

23 November 2016



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ASX Limited  
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By email: [dawn.james@asx.com.au](mailto:dawn.james@asx.com.au) and [tradinghaltspert@asx.com.au](mailto:tradinghaltspert@asx.com.au)

Dear Dawn

**Nearmap Ltd (ASX: NEA) – Response to ASX Letter**

We refer to your letter dated 23 November 2016 and respond to the questions raised in your letter as follows:

**1. *On Monday 21 November 2016 when ASX queried NEA was NEA in discussions regarding a capital raising and, if so, at what stage were those discussions?***

As at the time ASX queried NEA, NEA was evaluating options for funding. At that time, no final decision (including by the NEA board) had been made to proceed with any capital raising.

While discussions regarding a potential capital raising had been undertaken internally, discussions in respect of the following matters had not been finalised (meaning that any capital raising (if one was to be undertaken) was insufficiently definite to warrant disclosure to ASX at the time of ASX's query):

- the size of any capital raise;
- the price of the securities to be offered under any capital raise (if the capital raise was to take place by way of equity offering);
- the precise form of any capital raise (eg. equity or debt);
- whether any capital raise would be underwritten; and
- at what time any capital raise would be undertaken (if at all).

In addition, no confidential soundings had been undertaken.

**2. *If the answer to question 1 is “yes”, why did NEA not disclose to ASX the fact that it was in discussion about a proposed capital raising when it was queried by ASX?***

ASX queried whether any capital raising was being undertaken. As at that time, no capital raising was in process. Rather, NEA was evaluating options for funding.

**3. At the time of the Announcement was NEA in discussions regarding a capital raising and, if so, at what stage were those discussions?**

As for Question 1 (other than the reference to 'as at the time ASX queried NEA', which should be taken to be a reference to 'as at the time of the Announcement' for the purposes of this response).

**4. If the answer to question 3 is “yes”, at the time of the Announcement did NEA consider information about the capital raising still to be confidential and, if so, why?**

At the time of the Announcement, NEA had not decided to proceed with any capital raising as it was merely evaluating its funding options (as NEA does from time to time) and for the reasons set out below NEA believed that such evaluations remained confidential.

Prior to the Announcement, NEA considered the evaluation of funding options it was undertaking to be confidential for the following reasons:

- there had been no media releases, press articles or public information released to the market which would indicate that NEA was considering undertaking a capital raise;
- no confidential soundings had been undertaken by NEA (and as such, no public communication had been made outside NEA's advisers as to the fact that NEA was considering undertaking a capital raise); and
- while communications had been received from a third party individual referencing that NEA may be considering undertaking a capital raising, as NEA had not determined the terms of any proposed capital raising, these communications were necessarily incorrect and considered by NEA to be speculation by one individual.

On the basis of the above, NEA's view was that confidentiality had, at this point, not been lost regarding NEA's evaluation of funding options and that such information was incomplete and insufficiently definite to warrant disclosure. On this basis, NEA determined that no announcement was necessary at that time, however it continued to monitor the media and trading volumes in its securities.

Immediately before releasing the Announcement, NEA received further correspondence from the third party individual and an email enquiry from a journalist seeking comment on any proposed capital raising. On receipt of this information (and with the knowledge that disclosure to the press could result in broader speculation) NEA had regard to its obligations under the ASX Listing Rules and it immediately prepared and released the Announcement to ASX to respond to market speculation and confirm that, while it was continuing to evaluate its options for raising capital, no decision with respect to whether to seek funding (or the form as to which it may take) had been made.

Given the facts as they stood at the time (as to which see the responses set out in Question 3 above), NEA considered that the Announcement was the most appropriate approach for ensuring compliance with its obligations under the ASX Listing Rules. A trading halt would not be appropriate given that NEA had not made a decision to undertake any capital raising.

5. ***When was the decision made to proceed with the capital raising announced by NEA on 23 November 2016 and who made that decision?***

The Board of NEA approved the capital raising on Tuesday, 22 November 2016 (after market close).

6. ***Who drafted the Announcement?***

The Announcement was drafted by MinterEllison, as NEA's legal adviser, following instructions from NEA and input from NEA's other advisers.

7. ***Who within NEA authorised or approved the release of the Announcement?***

In accordance with NEA's continuous disclosure policy, NEA's Chairman, Peter James, approved the release of the Announcement.

8. ***Having regard to the capital raising announced by NEA on 23 November 2016, what was the basis for NEA's statement in the Announcement two days earlier that:***

***"The Company continues to evaluate options for raising capital to accelerate its growth plans. Nearmap does not require new capital in order to progress its existing business plan and the Company advises that, at this time, no decision with respect to whether to seek further funding (or as to what form it may take) has been made."***

See responses to Questions 3 and 4.

9. ***Having regard to the capital raising announced by NEA on 23 November 2016, why shouldn't the statement in the Announcement quoted in the preceding paragraph be regarded as misleading?***

As there was, at the time of the Announcement, no certainty with respect to whether NEA would undertake a capital raising, the statement in the Announcement quoted in Question 8 was not misleading when made as it accurately reflected the facts at the time (ie that NEA was continuing to evaluate funding options). To have disclosed more would have risked misleading the market given the state of discussions regarding the funding options (as to which see the response to Question 3). The conclusion of the evaluation and the determination to proceed with a capital raising occurred after market close on Tuesday, 22 November 2016.

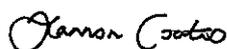
10. ***Please confirm that NEA is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.***

NEA is, and was at all times, in compliance with its obligations under the Listing Rules (including those in Listing Rule 3.1).

11. ***Please confirm that NEA'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 NEA with delegated authority from the board to respond to ASX on disclosure matters.***

Confirmed.

Yours sincerely



Shannon Coates  
Company Secretary



23 November 2016

Miss Shannon Coates  
Company Secretary  
Nearmap Limited  
Level 6, 6-8 Underwood Street  
Sydney NSW 2000

By email: shannon@evolutioncapital.com.au

Dear Miss Coates

**Nearmap Limited (“NEA”): aware query**

ASX Limited (“ASX”) refers to the following

- A. Our telephone discussion with you on Monday, 21 November 2016, in which ASX asked NEA if it was undertaking a capital raising and you responded that NEA was in ongoing discussions but that no capital raising was on foot.
- B. NEA’s announcement entitled “Response to Market Speculation” lodged on the ASX Market Announcements Platform and released at 2:47 pm AEDT on 21 November 2016 (the “Announcement”) stating:

*“Nearmap Ltd (ASX: NEA) (Nearmap or Company) has become aware of speculation concerning the Company undertaking a proposed capital raising.*

*The Company continues to evaluate options for raising capital to accelerate its growth plans. Nearmap does not require new capital in order to progress its existing business plan and the Company advises that, at this time, no decision with respect to whether to seek further funding (or as to what form it may take) has been made.”*
- C. NEA’s request for a trading halt lodged on the ASX Market Announcements Platform and released at 9:46 am AEDT on Wednesday, 23 November 2016 which stated:

*“The trading halt is requested in connection with a proposed equity raising to be conducted by the Company by way of an institutional placement ....”*
- D. NEA’s investor presentation released on the ASX Market Announcements Platform on Wednesday, 23 November 2016 and released at 11:40am AEDT referring to a fully underwritten placement to sophisticated, professional and other institutional investors to raise approximately A\$20 million and a non-underwritten SPP to raise up to a cap of \$5 million.
- E. The change in NEA’s share price on 21 November 2016, which dropped from an opening price of \$0.79 to a closing price of \$0.745, representing a fall of 5.7%.

F. Listing Rule 3.1, which requires a listed entity to give ASX immediately 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.

G. 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".

H. 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.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*

*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."*

I. 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."*

Having regard to the above, ASX asks NEA to respond separately to each of the following questions:

1. On Monday 21 November 2016 when ASX queried NEA was NEA in discussions regarding a capital raising and, if so, at what stage were those discussions?
2. If the answer to question 1 is "yes", why did NEA not disclose to ASX the fact that it was in discussion about a proposed capital raising when it was queried by ASX?
3. At the time of the Announcement was NEA in discussions regarding a capital raising and, if so, at what stage were those discussions?

4. If the answer to question 3 is “yes”, at the time of the Announcement did NEA consider information about the capital raising still to be confidential and, if so, why?
5. When was the decision made to proceed with the capital raising announced by NEA on 23 November 2016 and who made that decision?
6. Who drafted the Announcement?
7. Who within NEA authorised or approved the release of the Announcement?
8. Having regard to the capital raising announced by NEA on 23 November 2016, what was the basis for NEA’s statement in the Announcement two days earlier that:

*“The Company continues to evaluate options for raising capital to accelerate its growth plans. Nearmap does not require new capital in order to progress its existing business plan and the Company advises that, at this time, no decision with respect to whether to seek further funding (or as to what form it may take) has been made.”*

9. Having regard to the capital raising announced by NEA on 23 November 2016, why shouldn’t the statement in the Announcement quoted in the preceding paragraph be regarded as misleading?
10. Please confirm that NEA is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
11. Please confirm that NEA’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 NEA 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, and in accordance with, Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by not later than half an hour before the start of trading (ie before 9.30 am AEDT on Friday, 25 November 2016).

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, NEA’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.

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under Listing Rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail at [Dawn.James@asx.com.au](mailto:Dawn.James@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.

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

In responding to this letter, you should have regard to NEA’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 NEA’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.



If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

*[Sent electronically without signature]*

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