be no *voluntary* extension of the offer period of the Pallinghurst Offer. However, Pallinghurst could choose (in certain circumstances) to increase the bid consideration in the last week of the offer period, thus itself triggering an automatic extension of the Pallinghurst Offer under subsection 624(2) of the Act.

## Takeovers Panel

### Declaration of unacceptable circumstances – Consolidated Minerals Limited 03

#### Circumstances are unacceptable

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

#### DECLARATION

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

**John Keeves**

**President of the Sitting Panel**

Dated 30 October 2007