

6 August 2021

ASX Reference: 37516

Ms Sandra Wutete  
ASX Limited

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

Dear Ms Wutete

**Lithium Australia NL ('LIT' or 'the Company'): Query Letter 03 August 2021**

Reference is made to your letter dated 3 August 2021 and items A, B and C.

**Request for information**

1. IP Australia records disclose that the provisional patent was lodged on 16 July 2021, however there was a lag between this date and the date that LIT was formally advised and in receipt of the filing notification. The ASX release was made after LIT became aware of the lodgement.
2. LIT considers generally that this and similar information could be considered to be information that a reasonable person would expect to have a material effect on the price or value of its securities. Furthermore, given the constant option exercises LIT receives, the Company lodges cleansing statements routinely. As a result, where there is any doubt in determining whether or not a release is market sensitive, our practise is to check the market sensitive box on ASX Online. We consider that this practice is consistent with the guidance provided in paragraph 4.2 of ASX Guidance Note 8 – Continuous Disclosure (**GN 8**) 8, which recommends that entities '*carefully weigh up the potential consequences of not disclosing particular information in any given case*' in light of the significant penalties associated with a breach of Listing Rule 3.1.

In considering specifically whether this particular patent lodgement information (**Information**) could be considered to be information that a reasonable person would expect to have a material effect on the price or value of LIT's securities, is subject to debate given LIT's actual experience of advising the market about these patents. LIT's experience has shown that intellectual property (**IP**) is a valuable asset, particularly having regard to the nature and stage of the Company's operations and the industries in which it operates. This is also the view of the market in certain circumstances. The Information was assessed in the context of the circumstances affecting LIT at the time and the information publicly available about it, in accordance with paragraph 4.3 of GN 8, and a determination was made that the Information may be material having undertaken that assessment.

3. Given that the answer to question 2 is "yes", listed below are the reasons why specifically this particular application for a provisional patent is considered to be material.

- (a) It is our observation that such matters attract market attention, if not in price, in volume of turnover.
- (b) The ASX release is not incomplete or misleading in any respect. It contains all the information that an investor and its professional advisers would reasonably need to understand the materiality of the matter and assess its impact on the price or value of LIT's securities. Indeed, it contains all of the relevant information pertaining to the application that may be released without breaching patent law and subsequently jeopardising future grant of the patent.
- (c) The time taken to obtain a patent is usually many years. Some of LIT's patents have taken 16 years to be granted. If the application is granted at a future date, it may then be a considerable asset of the Company.
- (d) It is reasonable that persons who commonly invest in securities may speculate on the grant of a patent - very similar to announcing the commencement of drilling for a listed exploration company. Paragraph 4.2 of GN 8 regards persons who commonly invest in securities as persons who buy and hold securities for a period of time based on their view of the inherent nature of a security. Given the long time it takes for a patent application to be assessed and adjudicated upon, there is a reasonable basis for LIT to regard the Information as material. It may be regarded by persons who commonly invest in securities as going to the inherent value of LIT's securities.
- (e) The submission of a properly formulated patent application requires a significant volume of work and the completion of this task demonstrates the Company's commitment to the IP proposed to be secured by it and to the lines of business which would utilise that IP.
- (f) LIT is in the business of developing or acquiring IP and the industry in which LIT operates is very competitive and fast moving. Seeking IP protection for its core assets is a matter critical to LIT's ongoing viability and success. Conversely, the failure by an entity in the industries in which LIT operates to properly protect its IP could reasonably be expected to have a significantly detrimental effect on that entity. Accordingly LIT considered at the time it made the release, and maintains as at the date of this letter, that it was entirely reasonable for it to form the opinion that the Information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of LIT securities, in accordance with the guidance contained in paragraph 4.2 of GN 8.
- (g) ASX notes in GN 8 that Listing Rule 3.1 can give rise to difficulties in practice in assessing whether or not there is an obligation to disclose information, but that such difficulties are inescapable with it being "*the entity, and only the entity, that can and must form a view as to whether the information it knows, and the rest of the market does not, is market sensitive.*" For the reasons set out above LIT maintains that it has complied with, and properly discharged, its duty to undertake that assessment in electing to make the ASX release in question.

4. N/A

5. We confirm that LIT is complying with the Listing Rules and, in particular, Listing Rule 3.1.

6. We confirm that LIT's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board to respond to ASX on disclosure matters.

Please call me if you wish to discuss this issue.

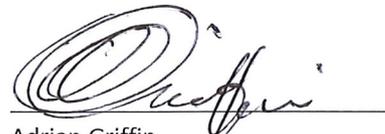
Yours sincerely

**LITHIUM AUSTRALIA NL**



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Barry Woodhouse  
**COMPANY SECRETARY**



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Adrian Griffin  
**MANAGING DIRECTOR**





3 August 2021

Reference: 37516

Mr Barry Woodhouse  
Company Secretary  
Lithium Australia NL

By email

Dear Mr Woodhouse

### **Lithium Australia NL ('LIT'): Query Letter**

ASX refers to the following:

- A. LIT's announcement titled "LIT fortifies IP protection for its battery recycling" lodged on the ASX Market Announcements Platform ('MAP') on 3 August 2021 (the 'Announcement'), which disclosed that a provisional patent application had been lodged in relation to technology developed by a subsidiary of LIT (the 'Information').

LIT lodged the Announcement as market-sensitive when submitted to ASX Online.

- B. 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.
- C. Section 7.10 of Guidance Note 8, which outlines ASX's view on "ramping" announcements and provides (relevantly):

*"Ramping announcements come in many forms, including:*

- the release of a "business update" or something similar, which will typically be worded in an exuberant fashion but which on closer examination contains little in the way of substance that has not already been disclosed to the market;" ...*
- "an announcement that has no substance but seeks to ride on the back of strong market sentiment in a particular sector;" ...*

*"Whenever ASX detects what it suspects to be a ramping announcement, it will give careful consideration to suspending the entity's securities from trading and issuing a query letter to the entity asking the entity:*

- if it marked the announcement as market sensitive when it was lodged on MAP, to identify what information in the announcement the entity considered was market sensitive and why;*
- if it marked the announcement as not being market sensitive when it was lodged on MAP, to explain its purpose in lodging the announcement on MAP, given its evident view that the information was not market sensitive and therefore not required to be disclosed under Listing Rule 3.1; ..."*

### **Request for information**

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

1. Please provide the date on which the provisional patent was lodged.
2. Does LIT 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?

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3. If the answer to question 2 is “yes”, please advise the basis for that view, commenting specifically on why an application for a provisional patent is considered to be material.
  4. If the answer to question 2 is “no”, please explain LIT’s purpose for lodging the Announcement on MAP, and why it was lodged as market-sensitive.
  5. Please confirm that LIT is complying with the Listing Rules and, in particular, Listing Rule 3.1.
  6. Please confirm that LIT’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 LIT 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 **12:00 PM AWST Friday, 6 August 2021**. You should note that if the information 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, LIT’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 LIT 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 LIT’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 LIT’s securities under Listing Rule 17.3.

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

In responding to this letter, you should have regard to LIT’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 LIT’s obligation to

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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

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)