

Constitution Macquarie Infrastructure Trust (I)

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

**Consolidated as at 20 November
2002**

This document is a consolidated copy of the Constitution for Macquarie Infrastructure Trust (I), 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 and 20 November 2002.

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 four 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 (I)

1 Name of Trust

- 1.1 The Trust is called the Macquarie Infrastructure Trust (I) 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 Law so requires³.
- 2.3 Subject to law, the Manager may have Assets held by a custodian^{3A}.

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.

¹ See Corporations Regulation 5C.1.02

² This clause is preserved in its original form and contains a reference to the Trustee which is historical

³ See section 601FC(1)(i)

^{3A} See clause 11.5

3.4 The provisions of the constitution relating to Unit Stapling took effect on and from the date of issue of 100 Fully Paid Units under clause 20.2 and an identical number of initial Stapled Units, subject to all other provisions of this constitution which may suspend, abrogate or terminate Unit Stapling.

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 Law (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 consideration or 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. 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 and New Zealand.

- 3.8
- (a) 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.
 - (b) Subject to 3.8(c) while Unit Stapling applies, an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the same person acquires an identical number of Stapled Units, which are then Stapled to the Units.
 - (c) While Share Stapling applies an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the same person acquires an identical number of Stapled Shares, which are then Stapled to the Units.

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

- (a) The Application Price of Units may be payable by instalments as set out in clauses 3.11 to 3.21.
- (b) Subject to clause 3.10(c) while Unit Stapling applies, Units may not be issued on the basis that they are Partly Paid unless there is a contemporaneous and corresponding issue of Stapled Units which are to be Partly Paid to the same extent. While Unit Stapling applies any issue of Partly Paid Units shall be upon the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Stapled Units is also paid.
- (c) While Share Stapling applies, Units may not be issued on the basis that they are Partly Paid unless there is a contemporaneous and corresponding issue of Stapled Shares which are partly paid to the same extent. While Share Stapling applies any issue of Partly Paid Units shall be on the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Stapled Shares is also paid.

- 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 and an equal number of Stapled Units and Stapled Shares 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 (together with a Stapled Unit and Stapled Shares) 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 and Stapled Unit and Stapled Shares in respect of which the notice has been given are suspended until reinstated by the Manager.
- 3.15 A forfeited Unit (together with a Stapled Unit and a Stapled Share) 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 Law 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 Law 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 and ceases to be a member of the Stapled Trust in respect of the Stapled Units and the Stapled Company in respect of the Stapled Shares 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 and a Stapled Unit or a Stapled Share (as the case requires) 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 and relevant Stapled Unit and Stapled Share are 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 or the Stapled Unit and Stapled Share 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 Law 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 Manager⁴.

⁴ Refer Listing Rules, Chapter 7 - reorganisations of capital.

- 3.25 While Stapling applies, Units may only be consolidated or divided if the related Stapled Units or Stapled Shares (as the case requires) are also consolidated or divided at the same time and to the same extent.

Transfer of Units and Options

- 3.26 Subject to clauses 3.27 and 3.31, 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 applicable 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 Rules⁵ 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 While Stapling applies and subject to the Corporations Law and the Listing Rules if the Listing Rules apply:
- (a) the Manager must not register any transfer of Units unless it is a single instrument of transfer of Stapled Securities or Share Stapled Securities (as the case requires) and any provision of clauses 3.26 to 3.30 of this constitution inclusive referring to a transfer of Units will be deemed to be a reference to such a transfer; and
 - (b) a reference in clauses 3.26 to 3.30 inclusive to a “Unit” will be deemed to be a reference to a Stapled Security or a Share Stapled Security.

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

⁵ Listing Rule 8.10 restricts the Manager’s ability to prevent proper SCH transfers, but allows for a holding lock in certain specified circumstances.

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 While Stapling applies, the number of issued Units at any time must equal the number of issued Stapled Units and Stapled Shares.

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:

- (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 Units⁶

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
 - (i) the Average Market Price of Stapled Securities minus the issue price of the Stapled Units; or

⁶ Required to be included by Section 601GA(1)(a)

- (ii) while Share Stapling applies, the Average Market Price of Share Stapled Securities minus the issue price of the Stapled Shares and the Stapled Units;
- (iii) the amount determined by the Manager in accordance with clause 4.6;⁷ 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, or the property against which Units are to be issued is vested in the Manager

whichever happens later.

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, 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 30 days immediately prior to the date of the offer if:

- (a) the Manager complies with the Listing Rules applicable to the issue and the conditions of any applicable ASIC relief⁸;
- (b) while Stapling applies, the Application Price of the Stapled Securities is not less than 50% of the Average Market Price of the Stapled Securities or Share Stapled Securities (as the case requires) on the day preceding the date of the offer;
- (c) while Unit Stapling applies, any offer of Units to a Member must be accompanied by a contemporaneous and corresponding offer of Stapled Units by the Stapled Trust, which offer is capable of acceptance only if the Member takes up an identical number of Units and Stapled Units;
- (d) while Share Stapling applies, any offer of Units, including if Unit Stapling applies any offer of Units under clause 4.4(c) to a Member must be accompanied by a contemporaneous and corresponding offer of Stapled Shares by the Stapled Company,

⁷ This is subject to obtaining appropriate ASIC relief.

⁸ See ASIC Class Order 98/52

which offer is capable of acceptance only if the Member takes up an identical number of Stapled Shares to the number of Units and, if clause 4.4(c) applies, Stapled Units taken up under clause 4.4(c); and

- (e) if an underwriter has underwritten any offer for subscription under this clause 4.4, the underwriter may take up any Units not subscribed for by the Member if the underwriter subscribes for an identical number of Stapled Units (while Unit Stapling applies) or Stapled Shares (while Share Stapling applies) or both (while Stapling applies).

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

Placements

4.5 While the Trust is Listed, the Manager may at any time issue Units to any person by way of a placement at a price and on terms determined by it, provided that:

- (a) the Manager complies with the Listing Rules applicable to the issue and the conditions of any applicable ASIC relief; and
- (b) while Unit Stapling applies, any offer of Units which are to be issued pursuant to this clause 4.5 must be accompanied by a contemporaneous and corresponding offer of Stapled Units by the Stapled Trust, which offer is capable of acceptance only if the recipient takes up an identical number of Units and Stapled Units; and
- (c) while Share Stapling applies, any offer of Units including if Unit Stapling applies any offer of Units under clause 4.5(b) which are to be issued pursuant to this clause 4.5 must be accompanied by a contemporaneous and corresponding offer of Stapled Shares by the Stapled Company, which offer is capable of acceptance only if the recipient takes up an identical number of Stapled Shares to the number of Units and if clause 4.5(b) applies, Stapled Units taken up under clause 4.5(b).

Determination of Application Price where Stapled Securities are issued

4.6 Where:

- (a) Stapling applies;
- (b) as a consequence, a Unit is to be issued as part of a Stapled Security or Share Stapled Security; and

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).

- (c) this constitution contains a provision for the calculation or determination of the Application Price for the Stapled Security or Share Stapled Security but not for the Unit;

the Manager must determine what part of the Application Price of a Stapled Security or Share Stapled Security is to represent the Application Price of a Unit for the purposes of this constitution.¹⁰

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 While Stapling applies, an applicant for Units must at the same time make an application for an identical number of Stapled Units and for an identical number of Stapled Shares.

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 rejection¹¹.

¹⁰ NB: This requires ASIC relief

¹¹ Refer Listing Rule 10.11 - restriction on issue of Units to related parties.

Manager must reject

- 5.5 While Stapling applies, the Manager must reject an application for Units (including an application consequent on the exercise of an Option) if the applicant does not apply at the same time:
- (a) for an identical number of Stapled Units if an identical number of Stapled Units will not be issued to the applicant at the same time as the issue of Units to the applicant; and
 - (b) for an identical number of Stapled Shares if an identical number of Stapled Shares will not be issued to the applicant at the same time as the issue of Units to the applicant.

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 time¹².

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 (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.

Register

- 5.9 Subject to the Corporations Law, a single register may be kept in which details of the holders of Units and the holders of Stapled Units and Stapled Shares are recorded.

Holding statements

- 5.10 Subject to the Corporations Law, while the Trust is admitted to an uncertificated trading system, a joint holding statement may be issued to evidence the holding of Stapled Securities comprising Units and Stapled Units and, while Share Stapling applies, Stapled Shares.

¹² While the Trust is Listed, see clause 26 regarding the sale of small holdings.

6 Redemption Price of Units¹³ 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;

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 Units¹⁴

6.4 While the Trust is Listed the Manager may, subject to and in accordance with the Corporations Law (including any modifications thereof) and any requirements under the Listing Rules, purchase Units, or where Stapling applies, Stapled Securities or Share Stapled Securities (as the case requires) and cause the Units which in part

¹³ Required to be included by Section 601GA(4) if a right of redemption is to be offered.

¹⁴ See Listing Rule 7.36.

comprise those Stapled Securities or Share Stapled Securities (as the case requires) to be cancelled. No Redemption Price is payable upon cancellation of the Units. Where the Units comprise part of Stapled Securities or Share Stapled Securities the Manager may only buy back and cancel the Units if the Stapled Unit or the Stapled Unit and Stapled Share (as the case may be) are also the subject of contemporaneous buy-back and cancellation. Where Units are purchased as part of a Stapled Security or Share Stapled Security pursuant to a buy-back arrangement, the Manager must determine what proportion of the price paid for the Stapled Security or Share Stapled Security as the case requires is to be paid from the Assets of the Trust.

7 Redemption procedures¹⁵

- 7.1A While the Trust is Listed, none of the provisions of this clause 7 except clause 7.10 apply¹⁶.

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 Liquid¹⁷

- 7.3 Clauses 7.4 to 7.10 apply only while the Trust is Liquid¹⁸.
- 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

¹⁵ These procedures must be fair to all Members: Section 601GA(4)

¹⁶ Refer Listing Rule 1.1 condition 5.

¹⁷ Required to be included by Section 601GA(4)(b)

¹⁸ For definition of a liquid scheme see Section 601KA

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.
- 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 Law 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 request¹⁹.

When Trust is not Liquid²⁰

- 7.11 While the Trust is not Liquid²¹, 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 Law regulating offers of that kind²². 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.

¹⁹ See section 601FC(1)(d) and Chapter 5C.6.

²⁰ Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

²¹ For definition of a liquid scheme see Section 601KA(1)

²² Refer sections 601KB to 601KE

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, 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.

Redemption while Stapling applies

- 7.17 While Stapling applies:
- (a) the Manager may not redeem a Unit unless the manager of the Stapled Trust also redeems or buys back the corresponding Stapled Unit; and
 - (b) the Manager may not redeem a Unit unless the Stapled Company also redeems or buys back the corresponding Stapled Share.

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 Law.²³
- 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 value²⁴.
- 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.

²³ See section 601FC(1)(j) for Manager's obligations concerning valuation

²⁴ ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

9 Income and distributions to Members²⁵

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. The 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

²⁵ Refer to Listing Rules 3.20 - notification to ASX of record date, and 6.10 - prohibition on changing the right to a distribution.

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 9.30 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

- (a) 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:
- (i) the number of Units in issue will increase accordingly;
 - (ii) 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;
 - (iii) the Manager may ignore fractions and round each Member's entitlement to the nearest whole Unit;
 - (iv) 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
 - (v) the additional Units created will rank for distribution of income and for all other purposes from a date determined by the Manager.
- (b) The Manager may not determine to capitalise an amount under this clause 9.17 unless contemporaneously with the increase in the number of Units:

- (i) while Unit Stapling applies, the Members subscribe for or purchase an identical number of Stapled Units which when issued or acquired (respectively) are then Stapled to the additional Units issued; and
- (ii) while Share Stapling applies, the Members subscribe for or purchase an identical number of Stapled Shares which when issued or acquired (respectively) are then Stapled to the additional Units issued.

The Manager may make provision for and make payment on behalf of Members of the subscription or purchase price for such Stapled Units and Stapled Shares out of the amount standing to the credit of the capital reserve account and which is otherwise available to be capitalised.

- 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) While Stapling applies:
- (i) no reinvestment under this clause 9.19 may occur unless contemporaneously with the reinvestment in additional Units the Members subscribe for or purchase an identical number of Stapled Units which when issued or acquired (respectively) are then Stapled to the additional Units; and
 - (ii) no reinvestment under this clause 9.19 may occur unless contemporaneously with the reinvestment in additional Units the Members subscribe for or purchase an identical number of Stapled Shares which when issued or acquired (respectively) are then Stapled to the additional Units (if applicable).

The Manager may make provision for and make payment of the subscription or purchase price for such Stapled Units and Stapled Shares out of the distribution or income (as applicable) which is otherwise available for reinvestment.

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 1 Business Day before 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 at least 1 Business Day before 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 the Trust and, (as the case requires):

- (a) while Unit Stapling applies, in Stapled Units; or
- (b) while Share Stapling applies, in Stapled Shares; or
- (c) while Stapling applies, in both Stapled Units and Stapled Shares,

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 on the first Business Day after the end of the Period to which the distribution relates.
- (b) Subject to clause 9.22(c), while the Units in the Trust are Listed the aggregate of the Application Price for each additional Unit and the application price for a Stapled Unit upon reinvestment is the weighted average of all sales of Stapled Securities recorded on the ASX during the first 5 trading days following the end of the Period to which the distribution relates (unless the Manager believes that this calculation does not provide a fair reflection of the market price of the Stapled Securities during this period in which event there shall be substituted for the amount so calculated the market price of the Stapled Security as determined by an expert independent of the Manager whose identity and instructions will be determined by the Manager) less such discount, if any, not exceeding 10% as the Manager may determine. The Application Price for each Unit is to be determined in accordance with clause 4.6. 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 Trust and MIT(II), in such proportions as the Manager and the responsible entity of MIT (II) may determine on behalf of the relevant Stapled Security Holder unless the Stapled Security Holder has cancelled any previous notice under clause 9.19 (such that references to “Member” in that clause are taken to be read as “Stapled Security Holder”) in which case the money representing the fraction is to be paid to the Stapled Security Holder as part of the Stapled Security Holder’s distribution in respect of the current Period.
- (c) While the Units in the Trust are Listed and Share Stapling applies the aggregate of the Application Price for each additional Unit and the application price for a Stapled Share and Stapled Unit upon reinvestment is the weighted average of all sales of Share Stapled Securities recorded on the ASX during the first 5 trading days following the end of the Period to which the distribution relates (unless the Manager believes that this calculation does not provide a fair reflection of the market price of the Share Stapled Securities during this period in which event there shall be substituted for the amount so calculated the market price of the Share Stapled Security as determined by an expert independent of the Manager whose identity and instructions will be determined by the Manager). The Application Price for each Unit is to be determined in accordance with clause 4.6. If the amount to be reinvested in additional Share Stapled Securities results in a fraction of a

Share Stapled Security, the money representing the fraction will be held for future reinvestment in the Trust and MIT(II) and the Stapled Company, in such proportions as the Manager and the responsible entity of MIT(II) and the Stapled Company may determine on behalf of the relevant Share Stapled Security Holder unless the Share Stapled Security Holder has cancelled any previous notice under clause 9.19 (such that references to “Member” in that clause are taken to be read as “Share Stapled Security Holder” in which case the money representing the fraction is to be paid to the Share Stapled Security Holder as part of the Share Stapled Security Holder’s distribution in respect of the current period.

9.23

- (a) 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.
- (b) While Stapling applies, a new Unit may not be so purchased until the reinvested money is sufficient for and is applied to a subscription for or purchase of a Stapled Unit and a Stapled Share which are then stapled to the Unit.

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 9.30, 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.

Transfer of property other than cash

- 9.30 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 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.

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 powers²⁶

- 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 guarantees²⁷.

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.²⁸

²⁶ Required to be included by Section 601GA(3)

²⁷ Refer Listing Rule 13.2 - the total liabilities of a listed trust must not exceed 60% of its total tangible assets.

²⁸ Subject to Section 601FC(4)

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 delegation²⁹

- 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.³⁰

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.

12 Retirement of Manager³¹

Voluntary retirement

- 12.1 The Manager may retire as the responsible entity of the Trust as permitted by law³².

Compulsory retirement

- 12.2 The Manager must retire as the responsible entity of the Trust when required by law³³.

²⁹ See also Section 601FB.

³⁰ Subject to Part 5C.7

³¹ Refer to Listing rule 3.16.2(a)

³² See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

³³ See Section 601FM and 601FA. Note that Listing Rules 13.3 and 13.4 do not apply to a managed investment scheme.

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.³⁴

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 holders³⁵

- 13.1 Subject to the Corporations Law, 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.
- 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 them³⁶.
- 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

³⁴ See section 601FR for the Manager's obligation to transfer records, etc. Section 601FS restricts this release.

³⁵ While the Trust is Listed, notices to Members must be copied to ASX - refer Listing Rule 3.17.

³⁶ See Clause 16.3(c)

not required. Subject to the law³⁷, the Manager may determine³⁸ 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 holder³⁹ unless the Manager dispenses with this requirement.

15 Meetings of Members

Corporations Law

- 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 Law.⁴⁰

Manager may determine

- 15.2 Subject to this clause 15, the Corporations Law⁴¹ 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 conducted⁴².

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.

³⁷ See Section 601FC(1)(d)

³⁸ See Section 252G(4)

³⁹ See Clause 16.3(c)

⁴⁰ Refer Part 2G.4

⁴¹ Refer Part 2G.4, especially sections 253C - voting rights, and 252W - proxies. See also clause 25 - restricted securities

⁴² Refer Listing Rules 3.13.2, 3.13.3, 6.10, 7.3, 10.10, 10.11 and 10.14.

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

Chairman

- 15.5 Subject to the Corporations Law⁴³ 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
- (a) While Unit Stapling applies, the Manager, the auditor of the Trust and the representatives of the responsible entity of the Stapled Trust may attend and speak at any meeting, or invite any other person to attend and speak.
- (b) While Share Stapling applies, the Manager, the auditor of the Trust and the representatives of the Stapled Company may attend and speak at any meeting, or invite any other person to attend and speak.

Proxies and voting

- 15.8 The provisions of the Corporations Law governing proxies and voting for meetings of members of registered managed investment schemes apply to the Trust⁴⁴.
- 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 Law⁴⁵.

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.

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.

⁴³ Refer Part 2G.4 and Section 601FC(1)

⁴⁴ This provision is included for completeness - the law operates of its own force.

⁴⁵ Section 252Y(1) specifies the information which is normally to be included in an appointment of proxy.

Joint meetings

- 15.14 While Unit Stapling or Share Stapling applies, meetings of Members may be held in conjunction with meetings of the holders of Stapled Units or Stapled Shares (as the case requires) and, subject to the Corporations Law, the Manager may make such rules for the conduct of such meetings as the Manager determines.

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 capacity⁴⁶.

Other capacities

- 16.2 Subject to the Corporations Law⁴⁷, nothing in this constitution restricts the Manager (or its associates) from:
- (a) dealing with itself (as trustee of the Trust or in another capacity), with the Stapled Trust or the Stapled Company 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), the Stapled Trust or the Stapled Company 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;

⁴⁶ See Section 601FG, Section 253E and Part 5C.7

⁴⁷ Refer Part 5C.7, and see also Listing Rule 10.1

- (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 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.

Manager's duties in relation to Stapling⁴⁸

16.4

- (a) Notwithstanding any other provision of this constitution, or any rule of law or equity to the contrary, in exercising any power or discretion conferred on it, the Manager may, subject to the Corporations Law, while Unit Stapling or Share Stapling applies, have regard to the interests of the Members of the Trust and MIT (II) and shareholders or beneficiaries of the Stapled Company (“**Group**”) as a whole and not only to the interests of the Members of either the Trust or MIT(II) or shareholders or beneficiaries of the Stapled Company alone.
- (b) The reference to exercising any power or discretion includes carrying out the Manager's functions and duties and identifying Members' rights and interests.

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 Law imposes such liability.
- 17.2 Subject to the Corporations Law, 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 Trust⁴⁹.

ASIC relief will be required for this.

⁴⁹ See Section 601GA(2)

- 17.4 To the extent permitted by the Corporations Law⁵⁰, 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.

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.

⁵⁰ See Sections 601FB(2) and 601GA(2)

19 Remuneration and expenses of Manager

Management fee

- 19.1 (a) Subject to the Corporations Law and clause 19.1(b), (c) and (e), the Manager is entitled to the following fees for managing the Trust:
- (i) a fee calculated at the rate of 1.25% per annum of the Market Value of the Funds (“**Base Fee**”); and
 - (ii) the Performance Fee.
- (b) The Manager acknowledges that so long as Stapling applies the fees determined under clause 19.1(a) are representative of the aggregate of the Manager’s entitlement to fees in respect of the Trust and MIT(II) and any entitlement of the Manager or any related body corporate of the Manager to any fee of the nature referred to in clause 19.1(a) from any Stapled Entity. The Manager and any such related body corporate of the Manager have absolute discretion as to the allocation of such fees amongst the Trust and each such Stapled Entity.
- (c) The Base Fee is payable to the Manager at the end of each Quarter.
- (d) The Performance Fee, which is calculated on the basis of the financial performance for a Financial Year (“**Relevant Year**”), is to be divided into three equal amounts (called respectively the “**First Instalment**”, “**Second Instalment**” and “**Third Instalment**”). The First Instalment is payable as at the last day of the Relevant Year. The Second Instalment accrues and is payable as at the last day of the next succeeding Financial Year (“**Second Year**”), subject to the succeeding provisions of this clause 19.1, only if the aggregate Annual Return for the period comprising the Relevant Year and the Second Year equals or exceeds the aggregate Benchmark Return for that period. The Third Instalment accrues and is payable as at the last day of the Second Financial Year after the Relevant Year (“**Third Year**”), subject to the succeeding provisions of this clause only if the aggregate Annual Return for the period comprising the Relevant Year, the Second Year and the Third Year equals or exceeds the aggregate Benchmark Return for that period. If the Manager ceases to be the responsible entity of the Trust (other than due to voluntary retirement) prior to the date upon which a Second Instalment or Third Instalment becomes payable the Manager will be entitled to receive that or those payments on the date of its retirement notwithstanding that performance requirements for the Second Year or Third Year may not be satisfied.
- (e) In determining the aggregate Annual Return and the aggregate Benchmark Return for the purposes of clause 19.1(d) for a

period greater than one “Financial Year” the definition of each of those terms will be applied as if the determination was for that period and not for the “Financial Year”, and in making the determination the period was substituted for the “Financial Year” and the “Financial Year immediately preceding the period” was substituted for the “previous Financial Year” in each of those definitions.

- (f) Whilst Unit Stapling applies, if an instalment of the Performance Fee is payable as at the last day of a Financial Year in accordance with clause 19.1(d) then, subject to the Corporations Act and the Listing Rules, the Manager and its associates, if approved by the non-executive directors of the Manager acting in the interest of the Members, shall be entitled to subscribe for that number of Stapled Securities equal to the amount of the instalment of the Performance Fee divided by the volume weighted average trading price of all Stapled Securities traded on the ASX during the last 10 Business Days of that Financial Year and apply the instalment of the Performance Fee in payment of the Application Price of those Stapled Securities. The Stapled Securities relating to an instalment of the Performance Fee must be issued as soon as reasonably practicable after the instalment of the Performance Fee becomes payable in accordance with clause 19.1(d) . To the extent that any instalment of the Performance Fee to which the Manager is entitled under this clause is not applied in the purchase of Stapled Securities, it must be paid in cash to the Manager out of the Assets. It is recognised that the Manager and its associate may receive part of the Performance Fee from the Stapled Trust and may aggregate the instalment of the Performance Fee payable by the Trust and the Stapled Trust for the purpose of applying that instalment of the Performance Fee to acquire Stapled Securities in accordance with this clause 19.1(f).
- (g) Whilst Share Stapling applies, if an instalment of the Performance Fee is payable as at the last day of a Financial Year in accordance with clause 19.1(d) then, subject to the Corporations Act, the Listing Rules and the Companies Act 1985 to 1989, the Manager and its associates, if approved by the non-executive directors of the Manager acting in the interest of the Members, shall be entitled to subscribe for that number of Share Stapled Securities equal to the amount of the instalment of the Performance Fee divided by the volume weighted average trading price of all Share Stapled Securities traded on the ASX during the last 10 Business Days of that Financial Year and apply the instalment of the Performance Fee in payment of the Application Price of those Share Stapled Securities. The Share Stapled Securities relating to an instalment of the Performance Fee must be issued as soon as reasonably practicable after the instalment of the Performance Fee becomes payable in accordance with clause 19.1(d) . To the extent that any

instalment of the Performance Fee to which the Manager is entitled under this clause is not applied in the purchase of Share Stapled Securities, it must be paid in cash to the Manager out of the Assets. It is recognised that the Manager and its associate may receive part of the Performance Fee from the Stapled Trust and the Stapled Company and may aggregate the instalment of the Performance Fee payable by the Trust, the Stapled Trust and the Stapled Company for the purpose of applying that instalment of the Performance Fee to acquire Share Stapled Securities in accordance with this clause 19.1(g).

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 Trust⁵¹ are payable or reimburseable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Law. 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, Options and/or Stapled Securities and/or Share Stapled Securities;
 - (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;
 - (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, Options, Stapled Securities or Share Stapled Securities, including underwriting fees, handling fees, costs and expenses, amounts

⁵¹ Refer Section 601GA(2)(b)

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 and attending any meetings of the Stapled Trust and/or the Stapled Company;
- (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 premiums⁵² 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 Law;
- (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; and
- (u) complying with any law, and any request or requirement of the ASIC.

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 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 Trust⁵³.

⁵² See Section 601JG

⁵³ Clauses 20.1 and 20.2 contain terminology no longer used in this constitution because it has been preserved in its original form.

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.

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 the 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 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 Law, 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 Law allows⁵⁴, this constitution may be amended:
- (a) by Resolution⁵⁵; or
 - (b) by deed executed by the Manager.

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

Statutory requirements

- 22.2 If the Corporations Law or a condition of any relief from the provisions of the Corporations Law granted by the ASIC requires that this constitution contain certain provisions, then those provisions are deemed to be incorporated into this constitution at all times at which they are required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. By the application of this constitution to their Unit holding, each Member and Option holder consents to the incorporation in this constitution of such provisions, and agrees to be bound by them. Clause 22.1 does not apply to provisions deemed by this clause 22.2 to be incorporated in the constitution.

⁵⁴ 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

⁵⁵ The required majority for such a Resolution under section 601GC(1)(a) is 75%.

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.
- 22.4 In accordance with ASIC Class Order 98/1808 or its equivalent 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 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 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 Law⁵⁶.

24 Complaints

If and for so long as the Corporations Law 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:

⁵⁶ See section 601JF

- (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 Law.

25.2 During a breach of the Listing Rules or of a restriction agreement relating to Units, Stapled Securities or Share Stapled Securities which are Restricted Securities, the Member who holds the Units, Stapled Securities or Share Stapled Securities which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Units, Stapled Securities or Share Stapled Securities.

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.
- 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), the Member advises the Manager that the Member wishes to retain the Units.
- 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 While Stapling applies, no redemption or sale under this clause 26 may occur unless, at the same time as Units are redeemed or sold, an identical number of Stapled Units and Stapled Shares are also redeemed or sold.

27 Stapling

Paramountcy of Stapling provisions

- 27.1 Subject to clauses 22.2 and 22.3, the provisions of this constitution relating to Stapling prevail over all other provisions of this constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Law, the Listing Rules (if the Listing Rules apply) or any other law.

27A Unit Stapling

Maintenance of Listing and Consistency with Constitution of MIT (II)

- 27A.1 The Manager must use every reasonable endeavour to procure that Stapled Securities are and continue to be Listed as one joint security

and that Stapled Securities are dealt with under this constitution in a manner consistent with the provisions relating to Stapled Units in the constitution of MIT (II).

Unit Stapling - general intention

27A.2 The Units are intended to be stapled to the Stapled Units in the ratio of one Unit to one Stapled Unit. The intention is that, so far as the law permits, a Unit and a Stapled Unit which are Stapled together shall be treated as one security.

27B Share Stapling

Commencement of Share Stapling provisions

27B.1 Share Stapling commences on such date as the Manager in its absolute discretion determines.

Cessation of Share Stapling Provisions

27B.2 The provisions in this deed relating to Share Stapling continue until the Manager in its absolute discretion determines that they cease to apply and the Members, at a meeting of Members have approved that determination.

Paramourcy of Share Stapling Provisions

27B.3 If there is an inconsistency between any provisions of this deed relating to or connected with Share Stapling or any Share Stapled Security and any other provisions of this deed (other than clause 27, 27A and this clause 27B) then the provisions relating to or connected with Share Stapling prevail in this way, even if other provisions are expressed to apply notwithstanding any other provisions of this deed.

Maintenance of Listing and Consistency with Trust Deed

27B.4 Subject to clause 27B.2, the Manager must use every reasonable endeavour to procure that Share Stapled Securities are and continue to be Listed as one joint security and that Share Stapled Securities are dealt with under this constitution in a manner consistent with the provisions relating to Stapled Shares in the constitution of the Stapled Company.

Share Stapling - general intention

27B.5 While Share Stapling applies, the Units are intended to be stapled to the Stapled Shares in the ratio of one Unit to one Stapled Share. The intention is that, so far as the law permits, a Unit and a Stapled Share which are Stapled together with any other Stapled Unit and Stapled Share shall collectively be treated as one security.

28 Interpretation

Definitions

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

Actuary: any actuary or other person suitably qualified to calculate the daily closing combined accumulation indices in paragraph (c) or (d) of the definition of “Annual Return”, as determined by the Manager.

Annual Return: means

- (a) if Unit Stapling applies (subject to paragraphs (b), (c) and (d) below) in relation to a Financial Year the sum calculated as follows:

$$AR = A \times \frac{B-C}{C}$$

Where

AR = the Annual Return for the Financial Year

A = in respect of each Financial Year is the average number of Stapled Securities or Share Stapled Securities on issue during the last ten ASX trading days in the previous Financial Year multiplied by the weighted average trading price of all Stapled Securities or Share Stapled Securities traded on the ASX during that ten trading days period;

B = the average of the daily closing accumulation indices for the Stapled Securities over the last ten Business Days of the Financial Year as calculated by a person reasonably approved or selected by the Manager and reported by Bloomberg;

C = the average of the daily closing accumulation indices for the Stapled Securities or Share Stapled Securities over the last ten Business Days of the previous Financial Year as calculated by a person reasonably approved or selected by the Manager and reported by Bloomberg.

- (b) if Share Stapling applies, subject to paragraph (c) and (d) below, in relation to a Financial Year the sum calculated as follows:

$$AR = A \times \frac{B-C}{C}$$

Where

AR = the Annual Return for the Financial Year

A = in respect of each Financial Year is the average number of Stapled Securities or Share Stapled Securities on issue during the last ten ASX trading days in the previous Financial Year multiplied by the weighted average

trading price of all Stapled Securities or Share Stapled Securities traded on the ASX during that ten trading days period;

B = the average of the daily closing accumulation indices for the Stapled Securities and/or the daily closing accumulation indices for the Share Stapled Securities (as the case requires) over the last ten Business Days of the Financial Year as calculated by a person reasonably approved or selected by the Manager and reported by Bloomberg;

C = the average of the daily closing accumulation indices for the Stapled Securities and/or the daily closing accumulation indices for the Share Stapled Securities (as the case requires) over the last ten Business Days of the previous Financial Year as calculated by a person reasonably approved or selected by the Manager and reported by Bloomberg;

(c) if the shares, units or units of shares or units of one or both of the Stapled Trust and any Stapled Company comprising the Stapled Entity are Stapled to Units at any time during:

(i) a Financial Year being a “Relevant Year” for the purposes of clause 19.1(d) but are not Stapled to Units on the last Business Day of the Financial Year; or

(ii) a Financial Year which is a “Second Year” for a “Relevant Year” for the purposes of clause 19.1(d) but are not Stapled to Units on the last Business Day of the Financial Year; or

(iii) a Financial Year which is a “Third Year” for a “Relevant Year” for the purposes of clause 19.1(d) but are not Stapled to Units on the last Business Day of the Financial Year,

in relation to that Financial Year the sum calculated as follows:

$$AR = A \times \frac{B-C}{C}$$

Where

AR = the Annual Return for the Financial Year

A = in respect of each Financial Year is the average number of Stapled Securities or Share Stapled Securities on issue during the last ten ASX trading days in the previous Financial Year multiplied by the weighted average trading price of all Stapled Securities or Share

Stapled Securities traded on the ASX during that ten trading days period;

B = the average of the daily closing combined accumulation indices for the Stapled Securities and the Shares and/or the daily closing accumulation indices for the Share Stapled Securities and/or the daily closing combined accumulation indices for the Share Stapled Securities and the Shares and/or the daily closing combined accumulation indices for the Units and the Shares (as the case requires) over the last ten Business Days of the Financial Year as calculated by the Actuary and reported by the Pricing Service;

C = the average of the daily closing accumulation indices for the Stapled Securities and/or the daily closing accumulation indices for the Share Stapled Securities (as the case requires) over the last ten Business Days of the previous Financial Year as calculated by a person reasonably approved or selected by the Manager and reported by Bloomberg

and “**Shares**” means, as the case requires, the shares, units or units of shares or units of one or both of the entities comprising the Stapled Entity referred to in paragraph (i), (ii) or (iii) above.

- (d) if the shares, units or units of shares or units of one or both of the Stapled Trust and any Stapled Company comprising the Stapled Entity are Stapled to Units at any time during:
- (i) a Financial Year being a “Relevant Year” for the purposes of clause 19.1(d) but are not Stapled to Units on the last Business Day of the Financial Year, for any “Second Year” or “Third Year” for that Relevant Year; or
 - (ii) a Financial Year which is a “Second Year” for a “Relevant Year” for the purposes of clause 19.1(d) but are not Stapled to Units on the last Business Day of the Financial Year, for any “Third Year” relating to that “Second Year”

in relation to that Financial Year the sum calculated as follows:

$$AR = A \times \frac{B-C}{C}$$

Where

AR = the Annual Return for the Financial Year

- A = in respect of each Financial Year is the average number of Stapled Securities or Share Stapled Securities and/or Units on issue during the last ten ASX trading days in the previous Financial Year multiplied by the weighted average trading price of all Stapled Securities or Share Stapled Securities and/or Units traded on the ASX during that ten trading days period;
- B = the average of the daily closing combined accumulation indices for the Stapled Securities and the Shares and/or the daily closing combined accumulation indices for the Share Stapled Securities and the Shares and/or the daily closing combined accumulation indices for the Units and the Shares (as the case requires) over the last ten Business Days of the Financial Year as calculated by the Actuary and reported by the Pricing Service; and
- C = the average of the daily closing combined accumulation indices for the Stapled Securities and the Shares and/or the daily closing accumulation indices for the Share Stapled Securities and/or the daily closing combined accumulation indices for the Share Stapled Securities and the Shares and/or the daily closing combined accumulation indices for the Units and the Shares (as the case requires) over the last ten Business Days of the previous Financial Year as calculated by the Actuary and reported by the Pricing Service

and “**Shares**” means, as the case requires, the shares, units or units of shares or units of one or both of the entities comprising the Stapled Entity referred to in paragraph (i), (ii) or (iii) above.

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

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

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: Australian Stock Exchange Limited.

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, fully paid Stapled Securities or fully paid Share Stapled

Securities (as relevant) during the 10 ASX trading days immediately preceding the relevant date.

Benchmark Return: the amount calculated by the Manager in respect of a Financial Year in accordance with the following formula:

$$BR = X \times \frac{Y-Z}{Z}$$

Where:

BR = the Benchmark Return for the Financial Year;

X = in respect of each Financial Year is the average number of Stapled Securities or Share Stapled Securities or Units (as used in the determination of "A" for the purposes of determining Annual Return for the Financial Year) on issue during the last ten ASX trading days in the previous Financial Year multiplied by the weighted average trading price of all Stapled Securities or Share Stapled Securities or Units (as used in the determination of "A" for the purposes of determining Annual Return for the Financial Year) traded on the ASX during that ten trading days period;

Y = the average of the daily S&P/ASX 300 Industrials Accumulation Indices over the last ten Business Days of the Financial Year as reported by Bloomberg;

Z = the average of the daily S&P/ASX 300 Industrials Accumulation Indices over the last ten Business Days of the previous Financial Year as reported by Bloomberg;

Bloomberg: Bloomberg Financial Markets or if it ceases to publish or report the S&P/ASX 300 Industrials Accumulation Index or the accumulation index for the Stapled Securities or Share Stapled Securities listed on ASX such other person which publishes or reports that information as selected by the Manager.

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

Capital Value of a Stapled Security: aggregate of the Capital Value of a Unit plus the capital value of the Stapled Unit as determined in accordance with the constitution for MIT(II).

Capital Value of a Share Stapled Security: while Share Stapling applies, the Capital Value of a Unit plus the capital value of a Stapled Unit as determined in accordance with the constitution for MIT(II) (if Unit Stapling applies) plus the net asset backing of a Stapled Share determined in accordance with applicable accounting standards.

Capital Value of a Unit: the Net Asset Value divided by the total number of Units in issue on that day less, in the case of a Partly Paid Unit, the amount of the Application Price unpaid on that day.

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

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.

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 which the Manager decides should be taken into account in determining the liabilities of the Trust.

Liquid: has the same meaning as in the Corporations Law⁵⁷.

Listed: admitted to the official list of ASX whether or not quotation of the Units is deferred, suspended or subjected to a trading halt⁵⁸, and whether securities in the Trust are listed as Units or as Stapled Securities.

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 responsible entity for the Trust under the Corporations Law.

Market Price: of a Stapled Security or a Share Stapled Security (as the case requires) on any Business Day means:

- (a) the last sale price per Stapled Security or a Share Stapled Security (as the case requires) recorded on the ASX on that Business Day (whether or not a sale was recorded on that Business Day);

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

- (b) the mid-point of the bid and offer prices per Stapled Security or a Share Stapled Security (as the case requires) recorded on the

⁵⁷ Refer Part 5C.6

⁵⁸ Refer Listing Rule 18.6

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 Stapled Security on that Business Day, in which case Market Price of a Stapled Security or a Share Stapled Security (as the case requires) on that Business Day means:

- (c) the market price of a Stapled Security or a Share Stapled Security of the relevant class as determined by an independent expert and the Manager whose identity and instructions will be determined by the Manager,

Market Value of the Funds: at the end of a Quarter means the aggregate of the market value of Stapled Securities or Share Stapled Securities (as the case requires) calculated on the basis of the average number of Stapled Securities or Share Stapled Securities (as the case requires) in Issue in each class during the last 10 trading days of the ASX in the relevant Quarter multiplied by the weighted average Market Price of all Stapled Securities or Share Stapled Securities (as the case requires) over those 10 days plus the borrowings of the Trust and MIT(II) (if Unit Stapling applies) and, in the case of Share Stapled Securities, the Stapled Company less the amount of Assets (for the Trust and MIT(II) (if Unit Stapling applies) and, in the case of Share Stapled Securities, the Stapled Company) representing cash or a cash equivalent as determined by the Manager and the responsible entity of MIT(II) (if Unit Stapling applies) and, in the case of Share Stapled Securities, the Stapled Company plus the aggregate of the amounts which are firmly committed for future investment by the Trust and MIT (II) (if Unit Stapling applies) and, in the case of Share Stapled Securities, the Stapled Company in investments (other than cash or a cash equivalent).

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

MIT (I): the trust constituted under the deed entitled Constitution Macquarie Infrastructure Trust (I) dated on or about the date of this constitution.

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.

Performance Fee: to be calculated in respect of any given Financial Year means:

- (a) subject to paragraph (c), 15% of the amount (if any) by which the Annual Return for the Financial Year exceeds the Benchmark Return for the Financial Year; or
- (b) nil if the Annual Return for the Financial Year does not exceed the Benchmark Return for the Financial Year; but
- (c) Subject to paragraph (d), if the Annual Return in any prior Financial Year is less than the Benchmark Return for that Financial Year the deficit is to be carried forward on a cumulative basis until offset on a dollar for dollar basis against a surplus or surpluses of the Annual Return in any succeeding Financial Year or Financial Years over the Benchmark Return for that Financial Year or those Financial Years prior to the 15% being calculated pursuant to paragraph (a);
- (d) If:

- (i) the shares, units or units of shares or units of a Stapled Entity are Stapled to Units at any time during the Financial Year;
- (ii) they are not stapled to Units at the end of the Financial Year;
- (iii) the Annual Return for that Financial Year is less than the Benchmark Return for that Financial Year or there is a carry forward deficit under paragraph (c) of this definition at the end of the Financial Year;

the Manager must allocate the deficit (whether for that Financial Year or carried forward) between the Trust and the Remaining Stapled Entity on the one hand and the Stapled Entity on the other hand based on the net assets of the Trust, the Remaining Stapled Entity (if any) and the Stapled Entity, where the value in each case of the net assets in the accounts is adjusted to reflect the market value of the assets if such accounts do not already do so, and the amount of the deficit for that Financial Year or the carried forward deficit at the end of the Financial Year will be reduced by the amount of such allocation. If the Manager believes that allocation of the deficit on the basis of market value of the net assets is unfair, the Manager must cause the allocation to be determined by an independent expert, chosen by the Manager, in consultation with the Manager.

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.

redemption request: a written request to the Manager to redeem Units and, while Stapling applies:

- (a) to redeem the Stapled Units relating to the Units to be redeemed; and
- (b) to cause the Stapled Company to buy back or redeem the Stapled Shares relating to the Units to be redeemed .

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

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

Registered: recorded in the Register.

Registration: recording in the Register.

Remaining Stapled Entity: any Entity in respect of which Share Stapling or Unit Stapling continues to apply.

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.

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.

S&P/ASX 300 Industrials Accumulation Index: the index with that name calculated by or on behalf of Standard & Poor’s and reported by Bloomberg or if that index ceases to be calculated and published the nearest equivalent available index reasonably selected by the Manager.

Share Stapled Security: a Unit and a Stapled Share which are Stapled together and registered in the name of the Member⁶⁰.

Share Stapling: means the linking together of all rights and obligations which attach to a Share Stapled Security.

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

Stapled: the state that results from Stapling.

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 See clause 28.2(i) which affects the interpretation of this definition.

Stapled Company: means any Entity (other than the Stapled Trust) which the Manager in its absolute discretion determines.

Stapled Entity: any Stapled Company and/or the Stapled Trust.

Stapled Security: a Unit and a Stapled Unit which are Stapled together and registered in the name of the Member.

Stapled Security Holder: the Member under this constitution and the holder of a Stapled Unit.

Stapled Security Holding: a Unit holding under this constitution and a unit holding of a Stapled Unit.

Stapled Share: a share, unit or unit of a share or unit (or other measure of beneficial interest in a trust) in the Stapled Company. A reference to a Stapled Share includes a reference to the underlying share in relation to a unit of a share or underlying unit in relation to a unit of a unit, where the context requires.

Stapled Trust: Macquarie Infrastructure Trust (II).

Stapled Unit: means a unit in the Stapled Trust.

Stapling: the linking together of all the rights and obligations which attach to a Stapled Security and/or a Share Stapled Security (as the case requires).

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) the 80th anniversary of the date of this trust deed, being 18 July 1996;
- (b) the Date of Delisting;

- (c) a date which the Members determine by Special Resolution;
- (d) the date determined under clause 20.4; or
- (e) the date on which the Trust is terminated under statute or general law.

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.

Unit Stapling: the linking together of all the rights and obligations which attach to a Stapled Security.

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 Law 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.

⁶¹ Refer Section 601GB

Other obligations excluded

28.7 Except as required by the Corporations Law all restrictions on the exercise of the Manager's powers or obligations of the Manager which 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.

Finding list

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

Corporations Law	Constitution
601GA	
(1)(a)	4.1 - 4.6
(1)(b)	11.1 - 11.3
(1)(c)	24
(1)(d)	21
(2)	17.3 - 17.5, 19.1 - 19.5
(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