



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/20

Monday, 7 March 2022

Lincoln Minerals Limited – Panel Accepts Undertaking and Declines to Conduct Proceedings

The Panel has declined to conduct proceedings on an application from Olary Holdings Limited in relation to the affairs of Lincoln Minerals Limited (**LML**) (see [TP22/13](#)) after accepting an undertaking from LML.

The application concerned (among other things) the proposed issue by LML of convertible notes to raise \$1.6 million (**Notes**), subject to necessary approvals, to Australia Poly Minerals Investments Pty Ltd (**APMI**), a company associated with Poly Mineral Investment Ltd which is a 19.91% shareholder of LML. APMI is a company associated with a former LML director. Upon conversion of the Notes into shares, APMI's voting power could increase to a maximum of 48.55%.¹

The applicant submitted that it had previously put proposals to the LML board.

The Panel had significant concerns around the level of disclosure in Lincoln's Notice of AGM² (**Notice**) in respect of the resolution which sought shareholder approval to issue the Notes to APMI. In particular, the Panel was concerned that the Notice did not disclose, or did not sufficiently disclose, among other things:

- Details of the terms of the Notes and the Notes Agreement between LML and APMI, noting that the conversion price for the Notes was erroneously described in the Notice
- The consequences of Lincoln entering into the Notes Agreement with APMI, including that, upon issue of the Notes, APMI will have the ability to require the issue of shares over time relying on the 3% creep exception which will

¹ Assuming a conversion price of \$0.005 and no interest accrued under the Notes is converted into shares. The conversion price may be greater if LML undertakes a subsequent capital raising prior to 31 December 2022 – see footnote 4 for further details

² LML's annual general meeting of shareholders was originally scheduled for 25 February 2022. It was subsequently postponed to 16 March 2022 and has been further postponed to a date not yet set by LML (as announced by LML in its ASX announcement from 24 February 2022)

ultimately give it more than 19.91% of LML shares without the need for shareholder approval under item 7 of section 611³

- The basis upon which the conversion price for the Notes was determined
- That shareholder approval is being sought on the basis that APMI is a related party to a former LML director
- The financial position of LML and funding needs for LML entering into the Notes Agreement and
- Other options that the LML board has considered prior to deciding to enter into the Notes Agreement and a description of each other funding offer or proposal subsequently received by LML and the impact (if any) on the LML board's recommendation in relation to the resolution for the issue of the Notes.

LML has undertaken (in summary) that it will:

- immediately advise the market that the conversion price for the Notes is erroneously described in the Notice and that it will be issuing a supplementary notice of AGM to its shareholders⁴
- prepare a supplementary notice of AGM (**Supplementary Notice**) which addresses the disclosure concerns of the Panel (including those noted above) and complies with any applicable regulatory requirements
- not formally issue the Supplementary Notice or re-schedule its AGM until ASIC and the Panel have separately provided confirmation that they do not object to the form of the Supplementary Notice and
- not hold its re-scheduled AGM until 14 days after the Supplementary Notice has been sent to its shareholders.

A copy of the undertaking is attached as Annexure A.

The Panel was satisfied its concerns were sufficiently addressed by the undertaking and that there was no reasonable prospect that it would make a declaration of unacceptable circumstances. Accordingly, the Panel declined to conduct proceedings. In making its decision, the Panel does not seek to limit any powers or

³ All references are to the *Corporations Act 2001* (Cth) unless otherwise indicated

⁴ On 2 March 2022, LML made an announcement on ASX advising (among other things) that there was an error reported in its announcement of 23 December 2021 titled 'Convertible Note funding' and in the Notice in relation to the conversion price for the Notes. LML's announcement disclosed that the correct conversion price for the Notes is the higher of \$0.005 and a 15% discount to the issue price of shares and/or the exercise price of any options offered under any capital raising(s) completed by LML of greater than \$500,000 prior to 31 December 2022. LML also disclosed that it was preparing a supplementary notice of AGM. The Panel is satisfied that LML's announcement is sufficient to satisfy its obligations under paragraph 1 of its undertaking and that a further announcement is not required

discretions of ASIC or ASX in relation to any regulatory requirements applicable to the issue of the Notes or shareholder approval being sought by LML.

The sitting Panel was Kristen Jung, Bill Koeck and Tony Osmond (sitting President).

The Panel will publish its reasons for the decision in due course on its [website](#).

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ANNEXURE A

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

LINCOLN MINERALS LIMITED

Lincoln Minerals Limited ACN 050 117 023 (**LML**) undertakes to the Takeover Panel (**Panel**) under section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) as follows:

1. LML must immediately advise the market that the conversion price in the Convertible Note Agreement dated 20 December 2021 (**Agreement**) pursuant to which LML proposes to issue up to 1,600,000 convertible notes (**Notes**) to Australia Poly Minerals Investments Pty Ltd ACN 622 067 556 (**APMI**) is erroneously described in its original Notice of AGM dated 18 January 2022 and that it will be issuing a supplementary notice of AGM to its shareholders.
2. Subject to paragraph 3 below, LML will issue a supplementary notice of AGM to its shareholders (**Supplementary Notice**) and disclose in the Supplementary Notice details and/or additional details in respect of the following:
 - (a) the terms of the Agreement;
 - (b) the consequences of LML entering into the Agreement and issuing the Notes to APMI, expressly including:
 - (i) the potential control effects upon issue and conversion of such Notes;
 - (ii) APMI's ability to increase its shareholding in LML to greater than 19.91% over time (relying on item 9 of section 611 of the Corporations Act) without the need for shareholder approval pursuant to item 7 of section 611 of the Corporations Act;
 - (iii) if issue of the Notes is approved by LML's shareholders, LML's plan for repaying the Notes if they are not subsequently converted by the relevant maturity date;
 - (iv) if issue of the Notes is not approved by LML's shareholders, LML's plan for repaying \$260,000 that has already been drawn down; and

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- (v) the full dilutionary effect of the Notes in the event APMI elects to receive interest accruing under the Agreement in shares;
 - (c) the basis upon which it was determined that 0.5 cents is an appropriate floor for the conversion price for the Notes
 - (d) that LML shareholder approval is being sought on the basis that APMI is a related party to Mr James Tenghui Zhang and which clarifies:
 - (i) whether shareholder approval is being sought for the purposes of Chapter 2E of the Corporations Act and/or ASX Listing Rule 10.11; and
 - (ii) if shareholder approval is not being sought under Chapter 2E of the Corporations Act, the basis upon which LML has determined that such approval is not required. If LML relies on the arm's length exception in section 210 of the Corporations Act, it should explain why it applies;
 - (e) the financial position of LML and funding needs for LML entering into the Agreement at the time; and
 - (f) other options that the board of LML has considered prior to deciding to enter into the Agreement and a description of each other funding offer or proposal received by LML since entering into the Agreement and their impact (if any) on the LML board's recommendation in relation to the resolution for the issue of the Notes.
3. LML will not formerly issue the Supplementary Notice or re-schedule the AGM until:
 - (a) a draft of the Supplementary Notice has been provided to ASIC and the Panel; and
 - (b) ASIC has provided written confirmation that it does not object to the form of the Supplementary Notice, to be followed by written confirmation from the Panel that it does not object to the same.
 4. LML will not hold its re-scheduled AGM until 14 days after the Supplementary Notice has been sent to its shareholders.
 5. In preparing the Supplementary Notice, LML will comply with any applicable regulatory requirements.

In this undertaking, the following terms have the corresponding meaning:

AGM

LML's Annual General Meeting of shareholders which was originally scheduled for 25 February 2022, postponed to 16 March 2022 and has been

further postponed to a date not yet set by LML (as announced by LML in its ASX announcement from 24 February 2022).

Corporations Act *Corporations Act 2001* (Cth)

**Signed by Ruiyu Zhang, Managing Director
with the authority, and on behalf, of
Lincoln Minerals Limited
Dated 1 March 2022**