

31 August 2020

Ms Sandra Wutete  
Senior Advisor, Listings Compliance (Perth)  
ASX Compliance Pty Limited  
Level 40, Central Park  
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Perth, WA 6000

By Email: [ListingsCompliancePerth@asx.com.au](mailto:ListingsCompliancePerth@asx.com.au)

Dear Ms Wutete

**Northern Minerals Limited (NTU or Company): General – Aware Query**

We refer to your letter dated 27 August 2020.

We provide the following responses to your questions in relation to NTU's announcement titled "Northern Minerals Settles R&D Tax Dispute" that was released at 9.15am on 24 August 2020 (**Announcement**) disclosing that NTU has entered into a settlement agreement (**Settlement Agreement**) with the Australian Taxation Office (**ATO**) that settles all matters relating to NTU's refundable research and development tax offset claims for the financial years ended 30 June 2017 and 2018 (**R&D Tax Offset**) which concluded the ATO's review of those claims (**Information**).

**1. Did NTU receive notification of the settlement of the R&D Tax Offset ("Notification") prior to entering into the Settlement Agreement with the ATO? If so, when did NTU receive the Notification?**

NTU had been in discussions with the ATO in relation to its R&D Tax Offset claims since May 2019 when the company received formal notification from the Department of Industry Innovation and Science (**AusIndustry**) that AusIndustry was of the opinion that the Company's R&D claims for the 2016/17 and 2017/18 financial years were not eligible for the R&D tax offset.

While NTU had been hoping to reach a settlement as part of those discussions, negotiations had been protracted and many drafts of the Settlement Agreement had been exchanged between the ATO and the Company (and its tax and legal advisors) over a lengthy period of time. There was therefore no certainty that an agreed settlement would be reached.

The Company received a purportedly final (but unsigned) execution version of the Settlement Agreement at 9.28am (Perth time) on Friday 21 August 2020. At 11.00am (Perth time) on Friday 21 August 2020, NTU sent its signed counterpart of the Settlement Agreement to the ATO, indicating that NTU was comfortable with and accepted the terms of the proposed settlement arrangement – subject to execution by the ATO. NTU received the ATO's signed counterpart at 2.08pm (Perth time) that day (after close of trading) and released the Announcement pre-open on Monday 24 August 2020.

Based on the facts set out above (and the fact that the settlement only became certain once the ATO signed the Settlement Agreement), NTU is of the view that it only received Notification of the settlement upon receipt of the executed Settlement Agreement from the ATO after close of trading on 21 August 2020.



**Powering Technology.**

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- 2. If the answer to question 1 is “yes”, does NTU consider the Notification to be information that a reasonable person would expect to have a material effect on the price or value of its securities?**

Not applicable.

- 3. If the answer to question 1 is “no”, please advise the basis for that view.**

As noted above, until the Settlement Agreement was executed by the ATO (which did not occur until after close of trading on 21 August 2020), NTU did not consider that the R&D Tax Offset claim had been settled. All settlement discussions with the ATO were “without prejudice” and “subject to contract” until such time as the Settlement Agreement was signed, and the ATO could have backed away from the discussions at any point until the Settlement Agreement had been signed by both parties.

- 4. If the answer to question 1 is “yes” and NTU first became aware of the Notification before the relevant date, did NTU make any announcement prior to the relevant date which disclosed the Notification? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe NTU was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps NTU took to ensure that the information was released promptly and without delay**

Not applicable.

- 5. Does NTU consider the Information to be information that a reasonable person would expect to have a material effect on the price or value of its securities?**

Yes.

- 6. If the answer to question 5 is “no”, please advise the basis for that view.**

Not applicable.

- 7. When did NTU first become aware of the Settlement Agreement?**

As noted above, a purportedly final (but unsigned) execution version of the Settlement Agreement was received by NTU at 9.28am (Perth time) on Friday 21 August 2020.

- 8. If the answer to question 5 is “yes” and NTU first became aware of the Information before the relevant date, did NTU make any announcement prior to the relevant date which disclosed the Information? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe NTU was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps NTU took to ensure that the information as released promptly and without delay.**

NTU has updated the market on a number of occasions as to the status of its R&D Tax Offset claims and the matter in general, including most recently in the Company’s ‘Company Update’ announcement released on 22 June 2020 and Quarterly Activities Report released on 30 July 2020 in which the Company disclosed that the Company had been having constructive discussions with the ATO in relation to resolution of its R&D Tax Offset claims and that the Company would keep the market informed as material developments arose.

Until the Settlement Agreement was executed by the ATO (which did not occur until after close of trading on 21 August 2020), NTU did not consider that the R&D Tax Offset claim had been settled. Until that time, NTU considers that the proposed settlement remained an incomplete proposal or negotiation that was



confidential and that a reasonable person would not expect to be disclosed. As noted above, it was only on execution of the Settlement Agreement by the ATO that the settlement became “complete”.

In relation to confidentiality, the Company submits that only its board of directors, a small number of senior executives and its external tax and legal advisors were involved in matters regarding the proposed settlement of the R&D Tax Offset claims to ensure that confidentiality was preserved. All persons involved were bound by obligations of confidentiality to the Company.

NTU is not aware of any loss of confidentiality in relation to the proposed settlement before execution of the Settlement Agreement by the ATO. While the price and volume of NTU securities traded did increase in the lead up to finalisation of the Settlement Agreement, NTU did not attribute this to a potential loss of confidentiality in relation to the Settlement Agreement, but rather a number of other factors, including the market becoming more comfortable with the change of leadership at NTU (and the cost savings resulting from filling the CEO role internally at no additional fixed cost to the Company) and to more favourable general sentiment in the rare earths industry. For example, an ASX-listed rare earths company announced a large fully underwritten equity raising and noted strong support from the Australian and Western Australian governments for the development of Australian based rare earths processing capability. The fact that the entity was able to raise such a large amount of money notwithstanding market uncertainty and volatility, and the increased trade tensions between the USA and China that could impact the global supply of rare earths, may have increased positive sentiment for other ASX-listed companies that operate in the rare earths sector. In this regard, the Company notes that it is aware of a number of other ASX-listed rare earths companies that also experienced price appreciation in mid-August.

As noted above, NTU considers that it became obliged to release details of the finalised settlement when it received the executed Settlement Agreement from the ATO, at which point the settlement ceased to be an incomplete proposal or negotiation. As the market had closed by that point, NTU finalised the draft Announcement promptly and without delay and, having received approval from the ATO of the form of announcement, as required under the Settlement Agreement, released the Announcement pre-open on the next trading day.

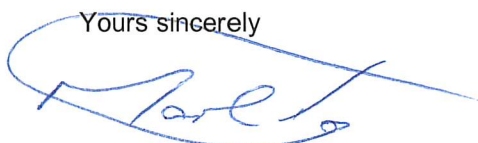
**9. Please confirm that NTU is complying with the Listing Rules and, in particular, Listing Rule 3.1.**

We confirm that NTU is in compliance with the Listing Rules and, in particular, Listing Rule 3.1

**10. Please confirm that NTU’s responses to the questions above have been authorized and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of NTU with delegated authority from the board to respond to ASX on disclosure matters.**

We confirm that the above responses have been approved by the Company’s board of directors.

Yours sincerely



**Mark Tory**  
CEO





27 August 2020

Reference: 23129

Mr Mark Tory  
Chief Executive Officer and Company Secretary  
Northern Minerals Limited

By email

Dear Mr Tory

**Northern Minerals Limited ('NTU'): General – Aware Query**

ASX refers to the following:

- A. NTU's announcement entitled "Northern Minerals Settles R&D Tax Dispute" lodged on the ASX Market Announcements Platform and released at 9:15 AM on 24 August 2020, disclosing that NTU has entered into a settlement agreement with the Australian Tax Office ("ATO") that settles all matters relating to NTU's refundable research and development tax offset claims for the financial years ended 30 June 2017 and 2018 ("R&D Tax Offset") which concluded the ATP's review of those claims ("Settlement Agreement") ('Information').
- B. The change in price in NTU's securities from a closing price of \$0.025 on 14 August 2020 to a closing price of \$0.04 on 24 August 2020. There was also a significant increase in the volume of NTU's securities traded from 18 August 2020 to 24 August 2020.
- C. Listing Rule 3.1, which requires a listed entity to immediately give ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- D. The definition of "aware" in Chapter 19 of the Listing Rules, which states that:  
*"an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity" and section 4.4 in Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B "When does an entity become aware of information."*
- E. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure, provided that each of the following are satisfied.  
*"3.1A Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:*  
*3.1A.1 One or more of the following applies:*
  - *It would be a breach of a law to disclose the information;*
  - *The information concerns an incomplete proposal or negotiation;*
  - *The information comprises matters of supposition or is insufficiently definite to warrant disclosure;*
  - *The information is generated for the internal management purposes of the entity; or*
  - *The information is a trade secret; and*

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3.1A.2 *The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and*

3.1A.3 *A reasonable person would not expect the information to be disclosed."*

- F. ASX's policy position on the concept of "confidentiality", which is detailed in section 5.8 of Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. In particular, the Guidance Note states that:

*"Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it ceases to be confidential information for the purposes of this rule."*

### **Request for information**

Having regard to the above, ASX asks NTU to respond separately to each of the following questions and requests for information:

1. Did NTU receive notification of the settlement of the R&D Tax Offset ("Notification") prior to entering into the Settlement Agreement with the ATO? If so, when did NTU receive the Notification?
2. If the answer to question 1 is "yes", does NTU consider the Notification to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
3. If the answer to question 1 is "no", please advise the basis for that view.
4. If the answer to question 1 is "yes" and NTU first became aware of the Notification before the relevant date, did NTU make any announcement prior to the relevant date which disclosed the Notification? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe NTU was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps NTU took to ensure that the information was released promptly and without delay
5. Does NTU consider the Information to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
6. If the answer to question 5 is "no", please advise the basis for that view.
7. When did NTU first become aware of the Settlement Agreement?
8. If the answer to question 5 is "yes" and NTU first became aware of the Information before the relevant date, did NTU make any announcement prior to the relevant date which disclosed the Information? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe NTU was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps NTU took to ensure that the information was released promptly and without delay.
9. Please confirm that NTU is complying with the Listing Rules and, in particular, Listing Rule 3.1.
10. Please confirm that NTU's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of NTU with delegated authority from the board to respond to ASX on disclosure matters.

### **When and where to send your response**

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **3:30 PM AWST Monday, 31 August 2020**. You should note that if the information

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requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, NTU's obligation is to disclose the information 'immediately'. This may require the information to be disclosed before the deadline set out in the previous paragraph and may require NTU to request a trading halt immediately.

Your response should be sent to me by e-mail at **ListingsCompliancePerth@asx.com.au**. It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

### **Trading halt**

If you are unable to respond to this letter by the time specified above, you should discuss with us whether it is appropriate to request a trading halt in NTU's securities under Listing Rule 17.1. If you wish a trading halt, you must tell us:

- the reasons for the trading halt;
- how long you want the trading halt to last;
- the event you expect to happen that will end the trading halt;
- that you are not aware of any reason why the trading halt should not be granted; and
- any other information necessary to inform the market about the trading halt, or that we ask for.

We require the request for a trading halt to be in writing. The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted. You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

### **Suspension**

If you are unable to respond to this letter by the time specified above, ASX will likely suspend trading in NTU's securities under Listing Rule 17.3.

### **Listing Rules 3.1 and 3.1A**

In responding to this letter, you should have regard to NTU's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. It should be noted that NTU's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

### **Release of correspondence between ASX and entity**

We reserve the right to release a copy of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A.

### **Questions**

If you have any questions in relation to the above, please do not hesitate to contact me.

Yours sincerely

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**Sandra Wutete**

Senior Adviser, Listings Compliance (Perth)