



Australian Government

Takeovers Panel

MEDIA RELEASE

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Friday, 30 June 2017

Molopo Energy Limited 03R, 04R & 05R – Declaration of Unacceptable Circumstances

The review Panel has made a declaration of unacceptable circumstances (**Annexure A**) in relation to applications dated 1 June 2017 by Keybridge Capital Limited (**Keybridge**) and Molopo Energy Limited (**Molopo**) (see [TP17/27](#)) seeking a review of the initial Panel's decision in Molopo Energy Limited 01 & 02 (see [TP16/26](#)). The applications have been heard together. Another review application, from Aurora Funds Management Limited (**Aurora**) dated 15 June 2017 seeking a review of the initial Panel's decision on orders (see [TP17/31](#)), is also part of the review and the question of orders is still being considered.

Background

On 30 June 2016, Keybridge sold Aurora to Seventh Orion Pty Ltd (**Seventh Orion**) as trustee of the Aurora Investments Unit Trust.

Since the sale of Aurora, Keybridge has increased its relevant interest in Molopo from 18.48% to 19.95% and Aurora¹ has increased its relevant interest in Molopo from approximately 1.88% to 17.92%.

On 13 March 2017, Keybridge requisitioned a meeting of Molopo shareholders to consider resolutions to replace the Molopo board with three new directors nominated by Keybridge² Aurora also nominated one director for appointment.

Mr Nicholas Bolton was previously the managing director of Keybridge³ and is now a consultant to Keybridge. Mr John Patton is the chairman, and a part-time executive, of Keybridge, a director of Seventh Orion and the managing director of Aurora.

¹ As responsible entity for Aurora Global Income Trust and Aurora Fortitude Absolute Return Fund

² The requisition was considered at Molopo's AGM on 20 June 2017

³ He resigned due to his disqualification by ASIC from managing a corporation (which is the subject of an appeal)

There are a number of other structural links between Mr Bolton, Mr Patton, Keybridge and Aurora. Some are described in the declaration.

The Panel considered that Mr Bolton has knowledge of, and the capacity to influence substantively, the investment strategies of both Keybridge and Aurora in relation to Molopo. He has used this capacity to influence or orchestrate strategies and actions at Keybridge and Aurora that have as their ultimate aim control of Molopo and access to Molopo's cash. The boards of directors of Keybridge and Aurora were aware of this and agreed to, or at least acquiesced in, those strategies and actions.

Accordingly, the Panel considered that by no later than 26 October 2016 Keybridge and Aurora were associated in relation to Molopo and have contravened section 606⁴ and the substantial holder notice provisions.

Further or in the alternative, the Panel agreed with the initial Panel that the actions of Mr Bolton and Mr Patton otherwise gave rise to unacceptable circumstances in relation to the affairs of Molopo from no later than 10 August 2016.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in section 657A(3).

Orders

The Panel is continuing to consider the review of the initial Panel's decision on orders and will publish details in due course. The undertakings provided by Keybridge and Aurora (not to dispose of or acquire any shares in Molopo without the Panel being given two business days' prior notice) continue to apply until the conclusion of Panel proceedings (see [TP17/30](#)).

The sitting review Panel is Peter Day, Ian Jackman SC (sitting President) and Tony Osmond.

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

Bruce Dyer
Counsel, Takeovers Panel
Level 10, 63 Exhibition Street
Melbourne VIC 3000
Ph: +61 3 9655 3559
bruce.dyer@takeovers.gov.au

⁴ 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)



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ANNEXURE A

**CORPORATIONS ACT
SECTIONS 657EA AND 657A
DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

MOLOPO ENERGY LIMITED 03R, 04R & 05R

The Takeovers Panel sets aside the declaration made on 30 May 2017 in relation to the affairs of Molopo Energy Limited (**Molopo**) and substitutes this declaration.

CIRCUMSTANCES

1. Molopo is an ASX listed entity. It currently has no operating activity and holds cash on hand of approximately \$67 million.
2. Keybridge Capital Limited (**Keybridge**) is an ASX listed entity. It currently has a relevant interest in 19.95% of Molopo.
3. Australian Style Group Pty Ltd (**ASG**) holds 21.16% of Keybridge. ASG is wholly owned by Australian Style Holdings Pty Ltd (**ASH**) whose shareholders are Mr Nicholas Bolton (1%) and Mr Bolton's sister (99%). Mr Bolton's father is the sole director of ASG and ASH. Prior to being disqualified from managing a corporation in December 2015, Mr Bolton was a co-director of ASG with his father and the sole director of ASH.
4. Mr Bolton also holds 2.2% of Keybridge in his personal capacity.
5. Mr Bolton was managing director of Keybridge until his disqualification.
6. Aurora Funds Management Limited (**Aurora**) is an unlisted funds manager. It currently has a relevant interest in 17.89% of Molopo, as responsible entity for Aurora Global Income Trust and Aurora Fortitude Absolute Return Fund.
7. Aurora was wholly owned by Keybridge until 30 June 2016. On or about that date, Keybridge sold Aurora to Seventh Orion Pty Ltd (**Seventh Orion**) as trustee for Aurora Investments Unit Trust. At the time, Aurora had a relevant interest in approximately 1.88% of Molopo.
8. Mr John Patton owns 50% of Seventh Orion and is one of its two directors. Mr Patton is the managing director of Aurora.

9. Units in the Aurora Investments Unit Trust are held indirectly by Mr Patton (26.1%)¹ and directly by Mr Bolton (49.9%).
10. On 1 July 2016, Keybridge filed a substantial shareholder notice advising that its relevant interest in Molopo had reduced to 18.48% as a result of the sale of Aurora.²
11. On 10 August 2016, Mr Patton was appointed as a non-executive director of Keybridge, nominated by ASG.
12. On 20 September 2016, Keybridge filed a substantial holder notice stating that it had acquired 1,682,763 Molopo shares and had voting power of 19.15% in Molopo.
13. On 13 October 2016, Mr Patton was appointed Chairman of the Keybridge board and engaged in a part time executive role.
14. On 14 October 2016, Mr Bolton was appointed as a consultant to Keybridge to provide Keybridge with advice and assistance in relation to its investments, including in Molopo.
15. From 7 October 2016, Aurora acquired shares in Molopo.³ While Mr Patton received daily reports setting out the number of shares held by the Aurora funds at each trading day, he did not become aware that Aurora's portfolio manager had commenced buying Molopo shares until "*later in October 2016*". By 31 October 2016, Aurora's total interest had increased to approximately 3.5% of Molopo's issued capital.
16. On 26 October 2016, Keybridge held a strategy meeting at which both Mr Bolton and Mr Patton were in attendance and where Keybridge's strategy in relation to acquisitions and disposals of Molopo shares and representation on the Molopo board was discussed.
17. In early November 2016, at Mr Patton's request, an investment paper was prepared and sent to Aurora's board members proposing that Aurora "*move to a 19.99% as a balance of power stake, seek board representation*".
18. On 1 December 2016, Aurora lodged a notice of initial substantial holder disclosing that it had voting power of 9.75% in Molopo.
19. Aurora continued to acquire shares in Molopo through to 21 March 2017, resulting in its then relevant interest in 17.92% of Molopo's issued capital.

¹ Through a corporation owned by Mr Patton and his wife that acts as the trustee for (i) a discretionary family trust and (ii) a superannuation fund

² Keybridge disclosed voting power in Molopo of 18.48% (netting the disposal and recent purchases of 1,704,222 shares)

³ Aurora had previously acquired 418,385 Molopo shares on or about 20 July 2016 as a result of the unwinding of an equity derivative

20. On 13 March 2017, Keybridge requisitioned a meeting of Molopo shareholders under section 249D⁴ to consider resolutions for the removal of all the directors of Molopo and the appointment of three new directors nominated by Keybridge.
21. On 22 March 2017, Mr Patton on behalf of Aurora wrote to the Chair of Molopo indicating that Aurora would seek to nominate one or more persons for election to the Molopo board. Aurora ultimately nominated one director.⁵
22. Mr Bolton plays a significant role in the affairs of Keybridge and Aurora. Mr Bolton provides advice to both Keybridge and Aurora. He has knowledge of, and the capacity to influence substantively, the investment strategies of both Keybridge and Aurora in relation to Molopo. He has used this capacity to influence or orchestrate strategies and actions at Keybridge and Aurora that have as their ultimate aim control of Molopo and access to Molopo's cash. The boards of directors of Keybridge and Aurora were aware of this and agreed to, or at least acquiesced in, those strategies and actions.
23. Accordingly, the Panel considers that, by no later than 26 October 2016, Keybridge and Aurora:
 - (a) have, or propose to enter into, a relevant agreement for the purpose of controlling or influencing the composition of the board of Molopo or the conduct of Molopo's affairs and are associated with each other under section 12(2)(b) or
 - (b) are acting, or propose to act, in concert in relation to the affairs of Molopo and are associated with each other under section 12(2)(c).
24. Further or in the alternative to association, the Panel considers the actions of Mr Bolton and Mr Patton, combined with the material financial interests each had in Keybridge and Aurora, and the influence that each exerted over Aurora and to an extent over Keybridge, gives rise to a control effect in Molopo that is otherwise unacceptable from no later than 10 August 2016. For example:
 - (a) In addition to Mr Bolton's substantial influence over the investment strategies of each of Keybridge and Aurora in relation to Molopo, he has at least substantial influence over ASG, Keybridge's largest shareholder.
 - (b) Mr Patton is conflicted in his role at Keybridge in relation to the acquisition or use of Molopo shares given his role at Aurora. Information barriers established in Keybridge to address such conflicts were established late and have not been fully effective.

⁴ 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)

⁵ On 20 June 2017, at the annual general meeting where the resolutions to change the board were considered, none of the resolutions seeking the removal of the existing directors or the appointment of Keybridge and Aurora nominees were passed

- (c) Despite Mr Patton being fully appraised of Keybridge's strategy in relation to Molopo, there is no evidence of Aurora establishing an information barrier when it embarked on its strategy for Molopo.

Contraventions of section 606

- 25. Immediately prior to 26 October 2016, the aggregate voting power of each of Keybridge and Aurora in Molopo shares was 22.49%.
- 26. Each acquisition of Molopo shares by Keybridge and Aurora occurring on or after 26 October 2016 has resulted in a contravention of section 606 with the voting power of each of Keybridge and Aurora increasing with each acquisition from a starting point that is above 20% and below 90%. None of the exceptions in section 611 applied.

Contraventions of section 671B

- 27. Since 26 October 2016, Keybridge and Aurora have failed to lodge notices of change in substantial holding disclosing their association in contravention of section 671B.

EFFECT

- 28. It appears to the Panel that the acquisition of control over voting shares in Molopo has not taken place in an efficient, competitive and informed market and the holders of shares in Molopo do not know the identity of persons who have acquired a substantial interest in Molopo.

CONCLUSION

- 29. 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, are having, will have or are likely to have on the control, or potential control, of Molopo
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602
 - (c) in the further alternative, because they:
 - (i) constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6 or 6C or
 - (ii) gave or give rise to, or will or are likely to give rise to, a contravention of a provision of Chapter 6 or 6C.
- 30. 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).

DECLARATION

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

Bruce Dyer
Counsel
with authority of Ian Jackman SC
President of the sitting Panel
Dated 30 June 2017