

Constitution Intoll Trust (II)

Manager: Macquarie
Infrastructure Investment
Management Limited
(ACN 072 609 271)

**Consolidated as at 3 February
2010**

This document is a consolidated copy of the Constitution for Intoll Trust (II), the terms of which apply to the Trust by virtue of the supplemental deed amending the original trust deed dated 12 May 2000, as further amended by the supplemental deeds dated 19 September 2000, 21 November 2001, 20 November 2002, 7 November 2003, 1 December 2004, 30 June 2005, 14 November 2005, 25 November 2005, 13 December 2005, 22 June 2006, 11 September 2006, 6 December 2006, 3 November 2008, 9 November 2009, 2 February 2010, and 2 February 2010.

This is not a legally binding document. Reference should be made to the original trust deed dated 18 July 1996 and to the subsequent amending deeds including the supplemental deeds noted above for the operative provisions. Footnotes do not form part of the text and are for guidance only.

Notes to user:

The footnotes contain only selected references to relevant Listing Rule requirements, not an exhaustive list of those which may apply.

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Constitution of Macquarie Infrastructure Trust (II)

1 Name of Trust

- 1.1 The Trust is called the Intoll Trust (II) or by such other name as the Manager determines from time to time¹.
- 1.2 If a Manager retires or is removed its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business.

2 Assets held on trust

Declaration of Trust

- 2.1 The Trustee declares that it holds the Trust Fund upon trust for the Unit Holders and will act in the interests of the Unit Holders on and subject to the terms and conditions of this deed.²
- 2.2 Any Assets held by the Manager as responsible entity of the Trust, must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Act so requires³.
- 2.3 Subject to law, the Manager may have Assets held by a custodian⁴.

3 Units and Options

Nature of Units

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 Subject to any rights, obligations or restrictions attaching to any particular Unit, each Fully Paid Unit confers an equal undivided interest and, unless this constitution states otherwise, a Partly Paid Unit confers an interest of the same nature which is proportionate to the amount paid up on the Unit.
- 3.3 Subject to the rights, obligations or restrictions attaching to any particular Unit, a Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.
- 3.4 [Deleted]

¹ See Corporations Regulation 5C.1.02

² See section 601FC of the Corporations Act. Clause 2.1 contains terminology no longer used in this constitution because it has been preserved in its original form.

³ See section 601FC(1)(i)

⁴ See clause 11.5.

Options

- 3.5 The Manager may create and issue Options on such terms and conditions as the Manager determines.
- 3.6 Subject to this constitution, the Corporations Act (and the conditions of any applicable relief from it) and, if relevant, the Listing Rules, the Manager may determine that Options will be issued:
- (a) for no consideration;
 - (b) on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the Manager, provided that the exercise price is less than the price that would otherwise apply under this constitution by a percentage not exceeding 50%; and
 - (c) conferring on the holder of the Option such other entitlement under this constitution as the Manager determines,
- and otherwise on terms and conditions and with such entitlements as determined by the Manager. Subject to this Constitution, the Corporations Act (and the conditions of any applicable relief from it) and, if relevant, the Listing Rules, the Manager may offer Options on such different or additional terms and conditions (including in relation to consideration) as the Manager considers appropriate. The terms of issue of the Option may allow the Manager to buy back options.
- 3.7 Subject to the Listing Rules and the conditions of any applicable ASIC relief, if the Manager is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the Manager is not required to offer Options under this clause to persons whose address on the Register is in a place other than Australia or New Zealand.
- 3.8 On exercise of an Option, the holder of the Option is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate.

Rights attaching to Units and Options

- 3.9 A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit. The holder of an Option holds an Option subject to the terms and conditions attaching to that Option.

Partly Paid Units

- 3.10 The Application Price of Units may be payable by instalments as set out in clauses 3.11 to 3.21.
- 3.11 The Manager may determine at any time that Units to be offered for sale or subscription in accordance with clause 4 are to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Manager determines or, if the Manager so determines, by a single instalment payable at such time as the Manager determines. All the terms and conditions of such an offer

must be set out in the document offering the Units for sale or subscription.

- 3.12 Subject to any applicable statutory duty requiring the Manager to treat Members of the same class equally and those of different classes fairly, where Units are offered for sale or subscription on terms and conditions determined and set out in accordance with clause 3.11, those terms and conditions may be varied or compliance therewith waived by the Manager. The variation or waiver must not take effect during the currency of the offering document pursuant to which the Units were offered for sale or subscription.
- 3.13 If a Member fails to pay in full any instalment due on any Partly Paid Unit or Units on or by the day specified for payment, the Manager may, during such time as the instalment or any part of the instalment remains unpaid, serve a notice on that Member requiring payment of so much of the instalment as is unpaid. The notice must specify a further time and day (not earlier than 14 days from the date of service of the notice) on or by which the payment as required by the notice is to be made. The notice must also state that in the event of non payment on or by that specified time and day, the Partly Paid Units in respect of which the instalment or part instalment remains unpaid will be liable to be forfeited.
- 3.14 If the requirements of any notice issued under clause 3.13 are not complied with:
- (a) any Partly Paid Unit in respect of which the notice has been given may at any time after the date specified in the notice for payment of the amount required by the notice, be forfeited if the Manager so determines; and
 - (b) all voting rights and entitlements to the distribution of income in connection with any Partly Paid Unit in respect of which the notice has been given are suspended until reinstated by the Manager.
- 3.15 A forfeited Unit may be sold or otherwise disposed of as a Fully Paid Unit, either:
- (a) at a price calculated in accordance with clause 4.1(e);
 - (b) by public auction, subject to ASIC giving any necessary relief from the provisions of the Corporations Act and the Manager complying with the conditions of that relief; or
 - (c) by private treaty, subject to ASIC giving any necessary relief from the provisions of the Corporations Act and the Manager complying with the conditions of that relief.

At any time before a sale or disposition the forfeiture may be cancelled upon such terms as the Manager thinks fit.

- 3.16 The holder of Partly Paid Units which have been forfeited ceases to be a Member in respect of the forfeited Units but remains liable to pay to the Manager all moneys which at the date of forfeiture were payable by him to the Manager in respect of the forfeited Units (including costs and together with interest at the bank bill reference rate plus 3% per annum, calculated from the date of forfeiture) but his liability ceases if and when the Manager receives payment in full of all such money and, if applicable, interest in respect of the forfeited Units.
- 3.17 A statement signed by a duly authorised officer of the Manager that a Partly Paid Unit have been duly forfeited on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the forfeited Units and Stapled Units and Stapled Shares.
- 3.18 Where a Partly Paid Unit forfeited pursuant to clauses 3.11 to 3.21 the Manager may receive the consideration, if any, given for a forfeited Unit on its sale or disposal, and the Manager may execute a transfer of such Unit in favour of the person to whom the Unit is sold or disposed of and that person must then be registered as the holder of that Unit and is not obliged to ensure that any part of the money which he has paid for the Unit is paid to the former holder of the Unit nor shall his title to that Unit be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit.
- 3.19 Where forfeited Units are sold or disposed of for cash, the Manager must deduct from the amount of the consideration the amount of the instalment owing at the date of forfeiture together with interest (if any) payable thereon and a sum representing an amount which has been or will be incurred for commissions, stamp duties, transfer fees and other usual charges, if any, on the sale or disposal of the Unit and any costs associated with the forfeiture or any proceedings brought against the Member to recover the instalment or part thereof owing. The Manager may retain the amounts so deducted, but the balance remaining must be paid to the Member whose Units were forfeited.
- 3.20 Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.
- 3.21 Subject to the Corporations Act and the provisions of this constitution, the rights and obligations attaching to a Partly Paid Unit will be in proportion to the extent to which that Unit is paid up.

No fractions of Units

- 3.22 Fractions of a Unit may not be issued.

Where any calculation performed under this constitution or the terms of a withdrawal offer would otherwise result in the issue or redemption of a fraction of one Unit, the number of Units to be issued or redeemed is to be rounded down or up respectively to the nearest whole Unit.

- 3.23 Any excess application or other money or property which results from rounding becomes an Asset of the Trust.

Consolidation and division of Units and Options

- 3.24 Units and Options may be consolidated or divided as determined by the Manager⁵.
- 3.25 [Deleted]

Transfer of Units and Options

- 3.26 Subject to clauses 3.27, Members may transfer Units and, subject to their terms and conditions, Options.
- 3.27 While the Trust is Listed and the Listing Rules so require, a Member may not transfer Restricted Securities during the Escrow Period.
- 3.28 Subject to the rules applicable while the Trust is admitted to an uncertificated trading system, transfers must be in a form approved by the Manager and be presented for Registration duly stamped.
- 3.29 A transfer is not effective until Registered.
- 3.30 The Manager:
- (a) subject to the Listing Rules⁶ while the Listing Rules apply, may refuse to record any transfer in the Register without giving any reason for the refusal; and
 - (b) while the Trust is Listed, must refuse to record a transfer in the Register which would be in breach of clause 3.27.
- 3.31 [Deleted]

Joint tenancy

- 3.32 Persons Registered jointly as the holder of a Unit or Option hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

Death, legal disability of Member or Option holder

- 3.33 If a Member or Option holder dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units or Options Registered in the Member's or Option holder's name.

Number of Units

- 3.34 [Deleted]

Income entitlement of Units

- 3.35 Except as otherwise expressly provided in this constitution, the Manager may in its discretion issue Units on terms that such Units:

⁵ Refer Listing Rules, Chapter 7 - reorganisations of capital.

⁶ Listing Rule 8.10 restricts the Manager's ability to prevent proper SCH transfers, but allows for a holding lock in certain specified circumstances.

- (a) participate fully for Net Income of the Trust in respect of the Period in which they are issued; or
- (b) do not entitle the holder of such Units to receive a distribution of Net Income of the Trust in respect of the Period in which such Units are issued; or
- (c) entitle the holder of such Units to receive a distribution of Net Income of the Trust in respect of the Period in which such Units are issued which is not greater than the proportion of the Net Income of the Trust to which a Member holding a Unit during the whole of that Period is entitled multiplied by the number of days from and including the date of allotment of those Units to the end of that Period divided by the total number of days in that Period.

4 Application Price for Units⁷

4.1 Units must only be issued at an Application Price:

- (a) in the case of a proportionate offer (including a rights issue) while the Trust is Listed, determined in accordance with clause 4.4;
- (b) in the case of a placement while the Trust is Listed, determined in accordance with clause 4.5;
- (c) in the case of reinvestment of income while the Trust is Listed, determined in accordance with clause 9.22;
- (d) in the case of Units issued upon the exercise of an Option, determined in accordance with clause 3.6;
- (e) in all other cases while the Trust is Listed, equal to the Average Market Price of Units; and
- (f) in all other cases while the Trust is not Listed, equal to:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Fully Paid Units in issue} + \text{Paid-up Proportion}}$$

4.2 Each of the variables in clause 4.1(f) must be determined as at the next Valuation Time after:

- (a) the Manager receives the application for Units; or
- (b) the Manager receives the application money (even if paid or to be paid into the Applications Account), or the property against which Units are to be issued is vested in the Manager

whichever happens later.

⁷ Required to be included by Section 601GA(1)(a)

- 4.3 The Application Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the Application Price.

Rights issues

- 4.4 While the Trust is Listed and subject to the terms of the applicable ASIC relief⁸, the Manager may offer Units for subscription at a price determined by the Manager to those persons who were Members on a date determined by the Manager not being more than 20 Business Days immediately prior to the date of the offer if:
- (a) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right of entitlement is renounceable); and
 - (b) the Application Price of the Units is not less than 50% of the Average Market Price of the Units calculated as at the last Business Day before the date of the offer document under which the offer is made.

Subject to the Listing Rules and the conditions of any applicable ASIC Relief, the Manager is not required to offer Units under this clause 4.4 to persons whose address on the Register is in a place other than Australia or New Zealand⁹.

Terms of pro rata issues

- 4.4A (a) Any offer made under clause 4.4 must specify the period during which it may be accepted. It must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Manager under clause 4.4. The Manager may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Manager must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units offered for subscription under clause 4.4 which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person. The application price payable in relation to such further offer must not be less than that at which the Units were originally offered to Members.
- (c) if an underwriter has underwritten any offer for subscription under clause 4.4, the underwriter may take up any Units not subscribed for by the Member.Placements and other issues

- 4.5 While the Trust is Listed, the Manager may at any time issue Units to any person, whether by way of a placement or otherwise:

⁸ See ASIC Class Order 05/26

⁹ Assumes the Manager is able to comply with the conditions in Listing Rule 7.7.1; see also ASIC Class Order 98/52, paragraph (vi).

- (a) at the Average Market Price on the day the Units are offered; or
- (b) at a price and on terms determined by it, provided that the Manager complies with the Listing Rules applicable to the issue and the conditions of any applicable ASIC Relief.

5 Application procedure

Application form

- 5.1 An applicant for Units must complete a form approved by the Manager if the Manager so requires. The form may be transmitted electronically if approved by the Manager.
- 5.2 [Deleted]

Payment

- 5.3 Payment in respect of an application in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:
 - (a) accompany the application;
 - (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time or as the terms of issue of the relevant Option or Partly Paid Unit contemplate; or
 - (c) comprise a reinvestment of distribution in accordance with clause 9.19 or 9.23.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property must be deducted from the market value of the property before the number of Units to be issued is calculated.

Manager may reject

- 5.4 The Manager may reject an application in whole or in part without giving any reason for the rejection¹⁰.
- 5.5 [Deleted]

Minimum amounts

- 5.6 The Manager may set a minimum application amount and a minimum holding for the Trust and alter or waive those amounts at any time¹¹.

¹⁰ Refer Listing Rule 10.11 - restriction on issue of Units to related parties.

¹¹ While the Trust is Listed, see clause 26 regarding the sale of small holdings.

Issue date

5.7 Except in the case of a reinvestment of distribution in accordance with clause 9.22, Units are taken to be issued when:

- (a) the Manager Accepts the application; or
- (b) the Manager receives the application money (even if paid into the Applications Account or received in the form of a cheque) (or the first instalment in respect of Partly Paid Units), or the property against which Units are to be issued is vested in the Manager,

whichever happens later.

Units which are issued on a reinvestment of distribution in accordance with clause 9.22 are taken to be issued on the first day after the end of the Period in which the application in respect of those Units is deemed to have been received.

Uncleared funds

5.8 Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Manager within 1 month of receipt of the application.

6 Redemption Price of Units¹² and buy-back of Units

Redemption Price

6.1 A Unit must only be redeemed at a Redemption Price calculated as:

$$\frac{(\text{NAV} - Y) \times Z}{U}$$

Where:

NAV = Net Asset Value;

Y = the aggregate of all costs, charges, expenses, disbursements, commissions, brokerage and other usual fees which would be incurred if all the Assets held at the date of calculation of the Redemption Price were sold on that date at the respective amounts at which each of the Assets is brought to account in computing the Net Asset Value at that date and after making such further allowance as the Manager determines in respect of any Tax that would be payable by the Trust if all such Assets had been disposed of on that date;

U = the aggregate of the number of Units in issue at the date of calculation of the Redemption Price;

¹² Required to be included by Section 601GA(4) if a right of redemption is to be offered.

Z = the amount of the Application Price paid on the Unit divided by the Application Price;

and if the formula results in a fraction of a cent the Redemption Price of a Unit will be rounded down to the nearest whole cent.

6.2 Each of the variables in clause 6.1 must be determined:

- (a) while the Trust is Liquid, as at the close of business on the day before the payment of the Redemption Price in accordance with clause 7; or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes.

6.3 If the calculation of the Redemption Price results in a fraction of a cent, the Redemption Price will be rounded down to the nearest whole cent.

Buy-back of Units¹³

6.4 While the Trust is Listed the Manager may, subject to and in accordance with the Corporations Act (including any modifications thereof) and any requirements under the Listing Rules, purchase Units.

6.4A The purchase price payable under clause 6.4 for the Unit shall be determined by the Manager as follows:

- (i) during any period in which a purchase may be made, the Manager (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on the ASX and may adjust that pricing range from time to time if appropriate, but the price paid must satisfy the following requirements:
 - (A) the maximum purchase price on any day can not exceed the Buy-Back Market Price for that day by more than 5%, the amount of that excess to be determined by the Manager (or its nominee); and
 - (B) the minimum purchase price on any day can not be less than the Buy-Back Market Price for that day by more than 15%, the amount of that reduction to be determined by the Manager (or its nominee);
- (ii) the purchase price must otherwise satisfy the conditions of any ASIC Relief.

For the purposes of this clause 6.4A:

Buy-Back Market Price: in respect of the relevant Unit means the average of the market prices (as that term is defined in the Listing

¹³ See Listing Rule 7.36.

Rules) for the Unit for the last 5 Business Days in which the Unit was traded on the ASX, determined on (and including) the Business Day immediately preceding the day on which a purchase is to be made.

7 Redemption procedures¹⁴

While Trust is Listed

- 7.1A While the Trust is Listed, none of the provisions of this clause 7 except clause 7.10 apply¹⁵.

Request for redemption

- 7.1 A Member may make a request for the redemption of some or all of their Units in any manner approved by the Manager and, while the Trust is Liquid, the Manager must give effect to that request at the time and in the manner set out in this clause 7.
- 7.2 A Member may not withdraw a redemption request unless the Manager agrees.

When Trust is Liquid¹⁶

- 7.3 Clauses 7.4 to 7.10 apply only while the Trust is Liquid¹⁷.
- 7.4 The Manager must satisfy a redemption request in respect of a Unit by payment from the Assets of the Redemption Price calculated in accordance with clause 6. The payment must be made within 60 days of receipt of the request.
- 7.5 The day of receipt of the redemption request is:
- (a) the day of actual receipt if the redemption request is received before 3.00pm on a Business Day; or
 - (b) the Business Day following the day of actual receipt if the redemption request is received on a day which is not a Business Day or is received after 3.00 pm on a Business Day.
- 7.6 The Manager need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amount as determined by the Manager from time to time unless the redemption request relates to the balance of the Member's holding.
- 7.7 The Manager is not obliged to pay any part of the Redemption Price out of its own funds.

¹⁴ These procedures must be fair to all Members: Section 601GA(4)

¹⁵ Refer Listing Rule 1.1 condition 5.

¹⁶ Required to be included by Section 601GA(4)(b)

¹⁷ For definition of a liquid scheme see Section 601KA

- 7.8 If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Manager may treat the redemption request as relating to the balance of the Member's holding.
- 7.9 If the Manager increases the minimum holding amount, the Manager may after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current minimum holding amount redeem that Member's holding without the need for a redemption request.

Discretionary redemption

- 7.10 Subject to the Corporations Act and the Listing Rules (if the Listing Rules apply), if the Manager is not obliged to give effect to a redemption request, it may redeem some or all of the Units which are the subject of the request¹⁸.

When Trust is not Liquid¹⁹

- 7.11 While the Trust is not Liquid²⁰, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager in accordance with the provisions of the Corporations Act regulating offers of that kind²¹. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.
- 7.12 The Manager is not at any time obliged to make a withdrawal offer. If it does, it may do so by:
- (a) publishing it by any means (for example in a newspaper or on the internet); or
 - (b) giving a copy to all Members.
- 7.13 If the Manager receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

Clauses applicable whether or not the Trust is Liquid

- 7.14 Clauses 7.15 and 7.16 apply whether or not the Trust is Liquid.

Sums owed to Manager

- 7.15 The Manager may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Member.

Transfer of Assets

- 7.16 The Manager may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a request pursuant to a redemption request,

¹⁸ See section 601FC(1)(d) and Chapter 5C.6.

¹⁹ Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

²⁰ For definition of a liquid scheme see Section 601KA(1)

²¹ Refer sections 601KB to 601KE

pursuant to a withdrawal offer or in payment of a distribution. These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the redemption request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer). If the Manager requires, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

8 Valuation of assets

Valuation

- 8.1 The Manager may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.²²
- 8.2 The Manager may determine Net Asset Value at any time, including more than once on each day.
- 8.3 The Manager may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Manager determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its market value²³.
- 8.4 While the Trust is not Listed, where the Manager values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Manager must be capable of resulting in a calculation of the Application Price or Redemption Price that is independently verifiable.

9 Income and distributions to Members²⁴

Collection of income

- 9.1 The Manager must receive and collect all income of the Trust.

Nature of Receipts etc

- 9.2 The Manager may determine in accordance with generally accepted accounting principles and accounting standards whether any receipt, profit, gain (whether realised or unrealised), payment, loss, outgoing, provision or reserve or any sum of money or investment in a Period is or is not to be treated as being on income or capital account and whether and the extent to which any provisions and reserves need to be made for the Period.

Determination of Net Income

- 9.3 The Manager must determine the net income of the Trust for each Period. Unless the Manager in its discretion otherwise determines, the

²² See section 601FC(1)(j) for Manager's obligations concerning valuation

²³ ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

²⁴ Refer to Listing Rules 3.20 - notification to ASX of record date, and 6.10 - prohibition on changing the right to a distribution.

Net Income of the Trust for a Period is to be the Taxable Period Income for the Period but if it is necessary in calculating the Taxable Period Income to gross up any amount of income, or include any amount of deemed assessable income or to make any deemed deductions, the grossing up or deemed assessable income (excluding net capital gains included in assessable income) or deemed deductions must not be included in calculating the Net Income of the Trust for the Period unless the Manager determines that the grossing up or deemed assessable income or deemed deductions should be included in calculating the Net Income of the Trust.

Accounting standards

- 9.3A Notwithstanding that the Net Income of the Trust may, in accordance with clause 9.3, be calculated in the same manner as the Taxable Period Income, the accounts of the Trust are to be prepared in accordance with applicable accounting standards and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Net Income of the Trust pursuant to clause 9.3.

Distribution Account

- 9.4 At the end of each Period the Members are presently entitled to the Net Income of the Trust together with any further amount which the Manager determines in accordance with clause 9.12, clause 9.15 or clause 9.29 to distribute to the Members in respect of that Period.
- 9.5 The Manager is empowered but not bound to make an apportionment or keep separate accounts of the different categories and sources of income that relate to different types of investments of the Trust and the costs, charges and expenses attributable to each of those types of income. The Manager may allocate to a Member all or part of the Net Income to which the Member is entitled from a particular category or source of income in which case the Manager must advise the Member of the extent to which income allocated to the Member consists of income from a particular category and/or source.
- 9.6 The Net Income of the Trust in respect of a Period is to be transferred to a special account in the name of the Manager and designated a Distribution Account. Any amount in the Distribution Account does not form part of the Trust Fund but must be held by the Manager, subject to clause 9.9, on trust for distribution among the registered holders of Units in the Trust as at the close of business on the last Business Day of the Period. The Manager may invest any moneys standing to the credit of the Distribution Account pending disbursement and the Manager shall have the same powers and responsibilities in relation to the management of such moneys as it has in relation to the Assets of the Trust. Income earned from the investment is deemed to be income of the Trust and must be dealt with accordingly. If the Manager has exercised its power under clause 9.5 the separate categories and sources of income must be shown in the Distribution Account.

- 9.7 In determining the Net Income of the Trust for a Period (but not the Taxable Period Income) if any income is received in a Period when, in the opinion of the Manager, it is not practicable to distribute it in the distribution for that Period, it may be treated by the Manager as having accrued during the next following Period and be distributed accordingly.

Participation in Distribution of Income

- 9.8 Subject to clause 25.2, a Member is entitled to receive a distribution of the Net Income of the Trust and any other moneys credited to the Distribution Account in accordance with the following formula:

$$\frac{A \times B}{C}$$

Where:

- A = the amount credited to the Distribution Account in respect of the relevant Period calculated to two decimal points of one cent and rounded down;
- B = the aggregate of the number of Fully Paid Units held by the Member as at the close of business on the last day of that Period which are entitled to a full income distribution for the relevant Period plus the number obtained by multiplying the number of Partly Paid Units held by the Member as at the close of business on the last day of the Period by the percentage of the Application Price paid in respect of those Units as at the last day of the Period plus, if the Member holds at the close of business on the last day of the Period Units issued during that Period which have a proportionate income entitlement in accordance with clause 3.35(c), the aggregate number of such Units held by that Member multiplied by the relevant proportion; and
- C = the aggregate of the total number of Fully Paid Units entitled to a full income distribution for the relevant Period as at the close of business on the last of the Period plus the number obtained by multiplying the number of Partly Paid Units in issue as at the close of business on the last day of the Period by the fraction obtained by dividing the aggregate of all amounts paid in respect of those Partly Paid Units by the total of the Application Prices of the Partly Paid Units plus, if Units have been issued during the relevant Period which have a proportionate income entitlement in accordance with clause 3.35(c), the aggregate of the total number of such Units multiplied by the relevant proportion.

Deduction of Tax

- 9.9 The deduction of the following amounts from the part of the Distribution Account to which a particular Member is entitled is authorised:

- (a) tax which is paid or anticipated to be payable by the Manager on account of or in respect of the Member on the amount of the Net Income of the Trust otherwise distributable to that Member;
- (b) if it is determined by the Manager, a charge made by a person on account of Tax imposed on the deposit in an account of the Trust or of the Manager of all amounts received from that Member during the relevant Period or any Tax imposed on the Manager in respect of the receipt by the Manager of those amounts;
- (c) if it is determined by the Manager, a charge made by a person on account of Tax imposed on or in respect of the debiting in an account of the Trust of the amount of Net Income of the Trust otherwise distributable to that Member; and
- (d) any other amount required to be deducted by law,

and all amounts deducted must be applied in reimbursing the Trust for any corresponding amount paid or reimbursed out of the Trust or reimbursing the Manager for the payment of the Tax to the person or authority entitled to it.

Distribution of Income

- 9.10 Subject to clause 9.31 and to any deductions made under clause 9.9, and provided that the Member's entitlement to any distribution for each Unit in the Trust is not to be reinvested under clause 9.19 at the end of the then current Period, the Manager must distribute to that Member the Member's entitlement to the Net Income of the Trust and other moneys in accordance with clause 9.8 within three months of the last day of the Period.
- 9.11 If the Member's entitlement to a distribution includes a fraction of a cent the entitlement is to be adjusted to the nearest cent below the amount of the Member's entitlement and the fraction of the cent becomes an Asset of the Trust.

Taxable Income Greater than Net Income

- 9.12 Subject to this constitution, the Manager from time to time may transfer capital to the Distribution Account for the purpose of enabling a distribution to Members of a total amount up to the Taxable Annual Income of the Trust in instances where the Taxable Annual Income of the Trust exceeds the Net Income of the Trust for a year of income. The sum transferred to the Distribution Account is to be distributed to Members in the same manner as Net Income of the Trust.
- 9.13 A transfer under clause 9.12 may not be made to the extent that the excess of the Taxable Annual Income of a Trust over the Net Income of the Trust for a year of income is due to the grossing up of any amount of income of the Trust in respect of any tax credit or unless the Manager is of the opinion that tax is likely to become payable by the Manager if it does not make the transfer or unless the benefit of a tax

credit or rebate cannot be made available to Members. If a transfer is not made for this reason the excess Taxable Annual Income of the Trust and the benefit of any tax credit is deemed to have been distributed to Members pro rata to their entitlement to any Net Income of the Trust of the category or source of income in respect of which the credit or rebate applied.

Reserves and Bonus Issues

- 9.14 If so determined by the Manager, any net realised and unrealised capital gains or losses of the Trust may be separated from the other receipts, profits and gains of the Trust and credited to the Reserve Account or credited to the Distribution Account.
- 9.15 The Manager may distribute to the Members from time to time by way of cash or other Assets of the Trust as at a date determined by the Manager an amount equal to so much of the net realised capital gains credited to the Reserve Account as the Manager may determine. The Manager must adjust the Reserve Account for the amount so distributed.
- 9.16 The distribution of cash or other Assets to each Member under clause 9.15 is to be calculated in accordance with the following formula or in any other manner determined by the Manager:

$$\frac{A \times B}{C}$$

Where:

- A = the amount of cash or the Value of Assets (determined by the Manager) to be distributed;
- B = the number of Fully Paid Units held by the Member on the day of calculation plus the number obtained by multiplying the number of Partly Paid Units held by the Member on the day of calculation by the percentage of the Application Price paid in respect of those Units on the day of calculation; and
- C = the number of Fully Paid Units in issue on the day of calculation plus the number obtained by multiplying the number of Partly Paid Units in issue on the day of calculation by the fraction obtained by dividing the aggregate of all amounts paid in respect of all Partly Paid Units in issue on the day of calculation by the total of the Application Prices of the Partly Paid Units in issue on the day of calculation;

9.17

Any amount standing to the credit of a capital reserve account may be capitalised by a determination of the Manager. Subject to clause 9.18, the capitalisation is to be effected by dividing the number of Units held by Members by a proportion determined by the Manager which takes into account the number of Fully Paid Units and Partly Paid Units held by the Member, the amount to be capitalised and other matters in relation to the particular Member determined by the Manager. Following the capitalisation:

- (a) the number of Units in issue will increase accordingly;
- (b) the Manager must cause the Register to be amended and take any other steps which the Manager considers necessary to amend the records of the Trust to reflect the capitalisation;
- (c) the Manager may ignore fractions and round each Member's entitlement to the nearest whole Unit;
- (d) the sum capitalised must be debited to the Reserve Account and thereafter be treated in the same manner as funds subscribed by Members to the Trust; and
- (e) the additional Units created will rank for distribution of income and for all other purposes from a date determined by the Manager.

9.18 The number of additional Units created under clause 9.17 must not be less than the number calculated in accordance with the following formula:

$$\frac{A}{B}$$

Where:

A = the amount standing to the credit of the Reserve Account which is to be capitalised; and

B = the Application Price applicable on the day upon which the capitalisation is to take place,

and each Unit created upon the capitalisation must be issued at the same price which may be less than the Application Price on that date.

Member Reinvestment

9.19 (a) The Manager may from time to time determine that it is appropriate that all or any part of the amount of which each Member is entitled to receive as a distribution in accordance with clauses 9.8, 9.10, 9.12, 9.15 and 9.29 should be reinvested

in further Units as at the end of the relevant Period and may by notice to the Members require them to invest in further Units up to the limit of the amount of the distribution. In addition to this mandatory reinvestment the Manager may in its discretion from time to time by notice to all Members confer upon Members of the Trust the right of reinvestment of any distribution in further Units during such period as the Manager may determine. This right if conferred by the Manager may be exercised by the Member by giving notice in writing to the Manager (in the form determined by the Manager from time to time) to request that the Manager retain and reinvest in Units the money or part of the money to be distributed to the Member under clauses 9.8, 9.12 and 9.29.

- (b) Where a Member is entitled to be provided with Units upon reinvestment, the Manager may, in its discretion, either issue new Units or cause existing Units to be acquired for transfer to the Member (or undertake a combination of both options). If the Manager determines to cause the transfer of Units to a Member, Units may be acquired in the manner the Manager considers appropriate and such acquisition shall satisfy the reinvestment obligation of the Manager. Where Units are transferred instead of issued upon reinvestment:
 - (i) the average purchase price at which those Units are transferred must equal the aggregate of the Application Price for each additional Unit; and
 - (ii) all references to Application Prices for Units in clauses 9.19 to 9.26 inclusive are taken to include the purchase prices for those Units.

9.20 A Member may by notice in writing to the Manager (in the form determined by the Manager from time to time) received not later than the last day of the relevant Period cancel any notice given under clause 9.19. The Member is entitled to give a further notice under clause 9.19 at any time in respect of any subsequent Period.

9.21 In the event that a notice under clause 9.19 has been given to the Manager by a Member not later than the last day of the relevant Period and has not been cancelled under clause 9.20 the Manager is entitled, but not obliged, out of any money to be distributed to the relevant Member at the date of distribution, to retain all or part of the amount specified in accordance with the notice and reinvest that money on behalf of the Member in additional Units in accordance with clause 9.23. The Manager may from time to time determine that any notice to be given to the Manager pursuant to clause 9.19 or clause 9.20 is to be given to the registrar maintaining the Register or some other person and must notify Members of the person and the address to which the notices are to be given.

9.22

- (a) The Application Price payable for each additional Unit upon reinvestment is the Application Price determined in accordance with this clause 9.22.
- (b) While the Units in the Trust are Listed the Application Price for each additional Unit is the average of the daily volume weighted average prices of all sales of Units recorded on ASX during the Pricing Period, not including any transaction classified under the ASX Market Rules as a "Special Crossing", crossings prior to the commencement of normal trading or during the closing phase and after hours adjust phase, any overseas trades or trades pursuant to the exercise of options over Units, any overnight crossings, or any other sales which the Manager considers may not be fairly reflective of natural supply and demand (unless the Manager believes that this calculation does not provide a fair reflection of the market price of the Units during this period in which event there shall be substituted for the amount so calculated the market price of the Unit as determined by an expert independent of the Manager whose identity and instructions will be determined by the Manager) less the discount (if any) of not more than 10% of this amount determined by the Manager, rounded to the nearest four decimal places of a cent. If the amount to be reinvested in additional Units results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust on behalf of the relevant Member unless the Member has cancelled any previous notice under clause 9.19 in which case the money representing the fraction is to be paid to the Member as part of the Member's distribution in respect of the current Period.
- (c) In this clause 9.22:
 - (i) "**Pricing Period**" means in respect of a particular distribution the period of 10 Trading Days (or such other period of not less than 5 Trading Days as the Manager may determine) ending on a day no later than the fifth Trading Day prior to the date scheduled for payment of that distribution (or such other date as the Manager may determine).
 - (ii) "**Trading Day**" means a day that is a trading day for the purposes of the ASX Market Rules and which is a full day on which Units are quoted on ASX, and not suspended from quotation or made subject to a trading halt.

9.23 Whenever under this deed or by law money is held on behalf of a Member for future reinvestment the money so held may be aggregated and on each occasion on which the aggregated amount reaches the

Application Price of a Unit the amount will be applied in the purchase of a new Unit for issue to the Member.

- 9.24 Units issued under clauses 9.19 to 9.23 inclusive are to participate fully for Net Income of the Trust in respect of the Period in which they are issued.

Notice of Reinvestment

- 9.25 Where a Member has made a request under clause 9.19, the Member is to be provided by the Manager with a notice to the effect that the whole or part (as the case may be) of the distribution to which the Member would otherwise have been entitled has been reinvested on the Member's behalf and the amount of any Tax withheld by the Manager. The notice is to be given by the Manager upon the issue of the additional Units.

- 9.26 For all purposes the distribution to be distributed to a Member is deemed to have been received by the Member on a reinvestment of that distribution in additional Units under the terms of this clause 9.

Effect of Transfer or Transmission of Units

- 9.27 Upon the registration of any transfer or transmission of Units from any person (including the Manager) the transferor's interest in any amount standing to the credit of the Distribution Account which has not been reinvested under clause 9.19 at the date of transfer remains credited to the account of the transferor and does not pass to the Member in whose name the Units become registered.

Liability

- 9.28 The Manager does not incur any liability and is not obliged to account to anyone (including any Member or former Member) nor is liable for any loss or damage as a result of the exercise of any discretion or power under this clause 9 or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power notwithstanding any error or miscalculation in any provision made for Tax.

Distributions of Capital

- 9.29 Subject to clause 9.31, the Manager may determine to distribute capital to Members at any time or as at the end of a Period in addition to any other distributions to be made to Members in respect of a Period. Where the Manager is making a distribution as at the end of a Period, the Manager must transfer capital to the Distribution Account for this purpose of enabling a distribution to Members and any sum transferred to the Distribution Account for this purpose is to be distributed to Members in the same manner as Net Income of the Trust. Where the Manager determines to make a capital distribution at any other time, the Manager must in accordance with the Listing Rules determine a record date for the distribution and make the distribution to Members as at the close of business on that record date in proportion to the number of Units held by them respectively.

Public Trading Trust

9.30 If and so long as the Trust is a public trading trust for the purposes of Division 6C of Part III of the Income Tax Assessment Act 1936 and any provisions which amend or replace it, the following provisions shall apply and shall override the provisions of clauses 9.4 to 9.29 to the extent that they are inconsistent:

- (a) the Manager must provide for, and pay from the assets of the Trust when appropriate, all taxation attributable to the income of the Trust;
- (b) the Members will not have a present entitlement at the end of a Period to the net income of the Trust;
- (c) the Manager must transfer to the Distribution Account such amounts from the after tax income of the Trust as the Manager may in its discretion determine from time to time;
- (d) the respective entitlements of the Members to distributions to be made from the moneys transferred to the Distribution Account pursuant to clause 9.29(c) shall be calculated based on their respective holdings, using the same principle to determine their relative entitlements as is set out in clause 9.8, as at the books closing date determined by the Manager which need not be the last day of a Period;
- (e) when distributions are being made to Members pursuant to clause 9.29(d) from income of the Trust, the Manager may calculate the level of the franking credit balance at the time of the distribution and take all necessary or desirable steps in relation thereto, including the franking of the distributions; and
- (f) the Manager must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to public trading trusts.

Transfer of property other than cash

9.31 The Manager may transfer Trust property to a Member (or a nominee on behalf of a Member) rather than pay cash in whole or partial satisfaction of a Member's entitlement to a distribution of income from the Trust in accordance with clause 9.10 or to a distribution of capital in accordance with clause 9.29. Such property need not be transferred to the Distribution Account prior to distribution. Any such property must be of equal value to the total amount which would otherwise be paid or payable to the Member in cash based on a valuation done within one month before the date of the proposed transfer. The property to be distributed may comprise solely a beneficial interest in tangible or intangible property. In each case where property other than cash is to be transferred to Members (or to a nominee on behalf of Members), each Member authorises the Manager:

- (a) to act as their agent to agree to obtain the property; and

- (b) where the property is a share or an interest in a share in a company, to agree to become a member of that company.

If a distribution of specific assets to, or at the direction of, a particular Member or Members is illegal or, in the Manager's opinion, impracticable, the Manager may make a cash payment to the Member or Members on the basis of the cash amount of the distribution instead of the distribution of specific assets.

10 Payments

- 10.1 Money payable by the Manager to a Member may be paid in any manner the Manager decides.
- 10.2 Cheques issued by the Manager that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed monies.
- 10.3 Where the Manager attempts to make a payment to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the money is to be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed monies.
- 10.4 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.
- 10.5 A payment to any one of joint Members will discharge the Manager in respect of the payment.
- 10.6 The Manager may deduct from any amount to be paid to a person who is or has been a Member, or received from a person who is or has been a Member:
 - (a) any amount of Tax (or an estimate of it); or
 - (b) any other amount owed by the Member to the Manager or any other person which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

11 Powers of the Manager

General powers

- 11.1 Subject to this constitution, the Manager has all the powers in respect of the Trust that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Assets and acting in its personal capacity.

Contracting powers²⁵

- 11.2 Without limiting clause 11.1, the Manager in its capacity as trustee of the Trust has power to borrow or raise money (whether or not on security) and to incur all types of obligations and liabilities, including guarantees²⁶.

Investment powers

- 11.3 Without limiting clause 11.1, but subject to clause 11.4, the Manager may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.²⁷

Principal investment policy

- 11.4 The principal investment policy of the Manager in relation to the Trust is investment either directly or indirectly (for example through the purchase of interests in a managed investment scheme, equities or debentures) in both existing and proposed Infrastructure Assets and the making of such other investments with the Assets of the Trust Fund which in the Manager's opinion are not from time to time required for that purpose. The Manager may vary the principal investment policy, provided reasonable notice is given to Members in order that Members may, if they see fit, dispose of their Units prior to the variation taking effect.

Power of delegation²⁸

- 11.5 The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.
- 11.6 The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Manager thinks fit.
- 11.7 The agent or delegate may be an associate of the Manager.²⁹

Exercise of discretion

- 11.8 The Manager may in its absolute discretion decide how and when to exercise its powers.

Underwriting

- 11.9 The Manager may enter into an arrangement with a person to underwrite the subscription or purchase of Units or Options on such terms as the Manager determines. Unless the agreement between the Manager and the underwriter expressly states the contrary intention, the underwriter will not be an agent or delegate of the Manager.

²⁵ Required to be included by Section 601GA(3)

²⁶ Refer Listing Rule 13.2 - the total liabilities of a listed trust must not exceed 60% of its total tangible assets.

²⁷ Subject to Section 601FC(4)

²⁸ See also Section 601FB.

²⁹ Subject to Part 5C.7

12 Retirement of Manager³⁰

Voluntary retirement

- 12.1 The Manager may retire as the responsible entity of the Trust as permitted by law³¹.

Compulsory retirement

- 12.2 The Manager must retire as the responsible entity of the Trust when required by law³².

New responsible entity

- 12.3 Any replacement Manager must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

Release

- 12.4 When it retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed.³³

Retirement benefit

- 12.5 The Manager is entitled to agree with the incoming manager to be remunerated by, or to receive a benefit from, the incoming manager in relation to:
- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Members, and nominating to the Members the incoming manager as its replacement; or
 - (b) its retirement as Manager

and is not required to account to Members or Option holders for such remuneration or benefit.

13 Notices to Members and Option holders³⁴

- 13.1 Subject to the Corporations Act, a notice or other communication required to be given to a Member or Option holder in connection with the Trust must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Member or Option holder at the Member's or Option holder's physical or electronic address last advised to the Manager for delivery of notices.

³⁰ Refer to Listing rule 3.16.2(a)

³¹ See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

³² See Section 601FM and 601FA. Note that Listing Rules 13.3 and 13.4 do not apply to a managed investment scheme.

³³ See section 601FR for the Manager's obligation to transfer records, etc. Section 601FS restricts this release.

³⁴ While the Trust is Listed, notices to Members must be copied to ASX - refer Listing Rule 3.17.

- 13.2 A cheque payable to a Member or Option holder may be posted to the Member's or Option holder's physical address or handed to the Member or Option Holder or a person authorised in writing by them³⁵.
- 13.3 In the case of joint Members or Option holders, the physical or electronic address of the Member or Option holder means the physical or electronic address of the Member or Option holder first named in the Register.
- 13.4 A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the law³⁶, the Manager may determine³⁷ the time at which other forms of communication will be taken to be received.

14 Notices to the Manager

- 14.1 A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.
- 14.2 The notice is effective only at the time of receipt.
- 14.3 The notice must bear the actual, facsimile or electronic signature of the Member or Option holder or a duly authorised officer or representative of the Member or Option holder³⁸ unless the Manager dispenses with this requirement.

15 Meetings of Members

Corporations Act

- 15.1 The Manager may at any time convene a meeting of Members or Option holders, and must do so if required by the Corporations Act.³⁹

Manager may determine

- 15.2 Subject to this clause 15, the Corporations Act⁴⁰ and the Listing Rules, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted⁴¹.

³⁵ See Clause 16.3(c)

³⁶ See Section 601FC(1)(d)

³⁷ See Section 252G(4)

³⁸ See Clause 16.3(c)

³⁹ Refer Part 2G.4

⁴⁰ Refer Part 2G.4, especially sections 253C - voting rights, and 252W - proxies. See also clause 25 - restricted securities

⁴¹ Refer Listing Rules 3.13.2, 3.13.3, 6.10, 7.3, 10.10, 10.11 and 10.14.

Quorum

- 15.3 The quorum for a meeting of Members is at least 2 Members present in person or by proxy who are entitled to vote, unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

No quorum

- 15.4 If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:
- (a) if convened on the requisition of Members - dissolved; or
 - (b) otherwise - adjourned to such place and time as the Manager decides.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

Chairman

- 15.5 Subject to the Corporations Act⁴² the Manager may appoint a person to chair a meeting of Members.
- 15.6 The decision of the chairman on any matter relating to the conduct of the meeting is final.

Other attendees

- 15.7 [Deleted]

Proxies and voting

- 15.8 The provisions of the Corporations Act governing proxies and voting for meetings of members of registered managed investment schemes apply to the Trust⁴³.
- 15.9 The Manager may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act⁴⁴.

Adjournment

- 15.10 The chairman has power to adjourn a meeting for any reason to such place and time as the chairman thinks fit.

Resolutions binding

- 15.11 A Resolution binds all Members, whether or not they were present at the meeting.
- 15.12 No objection may be made to any vote cast unless the objection is made at the meeting.

⁴² Refer Part 2G.4 and Section 601FC(1)

⁴³ This provision is included for completeness - the law operates of its own force.

⁴⁴ Section 252Y(1) specifies the information which is normally to be included in an appointment of proxy.

Non-receipt

- 15.13 If a Member does not receive a notice (including if notice was accidentally omitted to be given to them) the meeting is not invalidated.

Joint meetings

- 15.14 [Deleted]

Meetings of Option Holders

- 15.15 If any meeting of Option holders is required to be held the foregoing provisions of this clause 15 will apply with necessary amendments.

16 Rights and liabilities of Manager

Holding Units

- 16.1 The Manager and its associates may hold Units in the Trust in any capacity⁴⁵.

Other capacities

- 16.2 Subject to the Corporations Act⁴⁶, nothing in this constitution restricts the Manager (or its associates) from:
- (a) dealing with itself (as trustee of the Trust or in another capacity) or with any Member or Option holder;
 - (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity or with any Member or Option holder or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
 - (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

Manager may rely

- 16.3 The Manager may take and may act upon:
- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
 - (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
 - (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member or Option

⁴⁵ See Section 601FG, Section 253E and Part 5C.7

⁴⁶ Refer Part 5C.7, and see also Listing Rule 10.1

holder of a person to act as their agent for any purpose connected with the Trust; and

- (d) any other document provided to the Manager in connection with the Trust upon which it is reasonable for the Manager to rely;

and the Manager will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

17 Limitation of liability and indemnity in favour of Manager

Limitation on Manager's liability

- 17.1 The Manager is not liable in contract, tort or otherwise to Members or Option holders for any loss suffered in any way relating to the Trust except to the extent that the Corporations Act imposes such liability.
- 17.2 Subject to the Corporations Act, the liability of the Manager to any person other than a Member or Option holder in respect of the Trust including any contracts entered into as trustee of the Trust or in relation to any Assets is limited to the Manager's ability to be indemnified from the Assets.

Indemnity in favour of Manager

- 17.3 The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust⁴⁷.
- 17.4 To the extent permitted by the Corporations Act⁴⁸, the indemnity under clause 17.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.
- 17.5 This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed as trustee of the Trust.

Right of indemnity not affected by unrelated breach

- 17.6 Where a Liability is incurred pursuant to a proper exercise of the Manager's powers under this constitution or at law, the Manager may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that Liability to any creditor of the Manager (in its capacity as trustee or responsible entity of the Trust), despite any loss the Trust may have suffered or any diminution in the value of Assets as a consequence of any unrelated act or omission by the Manager or by any person or entity acting on behalf of the Manager.

⁴⁷ See Section 601GA(2)

⁴⁸ See Sections 601FB(2) and 601GA(2)

18 Liability of Members and Option Holders

Liability limited

- 18.1 Subject to clauses 18.3 and 18.5, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- 18.2 A Member or Option holder need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Trust.
- 18.3 The Manager is entitled to be indemnified by a Member or Option holder or former Member or Option holder to the extent that the Manager incurs any liability for Tax or User Pays Fees as a result of the Member's or Option holder's action or inaction, or as a result of an act or omission requested by the Member or Option holder or former Member or Option holder.
- 18.4 Joint Members or joint Option holders and former joint Members or former joint Option holders are jointly and severally liable in respect of all payments including payments of Tax to which clause 18.3 applies, and User Pays Fees.

Recourse

- 18.5 In the absence of separate agreement with a Member or Option holder, the recourse of the Manager and any creditor is limited to the Assets.

Restrictions on Members

- 18.6 A Member or Option holder:
- (a) must not interfere with any rights or powers of the Manager under this constitution;
 - (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
 - (c) may not require an Asset to be transferred to the Member or Option holder.

19 Remuneration and expenses of Manager

Management fee

- 19.1 (a) Subject to the Corporations Act, the Manager is entitled to be paid out of the Assets a management fee equal to 110% of the Manager's reasonable estimate of its costs, including all overheads and whether incurred directly by the Manager or reimbursed by the manager to any of its related bodies

corporate, in providing its services as Manager for which it is not otherwise reimbursed pursuant to clause 19.3.

- (b) This fee is to be payable from time to time upon demand by the Manager. The Manager may make a demand for payment for all or part of the fee at any time if it has incurred costs whether or not it has paid those costs.
- (c) The entitlement to this fee commences on and from the Stapling Commencement Date and continues to the date of final distribution in accordance with clause 21.4.
- (d) The Manager is entitled to remuneration for the period up to the Stapling Commencement Date in the manner calculated pursuant to the former clause 19.1 which was replaced by this clause 19.1.
- (e) The Manager must produce a statement within 1 month from the end of each Quarter setting out the management fee for the Quarter and any amount remaining unpaid.

Waiver of fees

- 19.2 The Manager may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

Expenses

- 19.3 All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust⁴⁹ are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with:
- (a) this constitution and the formation and registration of the Trust;
 - (b) the preparation, review, distribution and promotion of any prospectus or offering memorandum in respect of Units or Options;
 - (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
 - (d) any proposed acquisition, disposal or other dealing with an investment;
 - (e) the administration or management of the Trust or its Assets and Liabilities, including expenses in connection with the Register or the valuation of any Asset or the Trust Fund as a whole;

⁴⁹ Refer Section 601GA(2)(b)

- (f) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (g) the admission of the Trust to the official list of ASX and compliance with the Listing Rules;
- (h) underwriting of any subscription or purchase of Units or Options, including underwriting fees, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under any such underwriting agreement;
- (i) convening and holding meetings of Members or Option holders, the implementation of any Resolutions and communications with Members or Option holders;
- (j) tax (including any amount charged by a supplier of goods or services or both to the Manager by way of or as a reimbursement for GST) and financial institution fees;
- (k) the engagement of agents (including real estate agents and managing agents), valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Manager;
- (l) preparation and audit of the taxation returns and accounts of the Trust;
- (m) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
- (n) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 19.4(n) must be repaid;
- (o) all damages, expenses, payments, legal and other costs and disbursements incurred by the Manager in relation to or in connection with any claim, dispute or litigation (“**claim**”) arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Trust including any project document in connection with investment in any Infrastructure Asset and any offering document for any bond issue or other borrowing except where the claim arises out of the fraud or wilful default of the Manager;
- (p) the promotion of the Trust generally;

- (q) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to or insurance premiums⁵⁰ in respect of compliance committee members;
- (r) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors whose inclusion on the board of directors satisfies the requirements of Chapter 5C of the Corporations Act;
- (s) the preparation, implementation, amendment and audit of the compliance plan;
- (t) the cost of the Manager employing a compliance officer to carry out compliance duties under the compliance plan, in so far as the allocation of their time is attributable to matters connected with the Trust;
- (u) complying with any law, and any request or requirement of the ASIC; and
- (v)
 - (i) any directors fees paid to members of the board of directors of the Manager (“**Directors’ Fees**”), not exceeding a total aggregate amount of \$500,000 per annum or such higher amount as is approved from time to time by a Resolution of Members (“**Fee Cap**”). For the avoidance of doubt, if a proposal to approve a Fee Cap or increase a Fee Cap is not approved by a Resolution of Members, then the existing Fee Cap will continue to apply; and
 - (ii) any expenses reimbursed to, or insurance premiums paid in respect of, the directors of the Manager.

GST

- 19.4 The User Pays Fees and the fees payable out of the Assets to the Manager under this constitution do not include any amount referable to GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this agreement (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply

⁵⁰ See Section 601JG

for GST purposes by the prevailing rate of GST, and the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

20 Duration of the Trust

Initial settlement

- 20.1 The Manager, immediately after the execution of this deed, must lodge or procure persons to lodge with the Trustee the sum of \$100.00 for investment by the Trustee (so far as it extends) in Authorised Investments of the Trust⁵¹.

Initial Units

- 20.2 The beneficial interest in the Trust Fund as constituted by the settlement of the sum of \$100 made under clause 20.1 shall be divided into 100 Fully Paid Units which shall be issued either to the Manager or the other persons making the payments pursuant to clause 20.1.

Period of Trust

- 20.3 The Trust commenced on the date of this trust deed. The Trust terminates on the Termination Date.

Restriction on issue and redemption of Units

- 20.3A Despite any other provisions in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity.

Termination of Trust

- 20.4 The Trust may be terminated in the circumstances referred to in clauses 20.5, 20.6 and 20.7.
- 20.5 The Manager may terminate the Trust if as a result of any law it appears to the Manager to be in the interests of Members to do so.
- 20.6 If the weighted average sale price of the Stapled Securities or Share Stapled Securities on ASX for the last 20 ASX trading days immediately preceding any third anniversary of the date upon which the Trust was first Listed is less than 85% of the Capital Value of a Stapled Security or Capital Value of a Share Stapled Security on that third anniversary, then the Manager must within 90 days summon a meeting of the Members in accordance with the provisions of clause 15 to consider winding up the Trust. If by Special Resolution the Meeting so decides, the Trust must be wound up.
- 20.7 Notwithstanding the provisions contained in clauses 20.3, 20.4, 20.5 and 20.6 of this deed, if at any time legislation is enacted the result of which is that the Manager is liable to pay any income tax or capital gains tax (other than withholding tax or tax of a similar nature) on the

⁵¹ Clauses 20.1 and 20.2 contain terminology no longer used in this constitution because it has been preserved in its original form.

income of the Trust Fund other than income not distributed to Members, the Manager may summon a meeting of the Members in accordance with the provisions of clause 15 to consider winding up the Trust and if by Special Resolution the meeting so decides, the Trust shall be wound up.

21 Procedure on termination

Period of winding up

21.1

- (a) Following the Termination Date the Manager must sell, collect, call in and realise the Assets of the Trust. So far as reasonably practicable, the Manager must complete this within 180 days of the Termination Date.
- (b) Nothing in this clause 21 shall affect Members' entitlement to any amount standing to the credit of the Distribution Account on the Termination Date. Such entitlement shall be distributed to Members in accordance with clause 21.4 of this constitution.

21.2 The proceeds resulting from the actions of the Manager under clause 21.1(a) must be applied in the following order of priority:

- (a) in payment of or provision for the costs, charges, liabilities (whether actual or contingent) expenses, claims and demands reasonably and properly incurred, made or apprehended by the Manager in connection with the Trust or arising out of the termination of the Trust including the realisation of the Assets of the Trust, the administration of the winding-up of the Trust and the distribution of the proceeds of realisation of the Assets;
- (b) in payment of or provision for the costs, charges, liabilities (whether actual or contingent) expenses, claims and demands incurred, made or apprehended by the Manager in connection with the Trust or arising out of the termination of the Trust;
- (c) in payment to the Manager of any fees payable under clause 19; and
- (d) in payment to the Members in the amounts set out in clause 21.4 upon the execution by Members in favour of the Manager of any releases that may reasonably be required.

Audit of winding up

21.3 If and to the extent that ASIC policy so requires, the Manager must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

Distribution following termination

21.4 The Manager, upon completion of the realisation of the Assets under clause 21.1 and the making of payments or provisions under clause

21.2(a), (b) and (c), must distribute the net proceeds to the Members as follows:

- (a) first, in payment of any undistributed income to which they are entitled respectively which is held in the Distribution Account; and
- (b) secondly, each Member is entitled to receive an amount in accordance with the following formula:

$$\frac{A \times B}{C}$$

Where:

- A = the amount remaining in the Trust Fund after deduction of the amounts referred to in paragraphs (a) to (c) of clause 21.2 and paragraph (a) of this clause 21.4;
- B = the number of Fully Paid Units held by the Member as at the Termination Date plus the number obtained by multiplying the number of Partly Paid Units held by the Member as at the Termination Date by the percentage of the Application Price paid in respect of those Units as at the Termination Date; and
- C = the number of Fully Paid Units in Issue as at the Termination Date plus the number obtained by multiplying the number of Partly Paid Units in issue as at the Termination Date by the fraction obtained by dividing the aggregate of all amounts paid in respect of all Partly Paid Units in issue as at the Termination Date by the total of the Application Prices of the Partly Paid Units in issue as at the Termination Date.

The Manager may distribute proceeds of realisation in instalments.

- 21.5 Subject to the Corporations Act, the provisions of this constitution continue to apply from the Termination Date until the date of final distribution under clause 21.4, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member.

22 Amendments to this constitution

Manager may amend

- 22.1 If the Corporations Act allows⁵², this constitution may be amended:
 - (a) by Resolution⁵³; or
 - (b) by deed executed by the Manager.

⁵² See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC

⁵³ The required majority for such a Resolution under section 601GC(1)(a) is 75%.

If the constitution is amended by Resolution, the Manager may give effect to the amendments by executing a supplemental deed.

Corporations Act and ASIC Relief

- 22.2 (a) If the Corporations Act requires that this constitution contain certain provisions, or if any ASIC Relief on which the Manager has determined it wishes to rely or which is expressly applicable to the Trust and the Manager requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply (“**Required Provisions**”); or
- (b) if any part of this constitution (a “**Required Part**”) is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX (“**Regulatory Requirement**”) and that Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows, this constitution is taken to be amended so that the Required Provisions are included as separate provisions, or the Required Part is deleted or amended to reflect the amended Regulatory Requirement. The Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

The Members:

- (i) authorise the Manager to make the amendments referred to in this clause 22.2 in a deed and, if required, to lodge it with ASIC; and
- (ii) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to any right that would be adversely affected by the operation of this clause 22.2.

Listing Rules

- 22.3 While the Trust is Listed:
- (a) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;

- (e) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision; and
- (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

ASIC Class Orders

- 22.4 In accordance with ASIC Class Order 98/1808 or its equivalent or any similar ASIC Relief from subsections 601GC(1) and (2) of the Corporations Act and for so long as it applies to the Trust, a change in the text of this constitution because of the operation of clause 22.3 that is covered by such instrument is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act. Changes in the text of the constitution to which this clause 22.4 applies are made pursuant to the power in clause 22.1 but in respect of such changes the requirements of clause 22.1 are to be read subject to this clause 22.4.

Paramourncy of provisions

- 22.5 Subject to the Corporations Act and the Listing Rules, the following provisions prevail over other provisions of this constitution in the following order to the extent of any inconsistency:
- (a) first, clauses 22.2 and 22.3 and provisions taken to be included or amended under them;
 - (b) then, the Stapling Provisions set out in schedule 1 and the provisions in clause 27 regarding Stapling and the Stapling Provisions; and
 - (c) then, the Reorganisation Proposals set out in clauses 27.3 to 27.8.

Paragraphs (b) and (c) only prevail where this would not result in a breach of the Corporations Act, the Listing Rules or any other law.

23 Compliance committee

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act⁵⁴.

⁵⁴ See section 601JF

24 Complaints

If and for so long as the Corporations Act or ASIC policy requires, if a Member submits to the Manager a complaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle complaints;
- (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (e) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
 - (i) the determination in relation to the complaint;
 - (ii) the remedies (if any) available to the Member; and
 - (iii) information regarding any further avenue for complaint.

25 Restricted Securities

25.1 Clause 25.2 only operates:

- (a) while the Trust is Listed and the Listing Rules require this constitution to contain a provision to the effect of clause 25.2; and
- (b) to the extent that it is not inconsistent with the Corporations Act.

25.2 During a breach of the Listing Rules or of a restriction agreement

relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Units.

26 Small holdings

- 26.1 Subject to the provisions of this clause 26, while the Trust is Listed the Manager may in its discretion from time to time sell or redeem any Units held by a Member which comprise less than a marketable parcel as provided in the Listing Rules without request by the Member.
- 26.2 The Manager may only sell or redeem Units under this clause 26 on one occasion in any 12 month period. Subject to clause 26.6, if the Units are redeemed, the Redemption Price must be the amount calculated under clause 6.1.
- 26.3 The Manager must notify the Member in writing of its intention to sell or redeem Units under this clause 26.
- 26.4 The Manager will not sell or redeem the relevant Units:
- (a) before the expiry of 6 weeks from the date of the notice given under clause 26.3; or
 - (b) if, within the 6 weeks allowed by clause 26.4(a):
 - (i) the Member advises the Manager that the Member wishes to retain the Units; or
 - (ii) the market value of the Units held by the Member increases to at least a marketable parcel as provided in the Listing Rules.
- 26.5 The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
- 26.6 The Manager or the purchaser of the Units must pay the costs of the sale as the Manager decides.
- 26.7 The proceeds of the sale or redemption will not be sent until the Manager has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.
- 26.8 To effect the sale or redemption of Units under this clause 26, the Member appoints the Manager as the Member's attorney to do all acts and things and execute all documents which the Manager considers necessary, desirable or reasonably incidental or appropriate to effect the sale or redemption of the Units.

27 Stapling Provisions and Reorganisation Proposals

Stapling

- 27.1 The Manager may determine:
- (a) that the Stapling Provisions will take effect in accordance with clause 27.2; and
 - (b) the Stapling Commencement Date.

Stapling Provisions

- 27.2 If the Manager determines, the Stapling Provisions take effect on and from the Stapling Commencement Date until they cease to apply in accordance with this constitution.

On and from the Stapling Commencement Date:

- (a) subject to clause 22, the Stapling Provisions apply and this constitution is to be read subject to the Stapling Provisions except to the extent that this would result in a breach of the Corporations Act, the Listing Rules or any other law; and
- (b) provisions of this constitution, which by their context apply only while Units are not Stapled, do not apply while Units are part of a Stapled Security.

Power to enter into Reorganisation Proposals

- 27.3 Without limiting clause 11 the Manager may enter into:⁵⁵

- (a) without reference to or approval from Members:
 - (i) a Realisation Transaction;
 - (ii) a Consolidation or Division Proposal;
 - (iii) a Stapling Proposal;
 - (iv) a Top Hat Proposal;
 - (v) an Exchange Proposal; or
- (b) any other Reorganisation Proposal which is approved by Ordinary Resolution.

It is a term of issue of each Relevant Security, that the Relevant Security may be subject to a Reorganisation Proposal as provided in this clause 27.3. Each Relevant Security Holder by subscribing for or taking a transfer of, or otherwise acquiring a Relevant Security is taken to have consented to these Reorganisation Proposals.

Partly Paid Units

- 27.4 If any Unit is a Partly Paid Unit at the time of a Reorganisation

⁵⁵ If applicable, refer to the Listing Rules, Chapter 7 - reorganisations of capital.

Proposal, the unpaid amount of the Application Price and any instalment payable will be amended in the same ratio.

Power to give effect to the Stapling Provisions and Reorganisation Proposals

- 27.5 (a) In order to effect an initial or subsequent Stapling of securities to the Units as contemplated by clause 27.1 and schedule 1, the Manager has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Stapling and the Stapling Provisions.
- (b) If the Manager determines to enter into a Realisation Transaction, Consolidation or Division Proposal, a Stapling Proposal, a Top Hat Proposal or an Exchange Proposal in accordance with clause 27.3, then the Manager has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the relevant proposal.
- (c) If a Reorganisation Proposal is approved by an Ordinary Resolution in accordance with clause 27.3(b), then the Manager has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

Specific Powers

- 27.6 Without limiting clause 27.5, to give effect to a Stapling and the Stapling Provisions, a Realisation Transaction, Consolidation or Division Proposal, Stapling Proposal, a Top Hat Proposal or an Exchange Proposal, or a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 27.3(b), the Manager has power to:
- (a) make distributions and other payments out of the Assets and (subject to the Corporations Act and the Listing Rules) to redeem Units, and to apply the payment or redemption proceeds on behalf of Members;
- (b) apply for or purchase fully paid securities on behalf of the Members and to consent on behalf of Members to become a member of a company or other body;
- (c) issue Units;
- (d) transfer Assets; and
- (e) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the relevant proposal.

Appointment of Manager as agent and attorney

- 27.7 Without limiting clause 27.5, to give effect to a Stapling and the Stapling Provisions, a Realisation Transaction, Consolidation or Division Proposal, a Stapling Proposal, a Top Hat Proposal or an Exchange Proposal, or a Reorganisation Proposal which has been

approved by an Ordinary Resolution in accordance with clause 27.3(b), the Manager is irrevocably appointed the agent and attorney of each Member to:

- (a) apply any proceeds referred to in clause 27.6(a) on behalf of the Member;
- (b) execute any withdrawal request on behalf of the Member, or any application for, or transfer of, any securities in favour of the Member;
- (c) execute a transfer of Assets to a Member; and
- (d) execute all documents and do all things (including giving all consents) which the Manager reasonably considers are necessary or desirable to give effect to the Stapling or relevant transaction or proposal.

The Manager is authorised to execute these documents and to do these things without needing further authority or approval from Members.

Liability of Manager

- 27.8 The Manager has no liability of any nature whatsoever beyond the Assets to Members arising, directly or indirectly, from the Manager doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of a Stapling or any Reorganisation Proposal.

Paramountcy of provision

- 27.9 The provisions of this clause 27 prevail over other provisions of this constitution in the case of any inconsistency to the extent provided in clause 22.5.

28 Interpretation

Definitions

- 28.1 In this constitution these words and phrases have the following meaning unless the contrary intention appears:

Accept means:

- (a) in respect of an application for Units, the doing of any act by the Manager or its agent that constitutes an acceptance of the application or evidence that the application has been accepted, including notifying the applicant or recording a determination that the application is accepted, transferring the application money into an account other than an Applications Account, applying the application money to the purchase of investments for the Trust, or recording in the Register the issue of Units in response to the application;

- (b) in respect of a request for redemption of Units by a Member, the doing of any act by the Manager or its agent that constitutes an acceptance of the request or evidence that the request has been accepted, including notifying the Member or recording a determination that the request will be met in whole or in part, recording the redemption of Units in the Register or paying the redemption proceeds to or at the direction of the Member or former Member,

and **Acceptance** has a corresponding meaning.

Application Price: the Unit price calculated in accordance with clause 4.

Applications Account: means an account in which the Manager or, if permitted, its agent holds money on trust for applicants for Units in accordance with section 1017E of the Corporations Act or otherwise.

ASIC: the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

ASIC Relief: means an exemption or declaration granted by ASIC which gives relief from certain requirements of the Corporations Act.

Assets: all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in the Distribution Account.

ASX: ASX Limited or the market operated by it as the context requires.

Authorised Investment: for the purpose of clause 20.1, has the meaning which was given to that term in this constitution at the time the Trust commenced.

Average Market Price: the weighted average Market Price of fully paid Units.

Business Day: a day which is a business day for the purposes of the Listing Rules.

Compliance Committee Member: a member of a compliance committee established by the Manager in connection with the Trust.

Consolidation or Division Proposal: a proposal to consolidate, divide or convert Relevant Securities in a ratio determined by the Manager.

Corporations Act: the Corporations Act 2001 (Cwlth), and a reference to the Corporations Act or a provision of it includes a reference to the Corporations Act or that provision as modified by any applicable ASIC Relief.

Date of Delisting: the date on which the Manager receives notification from the ASX of the removal of the Trust from its official list.

Distribution Account: the account referred to in clause 9.6.

Entity: means a corporation or a trust.

Escrow Period: has the same meaning as in the Listing Rules.

Exchange Proposal: a proposal whereby a written offer to transfer or redeem some or all of their Units is made to Members or to specific Members in consideration of any or all of:

- (a) the issue or transfer of units in another trust, or interests of whatever nature in or in relation to another entity;
- (b) a cash payment; and
- (c) a transfer of Assets.

Financial Year:

- (a) for the first financial year, the period from the establishment of the Trust to the next 30 June;
- (b) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 30 June in each year.

Fully Paid Unit: a Unit on which the Application Price has been fully paid.

GST: a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

Half Year: means:

- (a) the period commencing on the date of commencement of the Trust and ending on 30 June 1997; and
- (b) each succeeding period of 6 months during the continuance of the Trust commencing on the date following the last day of the preceding Half Year and ending at the expiry of 6 months from that date and includes any period between the end of the last Half Year prior to the date of termination of the Trust and the date of termination of the Trust.

Infrastructure Asset: means an infrastructure asset located either in Australia or a foreign country, including in the following areas:

- (a) road, rail, air and sea transportation;

- (b) generation, transmission and distribution of electricity;
- (c) telecommunications;
- (d) supply, treatment, distribution or disposal of water, sewerage, waste and other materials;
- (e) production and distribution of gas or oil;
- (f) pipelines for the transmission of oil, gas or other materials;
- (g) hospital and education services.

Liabilities: all present liabilities of the Trust including any provision taken into account in accordance with accounting standards in determining the liabilities of the Trust, but not liabilities:

- (a) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued; or
- (b) to Members, arising by virtue of the right of Members to request redemption of their Units or to participate in the distribution of the Assets on winding up of the Trust.

Liquid: has the same meaning as in the Corporations Act⁵⁶.

Listed: admitted to the official list of ASX whether or not quotation of the Units is deferred, suspended or subjected to a trading halt⁵⁷.

Listing Rules: the listing rules of ASX and any other rules of ASX which are applicable while the Trust is admitted to the official list of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

Manager:

- (a) before the Trust is registered as a managed investment scheme, Macquarie Infrastructure Investment Management Limited; and
- (b) from the time the Trust is registered as a managed investment scheme, the company which is registered with the ASIC as the single responsible entity for the Trust under the Corporations Act.

Market Price: of a Unit on any Business Day means:

- (a) the last sale price per Unit recorded on the ASX on that Business Day (whether or not a sale was recorded on that Business Day);

⁵⁶ Refer Part 5C.6

⁵⁷ Refer Listing Rule 18.6

unless the Manager believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a Unit on that Business Day, in which case Market Price of a Unit on that Business Day means:

- (b) the mid-point of the bid and offer prices per Unit recorded on the ASX at the close of trading on that Business Day (whether or not a sale is recorded on that Business Day);

unless the Manager believes that the calculation in paragraph (b) does not provide a fair reflection of the market price of a Unit on that Business Day, in which case Market Price of a Unit on that Business Day means:

- (c) the market price of a Unit of the relevant class as determined by an independent expert and the Manager whose identity and instructions will be determined by the Manager.

Member: the person Registered as the holder of a Unit (including persons jointly Registered).

Net Income: the net income of the Trust determined pursuant to clause 9.3.

Net Asset Value: the sum calculated in accordance with clause 8.2 from time to time ascertained by the Manager by deducting from the aggregate of:

- (a) the value of all Assets of the Trust; and
- (b) any other amounts which should be included in the aggregate for the purpose of making a fair and reasonable determination of the value of the Trust Fund having due regard to generally accepted accounting standards and principles current from time to time,

the aggregate of:

- (c) all Liabilities of the Trust; and
- (d) any other amounts which should be included in the aggregate:
 - (i) for the purpose of making a fair and reasonable determination of the value of the Trust Fund having due regard to generally accepted accounting standards and principles current from time to time; and
 - (ii) as a provision for income tax or capital gains tax which would be payable by the Manager or the Members on the disposal of all or any of the Assets of the Trust.

Option: an option granted by the Manager in respect of unissued Units.

Paid-up Proportion: the number obtained by multiplying the number of Partly Paid Units on issue as at the date of calculation by the fraction obtained by dividing the aggregate of all amounts paid in respect of all Partly Paid Units in issue as at the date of calculation by the total of the Application Prices of those Partly Paid Units.

Partly Paid Unit: a Unit on which the Application Price has not been paid in full.

Period: a Half Year or any other period of time determined by the Manager from time to time.

Pricing Service: any service which publishes or reports on prices of securities which the Manager determines.

Quarter: each succeeding period of 3 months during the continuance of the Trust commencing on the date following the last day of the preceding Quarter and ending on the last Business Day of each March, each 30 June, the last Business Day of each September and the last Business Day of each December and includes any period between the end of the last Quarter prior to the date of termination of the Trust and the date of termination of the Trust.

Realisation Transaction: means a transaction which enables all Members to realise all or a substantial portion of their investment in the Trust, including:

- (a) a sell down of a substantial portion of the Units where all Members have the opportunity to participate in the sell down;
- (b) a sale of substantial Assets where all Members have an opportunity to have their Units redeemed or transferred; or
- (c) any other arrangement which has substantially the same economic effect as a transaction referred to in paragraph (a) or (b).

Redemption Request: a written request to the Manager to redeem Units.

Redemption Price: the Unit price calculated in accordance with clause 6.

Register: the register of Members kept by the Manager under the Corporations Act.

Registered: recorded in the Register.

Registration: recording in the Register.

Relevant Day means:

- (a) in the case of a calculation of Determined Issue Price under paragraph (a) of the definition of Determined Issue Price, the day on which the price for the Relevant Securities is set in the book build process; and
- (b) in the case of a calculation of Determined Issue Price under paragraph (b) of the definition of Determined Issue Price, the day on which the adviser provides its written determination of the Determined Issue Price.

Relevant Security: means a Unit or an Option as appropriate.

Relevant Security Holder: means a Member or an Option Holder as appropriate.

Reorganisation Proposal means:

- (a) any Realisation Transaction;
- (b) a Consolidation or Division Proposal;
- (c) a Stapling Proposal;
- (d) a Top Hat Proposal;
- (e) an Exchange Proposal; or
- (f) any other proposal to reorganise or restructure the capital of the Trust and, if relevant, any Stapled Entity, in any way.⁵⁸

Reserve Account: the account referred to in clause 9.15.

Resolution:

- (a) a resolution passed at a meeting of Members in the Trust:
 - (i) on a show of hands, by the required majority of Members present in person or by proxy and voting on the show of hands; or
 - (ii) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.

⁵⁸

Also defined in schedule 1.

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority⁵⁹.

Restricted Securities: has the same meaning as in the Listing Rules.

Special Resolution: A resolution which members pass by a majority of at least 75%.

Stapled Entity: has the same meaning as in schedule 1.

Stapled Security: has the same meaning as in schedule 1.

Stapling: has the same meaning as in schedule 1.

Stapling Commencement Date: the most recent date on which the Trustee determines that the Stapling Provisions commence in accordance with clause 27.1.⁶⁰

Stapling Proposal: a proposal to cause the Stapling of any other securities or financial products to the Units (other than the Stapling Provisions governed by schedule 1).

Stapling Provisions: the provisions relating to Stapling in schedule 1, as applied under clause 27.2.

Tax: all kinds of taxes, duties, imposts, deductions and charges imposed by a government including GST or any amount recovered from the Manager by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Manager on account of GST, together with interest and penalties.

Taxable Annual Income: the net income of the Trust calculated in accordance with the provisions of the Tax Act for a year of income.

Taxable Period Income: the net income in relation to the Trust calculated under the provisions of the Tax Act but on the assumption that a Period is a year of income for the purposes of that Act.

Tax Act: the Income Tax Assessment Act 1936 (“**1936 Act**”), the Income Tax Assessment Act 1997 (“**1997 Act**”) or both the 1936 Act and the 1997 Act, as appropriate.

Termination Date: the first to occur of the following dates:

- (a) [deleted];
- (b) the Date of Delisting;
- (c) a date which the Members determine by Special Resolution;

⁵⁹ Circumstances where an extraordinary resolution is required include a vote on amendments to this constitution if necessary (see section 601GA(1)(a)), winding up by Members, and choosing a new responsible entity.

⁶⁰ Also defined in schedule 1.

- (d) the date determined under clause 20.4; or
- (e) the date on which the Trust is terminated under statute or general law.

Top Hat Proposal: means a proposal that each Member should exchange their Units for an equivalent value of units in the Top Trust.

Top Trust: means a trust of which the Manager is also the responsible entity or trustee, and of which the only assets will, following the implementation of the Top Hat Proposal, be all of the Units on issue at that time.

Transaction Costs:

- (a) when calculating the Application Price of a Unit, the Manager's estimate of the total cost of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, the Manager's estimate of the total cost of selling the Assets.

Trust: the trust constituted under or governed by this constitution.

Trust Fund: all of the Assets for the time being of the Trust but subject to the Liabilities at that time of the Trust.

Trustee: the person appointed as the trustee of the Trust for the time being and the Manager when acting as the Trustee in accordance with the provisions of this deed.

Unit: an undivided share in the beneficial interest in the Trust as provided in this constitution.

Unit Holder: has the same meaning as Member.

User Pays Fees: any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member

which the Manager considers should be borne by that Member.

Valuation Time: a time at which the Manager calculates Net Asset Value.

Interpretation

28.2 Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;

- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether or the same class or genus or not;
- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;
- (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively; and
- (i) a reference to a Share Stapled Security includes the Stapled Unit (if any) to which the Unit is Stapled.

Other documents

- 28.3 A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

Constitution legally binding⁶¹

- 28.4 This constitution binds the Manager and each present and future Member and Option holder and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

Severance

- 28.5 If all or part of any provision contained in this constitution is void or invalid or would otherwise result in all or part of this constitution being void or invalid for any reason, then such part is to be severed from this constitution without affecting the validity or operation of any other provision of this constitution.

Governing law

- 28.6 This constitution is governed by the law of New South Wales.

Other obligations excluded

- 28.7 Except as required by the Corporations Act all restrictions on the exercise of the Manager’s powers or obligations of the Manager which

⁶¹ Refer Section 601GB

might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any such restriction or obligation of the Manager in its capacity as trustee of the Trust arising under any statute.

Schedule 1 – Stapling Provisions

On and from any Stapling Commencement Date determined by the Issuer, these Stapling Provisions:

- (a) apply to each Issuer in respect of its respective Stapled Entity and its Attached Securities;
- (b) apply to each Constituent Document and prevail over all other provisions of the Constituent Document, except to the extent provided in the Constituent Document or where this would result in a breach of the Corporations Act, the Listing Rules or other law; and
- (c) apply until they cease to apply in accordance with the Constituent Documents.

Unless the contrary intention appears, in this schedule a reference to a “**paragraph**” is a reference to a numbered provision of this schedule.

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, in this schedule capitalised terms not defined have the same meaning as in the Trust Constitution, and:

Accession Deed means the deed of that name between each Issuer and:

- (a) any new Manager; or
- (b) any issuer of a New Attached Security,

by which that person accedes to the Co-operation Deed.

Amounts has the meaning given in paragraph 10(c)(i).

Application Price means:

- (a) in respect of a Unit, the application price for the Unit calculated in accordance with clause 4 of the Trust Constitution or paragraph 4 of this schedule;
- (b) in respect of any Other Attached Security, the application price for the Other Attached Security; and
- (c) in respect of a Stapled Security, the application price for a Stapled Security calculated in accordance with this schedule.

Approved Valuer means any person, independent of the Issuer, who is duly qualified to conduct a valuation.

ASIC Relief has the same meaning as in the Trust Constitution.

Attached Security in the context of:

- (a) the Trust Constitution, means a Unit;
- (b) the IT(I) Constitution, means a IT(I) Unit;

- (c) the MIGIL Constitution, means a MIGIL Share; and
- (d) the Constituent Document for any New Attached Security, means a New Attached Security.

Attached Securities means any Securities an identical number of which are from time to time Stapled together to form a Stapled Security but does not include any Unstapled Security.

Business Day means a day which is a Trading Day for the purposes of the Listing Rules.

Constituent Documents means the constituent documents of a Stapled Entity and at the Stapling Commencement Date means the Trust Constitution, the IT(I) Constitution and the MIGIL Constitution.

Co-operation Deed means a deed entered into between the Issuer and Other Issuers setting out how they will co-operate in the conduct of the Stapled Entities as if they were one economic entity and the Stapled Securities were one security.

Corporate Action means any issues, bonus and rights issues, placements and redemptions and buy-backs of a Stapled Security.

CS Facility has the same meaning as clearing and settlement facility in the Corporations Act.

CS Facility Operator means the operator of the CS Facility.

Defaulted Attached Security means a partly paid Attached Security on which an instalment is due and payable but unpaid or in respect of which, a valid call has been made but has not paid in the time specified in the call.

Defaulted Stapled Security means a Stapled Security where one or more Attached Securities is a Defaulted Attached Security.

Designated Foreign Investor means a Foreign Investor in respect of whom the Issuer has made a determination in accordance with paragraph 10(b).

Encumbrance means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

Foreign Investor means an Investor whose address on the Register is in a jurisdiction other than Australia.

Group means the Stapled Entities and any Subsidiary of a Stapled Entity.

Intra-Group Loan means a loan or financial assistance provided by a Stapled Entity to any entity in the Group including but not limited to guaranteeing or indemnifying or granting security in favour of that entity.

Investor means a person entered in the Register as a holder of a Stapled Security.

Issuer:

- (a) in the context of the Trust Constitution, means the Manager;
- (b) in the context of the IT(I) Constitution, means the IT(I) Manager;
- (c) in the context of the MIGIL Constitution, means MIGIL; and
- (d) in the context of the Constituent Document of any other Attached Security, means the issuer of the Attached Security.

IT(I) means Intoll Trust (I) (ARSN 092 863 780).

IT(I) Constitution means the constitution establishing IT(I) dated 18 July 1996 (as amended from time to time).

IT(I) Manager means the company which is registered with ASIC as the responsible entity for IT(I) under the Corporations Act.

IT(I) Unit means an ordinary unit in IT(I).

Listed means being admitted to the official list of ASX as defined in the Listing Rules and **Listing** has a corresponding meaning.

Manager:

- (a) while the Trust is not a Registered Scheme, the trustee of the Trust, with the first Manager being the trustee named in the Details of the Trust Constitution; and
- (b) while the Trust is a Registered Scheme, the company which is registered with the ASIC as the responsible entity for the Trust under the Corporations Act.

Market Price of a Stapled Security on a particular day is:

- (a) the weighted average price per Stapled Security for sale on ASX (excluding any special crossings) for the period of 15 Trading Days immediately before the relevant day (whether or not a sale was recorded on any particular day); or
- (b) if:
 - (i) Stapled Securities have not been Officially Quoted for at least 15 consecutive Trading Days before the relevant day; or
 - (ii) in the Manager's opinion, a determination under paragraph (a) of this definition would not provide a fair reflection of the market value of the Stapled Security having regard to the nature of the proposed offer of Stapled Securities and the circumstances in which the proposed offer is made,

the price per Stapled Security determined to be the market price of the Stapled Security

on the relevant day as follows:

- (iii) the price obtained for Stapled Securities pursuant to a bookbuild arranged by a reputable merchant or investment bank or banks with experience in arranging bookbuilds in the Australian equity market or the equity market into which the Stapled Security is to be sold, provided that the Auditor has provided written certification that the bookbuild was conducted in accordance with normal market practice for such bookbuilds; or
- (iv) an amount determined by an adviser:
 - (A) who is independent of the Manager; and
 - (B) who is qualified to determine and has relevant market experience in determining the issue price of securities in circumstances similar to those in which the determination of the price of the Stapled Security is being made; and
 - (C) who certifies the amount in writing to the Manager and confirms that in determining the amount the expert has had regard to the matters set out in paragraphs (D) to (G) below,

as being a fair and reasonable issue price of the Stapled Security, having regard to:

- (D) the nature and size of the proposed offer for which purpose the issue price of a Stapled Security is being calculated;
- (E) the circumstances in which the proposed offer of Stapled Security will be made;
- (F) the interests of Members generally including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising; and
- (G) the valuation methods and policies applied by the adviser must be capable of resulting in a calculation of a price that is independently verifiable.

If either of paragraphs (iii) or (iv) in this definition is held to be void, invalid or otherwise unenforceable, it is deemed to be severed from the remainder of this definition, which will remain in full force and effect, and Issue Price must be calculated in accordance with the clause which is not thereby deemed to be severed.

MIGIL means Macquarie Infrastructure Group International Limited, a company incorporated in Bermuda (registered number EC 35715).

MIGIL Constitution means the bye-laws of MIGIL and includes any amendment or replacement of it.

MIGIL Share means an ordinary share in the capital of MIGIL.

New Attached Security has the meaning given in paragraph 8(a).

Officially Quoted means quotation on the official list of the ASX including, if quotation is

suspended for a continuous period of not more than 60 days, the period of suspension.

Other Attached Security means:

- (a) in respect of a Unit, an identical number of each Attached Security other than a Unit;
- (b) in respect of a IT(I) Unit, an identical number of each Attached Security other than a IT(I) Unit;
- (c) in respect of a MIGIL Share, an identical number of each Attached Security other than a MIGIL Share; and
- (d) in respect of any New Attached Security, an identical number of each Attached Security other than a New Attached Security.

Other Issuer means:

- (a) in respect of the Manager, each Issuer other than the Manager;
- (b) in respect of IT(I), Manager, each Issuer other than the IT(I) Manager;
- (c) in respect of MIGIL, each Issuer other than MIGIL; and
- (d) in respect of the issuer of any New Attached Security, each Issuer other than the issuer of the New Attached Security.

Pricing Period means in respect of a particular distribution the period of 10 Trading Days (or such other period of not less than five Trading Days as the Manager may determine) ending on a day no later than the fifth Trading Day prior to the date scheduled for payment of that distribution (or such other date as the Manager may determine).

Register means the register of Investors kept by the Stapled Entities under paragraph 6 and the Corporations Act.

Registered means recorded in the Register.

Registrar means the person appointed to maintain the Register.

Reorganisation Proposal means:

- (a) any Realisation Transaction;
- (b) a Consolidation or Division proposal;
- (c) a Stapling Proposal;
- (d) a Top Hat Proposal;
- (e) an Exchange Proposal; or
- (f) any other proposal to reorganise or restructure any Stapled Entity subject to an Ordinary Resolution,

as these terms are defined in the Trust Constitution.

Restapling has the meaning given in paragraph 9.3.

Restricted Securities has the meaning given in the Listing Rules.

Sale Consideration means the average price (net of transaction costs including applicable brokerage, stamp duty and other taxes or charges) at which those Stapled Securities held by the Sale Nominee are sold under the Sale Facility, multiplied by the number of Stapled Securities held and sold by the Sale Nominee for the relevant Designated Foreign Investor.

Sale Facility means the facility under which Designated Foreign Investors are required to transfer their existing Stapled Securities to the Sale Nominee on the basis that the Sale Nominee:

- (a) is entered in the Register in respect of those Stapled Securities;
- (b) will receive the New Attached Securities pursuant to the Stapling; and
- (c) will sell the resultant Stapled Securities for cash to pay the Sale Consideration to the relevant Designated Foreign Investor.

Sale Nominee means a financial services licensee appointed by the Issuer to carry out the role described in paragraphs 10(c) and (d).

Sale Record Date means the date determined by the Issuers as being the record date for the transaction under which the New Attached Securities are to be Stapled.

Same Person means:

- (a) while the Trust is not Listed, either a single person or two (but not more than two) bodies, at least one of which is a trustee of a unit trust, and securities issued by those two bodies are linked or stapled; or
- (b) while the Trust is Listed, a single person.

Security means any right or interest in a managed investment scheme, unit, share, note, debenture or any right or interest or option to acquire a share, note or debenture.

Small Holding means a holding of securities which comprises less than a marketable parcel as provided in the Listing Rules.

Stapled Entity means an Australian or overseas company, trust, corporation or managed investment scheme whose Securities are Attached Securities and who has executed the Accession Deed and at the Stapling Commencement Date means the Trust, IT(I) and MIGIL.

Stapled Security means the stapled security created by the Stapling together of the Attached Securities.

Stapling means the linking together of Securities so that one Attached Security may not be transferred or otherwise dealt with without the Other Attached Securities and so that the Attached Securities are quoted on ASX jointly as a “Stapled Security” or such other term as ASX permits. “**Stapled**” has a corresponding meaning.

Stapling Commencement Date means the most recent date on which the Issuer determines that the Stapling of Attached Securities commences.

Stapling Matter means a matter specified in paragraph 2.3(b).

Subsidiary of an entity means a company which is a subsidiary of the first entity within the meaning of Part 1.2 Div 6 of the Corporations Act or another entity which is controlled by the first entity within the meaning of control under section 50AA of the Corporations Act.

Trading Day has the same meaning as in the Listing Rules.

Transaction Documents means all regulatory, structuring, operational, finance and ancillary documents required to effect and maintain the Listing of the Stapled Entities and the Official Quotation of the Stapled Securities and to achieve the investment objectives of the Group, and any amending, supplemental and other document that the Issuer and the Other Issuers consider necessary or desirable in connection with those objectives.

Transfer has the meaning given in paragraph 8(d).

Trust means the trust the subject of the Trust Constitution.

Trust Constitution means the constitution establishing the Trust of which this schedule forms an operative part.

Unit means a unit in the Trust.

Unstapled Security means a Security which is no longer Stapled.

Unstapling means the process that results in the Attached Securities no longer being Stapled to each other. **Unstapled** has a corresponding meaning.

Unstapling Event means one or more of the following events:

- (a) a special resolution of the members of each Stapled Entity is passed to Unstaple the Stapled Securities;
- (b) Stapling becomes unlawful or prohibited under the Listing Rules; or
- (c) a winding-up is commenced in respect of a Stapled Entity.

VWAP in respect of a Stapled Security for a Trading Day, means the volume weighted average of the Stapled Security prices for that Trading Day for all sales of Stapled Securities recorded on ASX for the day, but excluding sales that occur otherwise than in the ordinary course of trading on ASX (such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, overseas sales, sales pursuant to the exercise of options over Stapled Securities, and overnight crossings) and any other sales which the Issuers reasonably consider may not be fairly reflective of natural supply and demand.

1.2 Interpretation

Unless the contrary intention appears, the interpretation provisions in clauses 22 and 28.2 of the Trust Constitution apply to this schedule.

2 Stapling - general intention

2.1 Stapled Securities - general intention

The Attached Securities are intended to be Stapled to form a Stapled Security from the Stapling Commencement Date. Subject to paragraph 9 it is intended that:

- (a) the holders of one Attached Security will be identical to the holders of each Other Attached Security;
- (b) as far as the law permits, the Stapled Securities will be treated as one security;
- (c) the number of each Attached Security on issue at any time must equal the number of each Other Attached Security on issue;
- (d) no transfer of an Attached Security is to occur without each Other Attached Security being transferred at the same time from the same transferor to the same transferee; and
- (e) no Attached Security is to be issued unless each Other Attached Security is issued at the same time to the Same Person.

2.2 Transaction Documents

Without limiting the Constituent Documents, the Issuer is authorised to enter into the Transaction Documents and to perform its obligations under the Transaction Documents.

2.3 Stapling Matters

- (a) The rights and obligations attaching to each Attached Security are set out in the relevant Constituent Document.
- (b) Without limiting the Constituent Documents or the Corporations Act, each Investor, by acquiring a Stapled Security will be taken to have consented to each provision in the Constituent Documents, including the following Stapling Matters:
 - (i) the Stapling of the Attached Securities;
 - (ii) any Reorganisation Proposal regarding the Attached Securities (subject to an Ordinary Resolution if required by the Constituent Document);
 - (iii) the disposal of any Defaulted Stapled Securities;
 - (iv) the disposal of any Small Holding of Stapled Securities;
 - (v) the restrictions on Stapled Securities that are Restricted Securities;
 - (vi) the Stapling of New Attached Securities to the Stapled Securities;
 - (vii) the Investor becoming a member of any new Stapled Entity and being bound by the Constituent Documents for any New Attached Security;
 - (viii) the Unstapling of one or more Attached Securities;
 - (ix) the Restapling of an Unstapled Security;
 - (x) the Unstapling of the Stapled Securities; and
 - (xi) the disposal of Stapled Securities of a Designated Foreign Investor in accordance with paragraph 10.
- (c) To effect a Stapling Matter, each Investor irrevocably appoints the Issuer as the Investor's:

- (i) agent and attorney in the Investor's name and on the Investor's behalf to do all acts and things and execute all documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect any Stapling Matter; and
 - (ii) proxy to vote at any meeting in favour of any resolution to effect a Stapling Matter.
- (d) Without limiting paragraph 2.3(c) or any provision of a relevant Constituent Document, to effect the Stapling of a New Attached Security to the Stapled Securities under paragraph 8, each Investor irrevocably appoints the Issuer as the Investor's agent and attorney in the Investor's name and on the Investor's behalf to:
 - (i) agree to obtain any New Attached Security;
 - (ii) apply any distributions, redemption proceeds or other payments to obtain a New Attached Security;
 - (iii) where a New Attached Security comprises shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme; and
 - (iv) to do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the Transfer of the New Attached Security to the Investor under paragraph 8.
- (e) Without limiting paragraph 2.3(c), to effect the disposal of Stapled Securities held by or on behalf of a Designated Foreign Investor under paragraph 10, each Designated Foreign Investor irrevocably appoints the Issuer as that Investor's agent and attorney in the Investor's name and on the Investor's behalf to:
 - (i) receive and apply the Amounts referred to in paragraph 10(c)(i) in the manner contemplated in paragraph 10;
 - (ii) execute applications or transfers in relation to the Transfer of any New Attached Security;
 - (iii) execute transfers of any Stapled Securities which are to be the subject of the Sale Facility; and
 - (iv) do all acts and things and execute any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the disposal of the Stapled Securities of the Designated Foreign Investor under paragraph 10.
- (f) The Issuer may:
 - (i) appoint (and revoke the appointment of) substitute attorneys to exercise the powers given to the Issuer in relation to any Stapling Matter; and
 - (ii) do all acts and things and execute all documents under this paragraph 2.3 without needing further authority or approval from an Investor and may do so even if it has an interest in the outcome.

- (g) Each Investor acknowledges and recognises that the exercise of the powers given to the Issuer under paragraphs 2.3(e) and 10 may cause individual Investors considerable disadvantage (including possible adverse financial and taxation consequences) but each Investor acknowledges that this result may be necessary to enable the requirements of paragraph 10 (Designated Foreign Investors) to be met.
- (h) To the maximum extent permitted by law, the Issuer has no liability to any Investor or any Stapled Entity, and a Stapled Entity has no liability to any Investor, for any loss or disadvantage incurred by an Investor as a result, whether directly or indirectly, of the Issuer exercising its powers in relation to any Stapling Matter.

3 Dealing in Stapled Securities

3.1 Stapling

Subject to paragraph 9, on and from the Stapling Commencement Date, each Attached Security must be Stapled to each Other Attached Security to form a Stapled Security and the Issuer must not:

- (a) offer an Attached Security for subscription or sale unless an offer is made at the same time and to the Same Person for each Other Attached Security for issue or sale;
- (b) offer an Attached Security for subscription or sale unless the terms of that offer require each offeree to subscribe for or buy each Other Attached Security;
- (c) accept an application for an Attached Security if the applicant does not at the same time apply for the Other Attached Securities or if the Other Attached Securities will not be issued to the applicant at the same time as the issue of the Attached Securities to the applicant;
- (d) issue or sell an Attached Security to any person unless each Other Attached Security is also issued or sold to the Same Person at the same time;
- (e) issue any rights or options to acquire an Attached Security unless corresponding rights or options to acquire each Other Attached Security are issued at the same time and to the Same Person;
- (f) without the prior written consent of each Other Issuer, issue any Security or class of Security other than an Attached Security or any right or option to acquire any such Attached Security; and
- (g) permit a reinvestment by Investors in an Attached Security unless at the same time the Investor acquires each Other Attached Security which when issued or acquired are Stapled to the Attached Security. The Issuer may make provisions governing the amount of the reinvested dividends/distributions to be used to subscribe for or acquire the Attached Security and the amount to be used to subscribe for or acquire the Other Attached Securities having regard to the application price of the Attached Securities.

Each Security issued by a Stapled Entity after the Stapling Commencement Date must be Stapled to each Other Attached Security immediately on the date of issue of the new Security.

3.2 Dealing in Attached Securities

- (a) **(No Unstapling)** On and from the Stapling Commencement Date, the Issuer must not:
- (i) do any act, matter or thing (including registering any transfer of any Attached Security); or
 - (ii) refrain from doing any act, matter or thing,
- if it would result directly or indirectly in any Attached Security no longer being Stapled to form a Stapled Security, other than in accordance with paragraph 9.
- (b) **(Attached Securities)** Subject to paragraph 9, on and from the Stapling Commencement Date, the Issuer must not:
- (i) cancel, buy-back or redeem an Attached Security unless at the same time there is a corresponding cancellation, buy-back or redemption of each Other Attached Security;
 - (ii) implement a Reorganisation Proposal involving an Attached Security unless at the same time there is a corresponding implementation of a Reorganisation Proposal involving each Other Attached Security;
 - (iii) register any transfer of an Attached Security to any person unless each Other Attached Security is also transferred to the Same Person at the same time in a single instrument of transfer of Stapled Securities.
- (c) **(Exercise options)** The Issuer must not permit an Investor to exercise any rights or options to acquire an Attached Security unless the Investor exercises the corresponding rights or options to acquire each Other Attached Security at the same time.
- (d) **(Request for holding lock)** The Issuer must not request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of an Attached Security from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be, unless a corresponding request is made in respect of each Other Attached Security.
- (e) **(Disposal)** The Issuer must not dispose of a Defaulted Attached Security unless at the same time each Other Attached Security is also disposed of in the same manner and to the Same Person.
- (f) **(Small Holdings)** The Issuer must not dispose of a Small Holding of an Attached Security unless at the same time the Small Holding of each Other Attached Security is also disposed of in the same manner and to the Same Person. A Small Holding must be disposed of in accordance with the Listing Rules and the Constituent Documents.
- (g) **(Designated Foreign Investors)** The Issuer must not dispose of, or cause the disposal of, an Attached Security of a Designated Foreign Investor unless at the same time each Other Attached Security of that Designated Foreign Investor is also disposed of in the same manner and to the Same Person.
- (h) **(Compliance with law)** The Issuer is not obliged to effect a buy-back, cancellation, redemption, transfer, issue or other Corporate Action in a manner inconsistent with any constitutional, contractual or fiduciary obligation or law by which it is bound, or if it does not have any necessary consent or approval.

3.3 Consistency with the Constituent Documents

The Issuer must use every reasonable endeavour to procure that each Attached Security is dealt with under the Constituent Document of their respective Stapled Entity in a manner consistent with the provisions relating to Stapled Securities in the Constituent Documents of each other Stapled Entity.

3.4 Joint quotation as Stapled Securities

Until all Attached Securities are Unstapled in accordance with provisions of this schedule, the Issuer must use reasonable endeavours to ensure that each Stapled Security which is Officially Quoted continues to be jointly Officially Quoted as a Stapled Security.

3.5 Joint certificates or joint holding statements

Subject to the Corporations Act, the Issuer may procure that joint certificates or joint holding statements are issued to evidence the holding of Stapled Securities comprising Attached Securities and Other Attached Securities.

3.6 Stapling and separate entities

Despite any other provision of this schedule, each Stapled Entity remains a separate legal entity, separately admitted to the Official List (if applicable), although the Attached Securities may be jointly Officially Quoted as Stapled Securities.

3.7 Exercise of Options while Stapling applies

An Option may only be exercised if, at the same time as an Attached Security is acquired pursuant to the exercise of an Option, the Same Person acquires each Other Attached Security to form a Stapled Security.

4 Allocation of Application Price

4.1 Application Price

- (a) Subject to paragraph 4.1(c), while Units are Officially Quoted as part of a Stapled Security, the application price payable for any Unit is the Average Market Price of a Stapled Security minus the Application Price of the Other Attached Securities, or the amount determined by the Manager in accordance with paragraph 4.2.
- (b) Subject to paragraph 4.1(c), while the Units are not Officially Quoted but are Stapled, the application price payable for a Unit is the price calculated under clause 4.1(f) of the Trust Constitution, and the application price of Stapled Securities is the sum of that amount and the Application Price of the Other Attached Securities.
- (c) While Units are Officially Quoted as part of a Stapled Security, the Manager may determine a different application price for any Units (subject to the Corporations Act as modified by any applicable ASIC Relief and the Listing Rules) in the case of:
 - (i) offers made at substantially the same time to persons who were Investors on a date determined by the Manager which is not more than 20 Business Days immediately before the offer, where:

- (A) all Investors are offered Units at the same Application Price on a pro rata basis (whether or not the right to acquire those Units is renounceable); and
 - (B) the application price is not less than 50% of the balance after subtracting the Application Price of the Other Attached Securities from the Average Market Price for the Stapled Securities, calculated as at the last Business Day before the date of the offer document under which the offer is made. Subject to the Corporations Act (as modified by any applicable ASIC Relief) and the Listing Rules, the Manager is not required to offer Units under this paragraph 4.1(c) to Foreign Investors;
- (ii) a distribution reinvestment, where the application price is determined in accordance with paragraph 4.3;
 - (iii) Units issued upon exercise of an Option, where the application price is determined in accordance with clause 4.1(d) of the Trust Constitution;
 - (iv) a placement of Stapled Securities;
 - (v) a security purchase plan; and
 - (vi) any of the other circumstances set out in the Corporations Act, as modified by any applicable ASIC Relief.

4.2 Apportionment of Application Price

- (a) If a Unit is to be issued as part of a Stapled Security and the Trust Constitution contains a provision for the calculation or determination of the Application Price for a Stapled Security but not for the Unit, the Manager must determine what part of the Application Price of a Stapled Security is to represent the Application Price of a Unit for the purposes of the Trust Constitution.
- (b) Unless otherwise agreed between the Manager and the Other Issuers, the Application Price for a Stapled Security will be allocated between the Application Price of the Unit and the Application Price of the Other Attached Securities as follows:
 - (i) first, to the Application Price of any Unit (or any Other Attached Security which is an interest in a trust), being an amount reflecting the net assets (adjusted for the net market value of its investments) of the Trust (or any other Stapled Entity which is a trust) immediately before the issue of the Stapled Security. If there is more than one Stapled Entity which is a trust, the amounts to be allocated between those trusts is in the ratio that the net assets of each relevant trust (adjusted for the net market value of its investments) immediately before the issue or acquisition of the Stapled Security, bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of those trusts at the end of the relevant period immediately before the issue of the Stapled Security; and
 - (ii) second, to the Application Price of any Other Attached Security, being the lesser of:
 - (A) any balance remaining after the allocation in paragraph (i); or

- (B) an amount which reflects the net assets (adjusted for the net market value of their investments) of the relevant Stapled Entities immediately before the issue of the Stapled Security.

The amounts to be allocated between the relevant Stapled Entities is in the ratio that the net assets of each relevant Stapled Entity (adjusted for the net market value of its investments) at the end of the relevant period immediately before the issue of the Stapled Security, bears to the amount of the aggregate net assets of those Stapled Entities (adjusted for the net market value of their investments) at the end of the relevant period immediately before the issue of the Stapled Security.

- (c) Where an option to acquire a Stapled Security is issued after the Stapling Commencement Date, the allocation of the issue price of the option must be determined in the same manner as under paragraph 4.2(b).
- (d) The allocation of the Application Price for a Stapled Security under this paragraph 4.2 must be consistent for each Stapled Security issued or transferred to each Investor at the same time.

4.3 Application Price if reinvestment applies

- (a) If reinvestment applies while Units are Officially Quoted and Stapled, the aggregate of the application price for each additional Unit issued and the Application Price for the Other Attached Securities upon reinvestment is the average of the VWAP for Stapled Securities for each day of the Pricing Period (“**DRP VWAP Price**”), less any discount not exceeding 10% as the Manager determines. If the Manager believes that the DRP VWAP Price does not provide a fair reflection of the market price of the Stapled Securities during the relevant period, an expert will determine the market price to be used in the calculation of the Application Price of each additional Stapled Security. The Manager will determine the identity of and instructions to the expert who will be independent of the Manager.
- (b) While Units are not Officially Quoted but are Stapled, the application price payable for each additional Unit on reinvestment is the Application Price calculated under clause 4.1(f) on the first Business day after the end of the Distribution Period to which the distribution relates.
- (c) If the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the money representing the fraction will be held for future reinvestment in the Stapled Entities at the next time that reinvestment is to occur, in such proportions as the Manager and the Other Issuers determine on behalf of the relevant Investor.
- (d) Any money held on behalf of an Investor for future reinvestment, may be aggregated in the discretion of the Issuer and when the aggregated amount reaches the Application Price of a Stapled Security, be applied in the subscription or transfer of a Stapled Security for the Investor.

5 Partly Paid Stapled Securities

5.1 Payment of Application Price by instalments

The Application Price of Stapled Securities may be paid in instalments.

5.2 Determination of amount and timing of instalments

In consultation with each Issuer of Other Attached Securities, the Issuer may determine that Stapled Securities are to be offered for sale or subscription on terms that the Application Price is payable by instalments of such amounts and at such times as they determine (including by a single instalment).

5.3 Variation or waiver of terms

Subject to any applicable statutory duty requiring an Issuer to treat Investors of the same class equally, and those of different classes fairly,⁶² where Stapled Securities are offered for sale or subscription on terms determined and set out in accordance with paragraph 5.2, those terms may be varied, or compliance with them waived, only with the consent of the Issuer. The variation or waiver must not take effect during the currency of the offer document pursuant to which the Units were offered for sale or subscription.

5.4 Notice of instalments

Subject to the Listing Rules,⁶³ the Manager must give each holder of a partly paid Attached Security a notice, specifying the amount per Attached Security of the instalment payable and the due date, no later than 14 days before the payment of an instalment is due unless the terms of the offer for the partly paid Attached Security provide otherwise. Failing to give a notice or the non-receipt of notice by the holder does not affect the obligation of the holder to pay the instalment.

5.5 Payment of instalments

Subject to the Listing Rules:

- (a) the payment of an instalment in respect of an Attached Security may be revoked or postponed by the Issuer;
- (b) an instalment is taken to be due on the date determined by the Issuer;
- (c) the non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that an instalment is due to an Investor, does not invalidate the instalment being due;
- (d) and subject to the Corporations Act and paragraph 5.3, any liability of an Investor in respect of money unpaid on an Investors' partly paid Attached Securities may be extinguished in full or in part by the Issuer; and
- (e) any instalment which, by the terms of issue of the Attached Security, becomes payable on issue of the partly paid Attached Security or at any date fixed by or in accordance with the terms of issue, is taken to be an instalment of which the Investors have received notice in accordance with paragraph 5.4. In the case of non-payment, all the provisions of this schedule as to payment of interest, disposal or otherwise apply as if the notice had been given.

5.6 Failure to pay instalments

If a Member fails to pay in full any instalment due on a partly paid Attached Security on or by the day specified for payment, the Manager may serve a notice on that Member requiring payment of the unpaid instalment and any interest calculated from the due date until payment at a fair market

⁶² Section 601FC(1)(d).

⁶³ Listing Rules Appendix 6A requires at least 30 but not more than 40 business days' notice of a call.

rate as determined by the Manager. The notice must specify a time and day (not earlier than 7 days from the date of service of the notice) on or by which the payment is to be made. The notice must also state that in the event of non-payment by that specified time and day, the partly paid Attached Securities in respect of which all or part of the instalment remains unpaid, may be forfeited.

5.7 If requirements of any notice not complied with

If the requirements of any notice issued under paragraph 5.6 are not complied with:

- (a) any partly paid Attached Security in respect of which the notice has been given (together with the Other Attached Securities) may at any time after the date specified in the notice for payment (and before payment of the instalment and any interest and expenses owing), be disposed of by the Issuer; and
- (b) subject to the Listing Rules, the Corporations Act and this schedule, all voting rights, entitlements to the distribution of income and other rights in connection with the partly paid Attached Security and the Other Attached Securities in respect of which the notice has been given are suspended until reinstated by the Issuer.

5.8 Disposal of Defaulted Attached Securities

- (a) If any Defaulted Attached Security is offered for sale under this paragraph 5.8, the Issuer must procure that each Other Attached Security is also offered for sale so that the whole Stapled Security is offered for sale.
- (b) Attached Securities may be sold under this paragraph 5 even if they are fully paid if there is default in payment of a call on a Defaulted Attached Security.
- (c) If a Defaulted Attached Security includes a Unit, then the price for the Defaulted Attached Security must be determined in accordance with clause 3.15 of the Trust Constitution. Otherwise, a Defaulted Attached Security (together with the Other Attached Securities) may be disposed of by the Issuer or their agent, at a price determined by the Issuer in accordance with any applicable ASIC Relief.⁶⁴
- (d) Any offer of Defaulted Attached Securities which are to be sold under paragraph 5.8(c) must be accompanied by a corresponding offer of the Other Attached Securities. The offer is capable of acceptance only if the recipient acquires an identical number of Defaulted Attached Securities and the Other Attached Securities.
- (e) Subject to the Listing Rules and the conditions of any applicable ASIC Relief,⁶⁵ the Issuer or their agent may sell or otherwise dispose of Defaulted Stapled Securities:
 - (i) in the ordinary course of trading on ASX; or
 - (ii) by private treaty or public auction.
- (f) The sale of Defaulted Stapled Securities may be on the basis that the person to whom the Defaulted Stapled Securities are sold (“**Transferee**”) is not liable to pay the outstanding call or any future calls.

⁶⁴ ASIC Class Order [CO 05/26].

⁶⁵ See notional section 601GAA(8) in ASIC Class Order [CO 05/26].

- (g) At any time before a sale or disposition of Defaulted Stapled Securities, the Issuer may cancel the sale or disposition upon such terms as the Issuer thinks fit.
- (h) Without limiting paragraph 5.8(c) the Issuer may set a reserve price for a Defaulted Stapled Security at any auction in accordance with any applicable ASIC Relief (“Reserve Price”).
- (i) If the Issuer or their agent is unable to sell the Defaulted Stapled Securities for a price not less than the Reserve Price then the Issuer may sell or otherwise dispose of the Defaulted Stapled Securities. The Issuer is not obliged to offer these Defaulted Stapled Securities to Investors before disposing of them.

5.9 Evidence of Enforcement

A statement signed by an authorised officer of the Issuer that a Defaulted Stapled Security has been disposed of on a specified date is conclusive evidence of those facts as against all persons claiming to be entitled to the Defaulted Stapled Security.

5.10 Consideration for sold Defaulted Stapled Securities

- (a) Where a Defaulted Stapled Security is sold, an Issuer nominated by each Issuer by agreement may:
 - (i) receive the consideration given for a Defaulted Stapled Security; and
 - (ii) execute a transfer of the Defaulted Stapled Security in favour of the Transferee.
- (b) Unless otherwise agreed between the Manager and the Other Issuers, the amount received for a Unit on the sale of a Defaulted Stapled Security is the amount received less the fair value for the Other Attached Securities, as determined by the Manager.
- (c) Where a Defaulted Stapled Security is offered for sale under this paragraph 5, the obligations of the Issuer are subject to the requirements of any applicable law, the Listing Rules, any consent or other approval from any necessary authority and any other terms of the relevant Constituent Document.
- (d) The Issuer must then Register the Transferee as holder of that Stapled Security. On registration, the Transferee is not obliged to ensure that any part of the money which the person has paid for the Stapled Security is paid to the former holder of the Stapled Security nor is the Transferee’s title to that Stapled Security affected by any irregularity or invalidity in the proceedings in relation to the forfeiture or sale of that Stapled Security.

5.11 Deductions from consideration for Defaulted Attached Securities

- (a) The proceeds of the sale of a Defaulted Stapled Security must be applied to pay:
 - (i) first, the expenses incurred by the relevant Issuer, its agents and assignees in respect of the sale;
 - (ii) then, any expenses necessarily incurred in respect of the enforcement of the Issuer’s rights;
 - (iii) then, the calls on the Attached Securities that are due and unpaid; and

- (iv) then, any unpaid interest on the call and any other amounts payable.
- (b) The Issuer may retain the amounts deducted, but any balance remaining must be paid to the Investor whose Stapled Securities were sold. If there is a certificate that relates to the Attached Security or the Other Attached Security, the balance does not have to be paid until the Investor delivers the certificate to the relevant Stapled Entity.

5.12 Holder of Defaulted Stapled Securities

- (a) The holder of a Defaulted Stapled Security which has been sold under this paragraph 5 ceases to be an Investor, ceases to hold a right or interest in the Stapled Entities and ceases to be a member of each Stapled Entity.
- (b) The former Investor has no claims or demands against the Issuer in respect of a Defaulted Stapled Security that has been sold but remains liable to pay to the Issuer or any assignee of the Issuer all money which at the date of sale was payable by the former Investor to the Issuer in respect of the sold Defaulted Stapled Security (including interest owing under paragraph 5.6 and expenses).
- (c) The former Investor's liability ceases if the Issuer, or any assignee, receives payment in full and, if applicable, interest in respect of the sold Defaulted Stapled Security.

5.13 Liability of holder of Defaulted Stapled Securities to underwriter

Where:

- (a) the Issuer has appointed an underwriter to underwrite the payment of a call in respect of any Stapled Securities; and
- (b) in discharging its obligations, the underwriter has purchased Stapled Securities at a public auction or otherwise as contemplated by the relevant underwriting agreement at a price which is more than the market price of a Stapled Security (in respect of which the relevant call has been paid); and
- (c) the Issuer is required to pay the underwriter in respect of each Stapled Security purchased in accordance with paragraph (b) of this paragraph, an amount equal to the difference between the market price of a Stapled Security (in respect of which the relevant call has been paid) and the price paid by the underwriter for the Stapled Security,

then the former holder of those Stapled Securities is liable to the Issuer in respect of the relevant Defaulted Stapled Securities and may be sued for:

- (i) all money payable by the Issuer to the underwriter as contemplated by paragraph (c) of this paragraph;
- (ii) interest (as provided under this schedule); and
- (iii) all costs incurred by the Issuer in procuring payment from the former Investor.

For the purposes of this paragraph, the market price of a Stapled Security (in respect of which the relevant call has been paid) is the weighted average price at which the Stapled Securities traded on ASX over the five Trading Days immediately preceding the day of public auction, or, if there is no such price, then the last sale price of the Stapled Security on ASX before that date.

5.14 Assignment of right of action

The Issuer must ensure that where the Issuer is liable to the underwriter as contemplated by paragraph 5.13, the Issuer's liability to the underwriter may be satisfied by the assignment of the Issuer's right of action against the former Investor in full satisfaction of such liability of the Issuer to the underwriter.

6 Buyback

6.1 Buy-back of Stapled Securities

While Units are Officially Quoted as part of a Stapled Security, the Manager may, subject to and in accordance with the Corporations Act (as modified by any ASIC Relief) and any requirements under the Listing Rules, purchase Stapled Securities and cause the Units which in part comprise those Stapled Securities to be cancelled. No Redemption Price is payable upon cancellation of the Units. Where the Units comprise part of Stapled Securities the Manager may only buy back and cancel the Units if the Other Attached Securities are also the subject of contemporaneous buy-back and cancellation. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the Manager must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust.

6.2 Buy-back price

The purchase price payable under paragraph 6.1 for the Stapled Securities shall be determined by the Manager as follows:

- (a) during any period in which a purchase may be made, the Manager (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on the ASX and may adjust that pricing range from time to time if appropriate, but the maximum purchase price on any day can not exceed the Buy-Back Market Price for that day by more than 5%, the amount of that excess to be determined by the Manager (or its nominee); and
- (b) the purchase price must otherwise satisfy the conditions of any ASIC Relief.

For the purposes of this paragraph 6.2:

Buy-Back Market Price: in respect of the relevant Stapled Securities, means the average of the market prices (as that term is defined in the Listing Rules) for the Stapled Security for the last 5 Business Days in which the Stapled Security was traded on the ASX, determined on (and including) the Business Day immediately preceding the day on which a purchase is to be made.

7 Single Register

Subject to the Corporations Act, a single Register may be kept in which details of the holders of the Attached Securities and the Other Attached Securities are recorded.

8 Power to add New Attached Securities

- (a) Subject to paragraph 8(b), the Corporations Act and the Listing Rules, the Issuer may at any time determine that a Security is a New Attached Security and cause it to be Stapled to the Stapled Securities. A determination under this paragraph may be made on such terms as the Issuer considers appropriate.

- (b) A determination that a Security is a New Attached Security may only be made if:
 - (i) while the Units are Officially Quoted, the New Attached Security is also Officially Quoted or the ASX has indicated in writing that it will grant permission for the New Attached Security to be Officially Quoted;
 - (ii) while the Units are Officially Quoted, ASX has indicated in writing that it will approve the addition of the New Attached Security to the Stapled Securities;
 - (iii) each Other Issuer (excluding the issuer of the New Attached Security) has agreed:
 - (A) to the Stapling of the New Attached Security to the Stapled Security; and
 - (B) that the Stapling of the New Attached Security is in the best interest of Investors as a whole and is consistent with the then investment objectives of the Group; and
 - (iv) the Constituent Documents of the New Attached Security will have provisions giving effect to the Stapling (including provisions in substantially the form of this schedule);
 - (v) the issuer of the New Attached Security has agreed to enter into the Accession Deed;
 - (vi) where the New Attached Security is partly-paid, or approval from Investors is required to the transaction, any required approval of the members of each Stapled Entity has been obtained; and
 - (vii) the number of New Attached Securities to be allocated is identical to the number of Stapled Securities on issue.
- (c) The Issuer has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Stapling of the New Attached Securities to the Stapled Security under this paragraph 8.
- (d) A New Attached Security may be transferred to an Investor by any means and in any manner, including but not limited to any combination of issue, sale, reduction of capital, distribution in kind or transfer (“**Transfer**”).
- (e) A transfer of a New Attached Security made under this paragraph 8 will be Registered in the Register as of the date title is transferred.
- (f) It is not necessary for the Issuer to receive a transfer, instrument or certificate for a New Attached Security in order for that Issuer to Register the transfer of the New Attached Security. The transfer will be evidenced by, and have full effect from, its Registration by the relevant Issuer in the Register.

9 Unstapling

9.1 Procedure for Unstapling

Subject to this paragraph 9, from the Stapling Commencement Date each Attached Security will

remain Stapled to each other Attached Security for so long as the Stapled Securities remain on issue.

9.2 Unstapling an Attached Security

- (a) Subject to this paragraph 9, the Corporations Act, the Listing Rules and the relevant Constituent Documents, the Issuer may determine that one or more Attached Securities are to be Unstapled from the Stapled Security.
- (b) A determination under paragraph 9.2(a) may only be made:
 - (i) if the Stapled Securities are Officially Quoted, only if ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security or Securities from the Stapled Security and the remaining Attached Securities will remain Officially Quoted as a Stapled Security; and
 - (ii) if the Unstapling is approved by the holders of the Attached Security to be Unstapled by Special Resolution; and
 - (iii) if each Other Issuer has agreed:
 - (A) to the Unstapling of an Attached Security from the Stapled Security; and
 - (B) that the Unstapling of the Attached Security from the Stapled Security is not contrary to the interests of Investors as a whole and is consistent with the investment objectives of the Group; and
 - (iv) if the Stapling Provisions will terminate in respect of the Attached Security which is to be Unstapled.
- (c) After the Unstapling, the references to the Unstapled Security will be removed from the Register.

9.3 Restapling

If an Issuer determines that its Attached Securities are to be Unstapled under paragraph 9.2(a), this does not prevent the Issuer of the Unstapled Security subsequently determining that the Stapling Provisions should recommence in respect of that Unstapled Security (“**Restapling**”).

9.4 Unstapling the Stapled Securities

- (a) Subject to paragraph 9.4(b), the Corporations Act, the Listing Rules and the relevant Constituent Document, the Issuer must determine that an Attached Security will be Unstapled on the occurrence of an Unstapling Event affecting that Attached Security.
- (b) A determination under paragraph 9.4(a) may only be made if:
 - (i) ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security; and
 - (ii) each Other Issuer has agreed:
 - (A) to the Unstapling of the Attached Security; and

- (B) that the Unstapling of the Attached Security is not contrary to the interest of Investors as a whole.
- (c) On and from any date determined under paragraph 9.4(a), the Issuer must procure that the Attached Security is Unstapled and that the Stapling Provisions cease to have effect in respect of that Attached Security.

10 Designated Foreign Investors

- (a) Without limiting paragraph 8(c), to enable the Issuer to give effect to the Stapling of New Attached Securities to the Stapled Securities under paragraph 8, the provisions of this paragraph 10 apply.
- (b) Subject to the Corporations Act as modified by any applicable ASIC Relief, the Issuer may determine that a Foreign Investor is a Designated Foreign Investor for the purposes of the Transfer of a New Attached Security where the Issuer reasonably considers that it would be unreasonable to Transfer a New Attached Security to a Foreign Investor, having regard to:
 - (i) the number of Foreign Investors in the foreign place;
 - (ii) the number and the value of New Attached Securities that may be Transferred to Foreign Investors in the foreign place; and
 - (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to the Transfer of the New Attached Securities in the foreign place.
- (c) Despite anything to the contrary contained in the Constituent Documents, each Foreign Investor who is or becomes a Designated Foreign Investor consents and directs:
 - (i) the Issuer to pay any distributions, redemption proceeds or other payments in respect of its Attached Security which are to be used to obtain a New Attached Security (“**Amounts**”) to the Sale Nominee;
 - (ii) the Sale Nominee to apply those Amounts to obtain a New Attached Security;
 - (iii) subject to paragraph 10(d) below, the Sale Nominee to then sell any Stapled Security to which the New Attached Security is Stapled; and
 - (iv) the Sale Nominee to pay the Sale Consideration to the relevant Designated Foreign Investor as soon as practicable after the sale of the relevant Stapled Security.
- (d) If a New Attached Security is to be Stapled to an existing Stapled Security, the Designated Foreign Investor agrees to transfer each existing Stapled Security they hold free of any Encumbrance to the Sale Nominee on or before the Sale Record Date so that the Sale Nominee:
 - (i) is entered in the Register in respect of that Stapled Security as of the date title is transferred on the Sale Record Date; and
 - (ii) will receive the New Attached Security pursuant to the Stapling of the New Attached Security; and

- (iii) will sell the resultant Stapled Security for cash to pay the Sale Consideration to the Designated Foreign Investor.
- (e) In respect of its Attached Securities, the Issuer:
 - (i) must procure that each Designated Foreign Investor is paid the Sale Consideration to which that Designated Foreign Investor is entitled as soon as practicable after the sale of the relevant Stapled Security;
 - (ii) may take all steps to ensure that the Stapled Security held by the Designated Foreign Investor and to which a New Attached Security is to be Stapled, is transferred to the Sale Nominee before the Sale Record Date; and
 - (iii) need not receive any transfer, instrument or certificate for existing Stapled Securities in order for the Issuer to Register the transfer of the existing Stapled Securities to the Sale Nominee. The transfer will be evidenced by, and has full effect from, its Registration by the relevant Issuer in the Register.
- (f) Unless otherwise agreed between the Manager and the Other Issuers, the amount received for a Unit upon sale of a Stapled Security under paragraph 10(d)(iii) is the amount received on the sale of the Stapled Security less the fair value for the Other Attached Securities, as determined by the Manager.

11 Duties and obligations of Parties

11.1 Duties in relation to Stapling

Despite any provision of the Constituent Documents, or any rule of law (but subject to the Corporations Act as modified by any applicable ASIC Relief)⁶⁶ while Stapling applies, in exercising any power or discretion, the Issuer may have regard to the interests of Investors as a whole and not only to the interests of the holders of the relevant Attached Securities considered separately.

11.2 Reference to power or discretion

References in the Constituent Documents to the exercise of any powers or discretion includes the carrying out of the Issuer's functions and duties and identifying the Investor's rights and interests.

12 Meetings of Investors

12.1 Meetings

While Stapling applies, meetings of holders of Attached Securities may be held in conjunction with meetings of holders of the Other Attached Securities. Subject to the Corporations Act, the Issuer may make such rules for the conduct of such meetings as the Issuer determines.

12.2 Representatives form while Stapling applies

Subject to the Corporations Act, the form of proxy used to appoint a proxy to vote on behalf of an Investor in respect of an Attached Security may be the same form as they use to appoint a

⁶⁶ Case by case relief is usually sought from ASIC when stapling is proposed.

proxy in respect of the Other Attached Securities which they hold.

12.3 Other attendees

The auditor of each Stapled Entity and the representatives of the Issuer may attend and speak at any meeting of Investors, or invite any other person to attend and speak at the meeting.

13 General

13.1 Other capacities

Subject to the Corporations Act,⁶⁷ nothing in the Trust Constitution restricts the Manager (or its associates) from:

- (a) dealing with itself (as trustee of the Trust or in another capacity) and any Stapled Entity (or their associates); and
- (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or any Stapled Entity (or their associates) or retaining for its own benefit any profits or benefits derived from any such contract or transaction.

13.2 Expenses in relation to the Trust

- (a) A reference to “Unit” in clause 19.3 of the Trust Constitution is a reference to it as part of a Stapled Security, and a reference to “Trust” is a reference to the Trust as part of the Group.
- (b) Clause 19.3 of the Trust Constitution is taken to also include expenses in connection with:
 - (i) establishing, administering and managing the Stapling, including the costs incurred in enforcing Stapling, the Stapling of New Attached Securities, the Unstapling of an Attached Security, the restapling of Unstapled Attached Securities and the Unstapling of the Stapled Securities; and
 - (ii) organising, convening and holding meetings of Investors, implementing any Resolutions and communicating with Investors.

13.3 Apportionment of fees

The Issuer may agree with any Other Issuer to apportion fees payable under any Stapled Entity’s, or any Stapled Entity’s wholly owned subsidiary’s, constitution between the Stapled Entities as a whole. In default of any agreement, fees must be apportioned between the Stapled Entities in accordance with the proportion their net asset value (calculated in accordance with their respective constitutions) bears to the combined net asset value of all Stapled Entities.

13.4 Agreements as to allocation between Stapled Entities

An Issuer may with all Other Issuers agree:

- (a) any allocation of assets, property, liability, expenses or remuneration between the Stapled Entities; and

⁶⁷ Refer to Part 5C.7. Case by case relief is usually sought from ASIC when stapling is proposed.

- (b) any other matter between the Stapled Entities that the Issuers consider to be necessary or appropriate in connection with the Stapling.

13.5 Small Holdings

A reference to a “Small Holding” in each Constituent Document is taken to be a reference a small holding of Stapled Securities.

13.6 Financial assistance

Without limiting clause 13.3 of this schedule the Issuer may enter into loan arrangements (including Intra-Group Loans) with Other Issuers for the purpose of allocating capital raised under issues of Stapled Securities to the extent that this is required.

13.7 Intra-Group Loans

Without limiting the Constituent Documents, the Issuer may enter into any agreement, document or arrangement with any Other Issuer, or do any other act, matter or thing at the request of any Other Issuer, in respect of any of the following:

- (a) lending money or providing financial accommodation from one Stapled Entity (or any of its Subsidiaries) to any other Stapled Entity (or any of its Subsidiaries) (including, for the avoidance of doubt, the lending of money to or from any entity jointly owned by any of the Stapled Entities);
- (b) guaranteeing any loan or other financing facility or financial accommodation of any Stapled Entity or Subsidiary, including providing any security or indemnity to any person providing the loan facility or financial accommodation;
- (c) entering into any covenant, undertaking, restraint, or pledge at the request of the Other Issuer including, without limitation, a negative pledge on the obtaining of financial accommodation or the provision of any guarantee or Security in connection with any financial accommodation;
- (d) issuing redeemable preference shares or any other form of Securities to the Other Issuer;
- (e) paying any costs or expenses incurred by any other Stapled Entity (or any of its Subsidiaries);
- (f) entering into any joint borrowing or joint financial accommodation with any Other Issuer or Subsidiary and providing any guarantee, security, indemnities and undertakings in connection with the joint borrowing or other joint financial accommodation; and
- (g) guaranteeing the obligations of or providing an indemnity or undertaking to a third party in respect of the obligations of any Stapled Entity or any Subsidiary.

13.8 Notice to other Stapled Entities

On or before commencement of a winding up of a Stapled Entity, the Issuer must give each Other Stapled Entity written notice that the Stapled Entity is to be wound up.

13.9 Other Attached Security

If a New Attached Security, which is an interest in a trust, is to be Stapled to the Stapled Securities, then paragraphs 4.1(a), 4.1(c), 4.2(a), 4.3, 13.1 and 13.2 apply in relation to that New

Attached Security with the necessary changes.

Finding list

This list is included to assist the ASIC in identifying the provisions in this constitution which satisfy the requirements of the Corporations Act for constitutions of registered managed investment schemes.

Corporations Act	Constitution
601GA	
(1)(a)	4.1 - 4.5
(1)(b)	11.1 - 11.3
(1)(c)	24
(1)(d)	21
(2)	17.3 - 17.6, 19.1 - 19.4
(3)	11.2
(4)(a)	7.1, 7.4, 7.11, but not a right while listed (7.1A)
(4)(b)	7.3 - 7.9, 6.1 - 6.4
(4)(c)	7.11 - 7.13
601GB	28.4

This list is included to assist the ASX in identifying the provisions in this constitution which satisfy the requirements of the Listing Rules which relate to constitutions of registered managed investment schemes.

Listing Rules	Constitution
1.1, condition 2	22.3
1.1, condition 5	7.1A
15.12.1	3.26
15.12.2	3.29
15.12.3	25
15.13	26
15.14	N/A