
Stapling Deed

Macquarie Infrastructure Group

Macquarie Infrastructure Investment Management Limited

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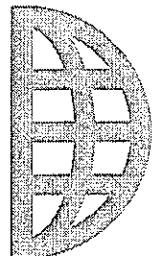
Macquarie Infrastructure Bermuda Limited

Macquarie European Infrastructure Public Limited Company

**Macquarie Investment Management (UK)
Limited**

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Date 12 January 2005

Parties

Macquarie Infrastructure Investment Management Limited (ACN 072 609 271) of Level 15, 1 Martin Place, Sydney in the state of New South Wales in its capacity as trustee of the Macquarie Infrastructure Trust (I) (**MIT(I)**) (*Trustee*)

Macquarie Infrastructure Investment Management Limited (ACN 072 609 271) of Level 15, 1 Martin Place, Sydney in the state of New South Wales in its capacity as trustee of the Macquarie Infrastructure Trust (II) (**MIT(II)**) (*Trustee*)

Macquarie Infrastructure Bermuda Limited a mutual fund company incorporated in Bermuda with registered number EC 35715 of Rosebank Centre, 11 Bermudiana Road, Pembroke HM 08, Bermuda (*Company*)

Macquarie European Infrastructure Public Limited Company a company registered in England and Wales with registered number 3724230 whose registered office is at Level 29 and 30, Citypoint, 1 Ropemaker Street, London EC2Y 9HD, England (*MEIP*)

Macquarie Investment Management (UK) Limited a company registered in England and Wales with registered number 3976881 whose registered office is at Level 29 and 30, Citypoint, 1 Ropemaker Street, London EC2Y 9HD, England (*Macquarie*)

Recitals

- A The MIT(I) Trustee is trustee of MIT(I) pursuant to MIT(I) Constitution and the MIT(II) Trustee is trustee of MIT(II) pursuant to the MIT(II) Constitution.
- B The Trust Deeds provide for Unit Stapling (as that term is defined in each Trust Deed).
- C Each of the Trust Deeds provides for Share Stapling (as that term is defined in each Trust Deed) and since 19 September 2000 units in each of MIT(I) and MIT(II) have been stapled to a CUFS over MEIP Shares pursuant to the terms of the Old Deed, and the resulting share stapled security has been quoted on the ASX.
- D It is proposed to implement the Restructure, pursuant to which MEIP will become a subsidiary of MIBL and the Shares will replace the CUFS as a component of a share stapled security (which will become a Share Stapled Security under this Deed).
- E This deed sets out the terms and conditions of the relationship between the Trustees and the Company in respect of the Share Stapled Securities following the Effective Time for so long as the Shares remain Stapled to the Units.

This deed witnesses

That in consideration of, among other things, the mutual promises contained in this deed, the parties agree:

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this deed, unless the context otherwise requires:

A Special Share has the same meaning as provided in the Bye-laws;

Advisory Agreement means the Advisory Deed dated on or around the date of this deed, entered into between the Company, MEIP and Macquarie;

ASX means the Australian Stock Exchange Limited;

Auditor means:

- (a) while Unit Stapling applies, the person appointed by the MIT(II) Trustee to audit MIT(II); and
- (b) if Unit Stapling does not apply, the person appointed by the Trustee of the Trust of which Units are Stapled to Shares, to audit that Trust;

B Special Share has the same meaning as provided in the Bye-laws;

Business Day has the meaning given to that term in the Listing Rules;

Bye-laws means the Bye-laws of the Company as amended from time to time;

Circular means the Circular to holders of Share Stapled Securities (as defined under the Old Deed) dated on or about the date of this deed;

Commission means the Australian Securities and Investment Commission;

Company means Macquarie Infrastructure Bermuda Limited;

Corporate Action has the meaning given to that term in the Listing Rules;

CUFS has the meaning given to it in section 2.13.1 of the ASTC Settlement Rules;

Effective Time means the time at which the Scheme comes into effect;

Governmental agency means any Bermudan or Australian government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, but does not include any of the parties to this agreement;

Listing Rules means the listing rules published by the ASX from time to time;

MEIP Share means an ordinary share of 15 pence in MEIP;



MIIML means Macquarie Infrastructure Investment Management Limited;

MIT(I) means Macquarie Infrastructure Trust (1) constituted under the MIT(I) Constitution;

MIT(II) means Macquarie Infrastructure Trust (II) constituted under the MIT(II) Constitution;

MIT(I) Constitution means the trust deed establishing MIT(I) (formerly the Infrastructure Trust of Australia (1)) dated 18 July 1996 (as amended from time to time);

MIT(II) Constitution means the trust deed establishing MIT(II) (formerly the Infrastructure Trust of Australia (II)) dated 18 July 1996 (as amended from time to time);

Old Deed means the Share Stapling Deed dated 19 September 2000 between the Trustee, MEIP and Macquarie;

Old Management Agreement means the Management Deed dated 19 September 2000 between MEIP and Macquarie as amended pursuant to the Supplemental Deed dated 22 November 2000 and the First Amendment Deed dated 27 November 2002;

Restructure means the restructure of the issued share capital of MEIP and the issuance of Shares to holders of CUFS over the MEIP Shares in consideration for the issue of ordinary shares in MEIP to the Company pursuant to the Scheme;

Scheme means the scheme of arrangement under section 425 of the Companies Act 1985 (UK) between MEIP and the holders of the MEIP Shares approved by the High Court of Justice in England and Wales;

Share means an undivided ordinary share in the Company;

Shareholders means a person registered as the holder of a Share including any persons jointly registered;

Share Stapled Security means:

- (a) While Unit Stapling applies, one Share which is Stapled to a Unit in each Trust; and
- (b) If Unit Stapling does not apply, a Unit in a Trust which is Stapled to a Share;

Share Stapled Securities Register means a register of Share Stapled Securities operated under clause 10;

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

Stapled means the linking of a Unit in each Trust or a Trust and a Share together so that one may not be dealt with without the other;

Trust Deeds means:

- (a) The MIT(I) Constitution; and
- (b) The MIT(II) Constitution;

Trustees means:

- (a) The MIT(I) Trustee or any other company named in the Commission's record of registration of MIT(I) as the responsible entity or temporary responsible entity of MIT(I); and
- (b) The MIT(II) Trustee or any other company named in the Commission's record of registration of MIT(II) as the responsible entity or temporary responsible entity of MIT(II);

Trustees' Determination means a determination of the Trustees in the form of Schedule 1.

Trusts means:

- (a) MIT(I); and
- (b) MIT(II);

Unit means, as the context requires:

- (a) while Unit Stapling applies, a unit (as defined in each Trust Deed) in each of the Trusts; and
- (b) if Unit Stapling does not apply, a unit in either of the Trusts;

Unitholder means a person registered as the holder of a Unit in a Trust including any persons jointly registered;

Unit Stapling means a linking of a Unit in each Trust together under each Trust Deed so that one may not be dealt with without the other; and

Unstapled means:

- (a) In relation to a Unit in the Trusts, not being Stapled to a Share; and
- (b) In relation to a Share, not being Stapled to a Unit in either Trust.

1.2 Corporations Law definitions

Unless otherwise specified in this deed, terms defined in the Corporations Act 2001 (Cth) (including, without limitation, the ATSC Settlement Rules) are used in this deed with the same defined meaning.

1.3 Interpretation

In this deed, unless the context otherwise requires:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) Words importing the singular include the plural and vice versa;
- (c) Words importing a gender include any gender;
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) An expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate;
- (f) A reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause 1.3(f) implies that performance of part of an obligation constitutes performance of the obligation;

- (g) A reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this deed and a reference to this deed includes any annexure, exhibit and schedule;
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) A reference to a party to a document includes that party's successors and permitted assigns;
- (j) No provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision; and
- (k) A reference to a body, other than a party to this deed (including, without limitation, an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (l) A reference to a statute, ordinance, code or other law or rule includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements.

1.4 Share Stapling

For avoidance of doubt, if in accordance with clause 4.5(b) the Units in one of the Trusts cease to be Stapled to the Shares, but the Units in the other Trust continue to be Stapled to the Shares:

- (a) A reference in this deed to a Unit or Units is to be interpreted as a reference to a Unit in the Trust the Units in which remain Stapled to the Shares;
- (b) The provisions of this deed continue to bind the Trustee of the Trust the Units in which remain Stapled to the Shares; and
- (c) The Trustee of the Trust the Units in which cease to be Stapled to the Shares is, subject to any provision of this deed to the contrary, released from its obligations under this deed.

2 Commencement of Stapling

2.1 Operative Provisions

- (a) Clauses 1.1, 1.2, 1.3, 2, 16 and 17 of this deed are effective from the date of this deed.
- (b) The remaining provisions of this deed are effective from the time Share Stapling commences pursuant to the Trustees' Determination.

2.2 Trustees' Determination

The Trustees may, at any time on or after the date of this deed, make a determination pursuant to clause 27B.2 of the MIT(I) Constitution and the MIT(II) Constitution and deliver to each party to this deed (other than the Trustees) evidence of such determination in the form of the Trustees' Determination.



2.3 Termination of Old Deed

Notwithstanding any provision of the Old Deed to the contrary:

- (a) the Old Deed will terminate immediately prior to the Effective Time;
- (b) the Old Deed shall cease to be of any force or effect from the time of its termination, including, without limitation, in relation to the obligations arising under clause 10.1.

3 Co-operation and Consultation

3.1 Overriding obligation

- (a) The Trustees and the Company must co-operate in respect of all matters relating to the Share Stapled Securities and must (in the case of the Company to the extent permitted by the Companies Act 1981 (Bermuda) and the Bye-laws), do all things necessary to give effect to this deed.
- (b) Each of the Trustees and the Company hereby agrees that it shall do all things reasonably necessary to assist each other to enable each of them to give effect to this deed and their respective obligations under this deed, from time to time.

3.2 Consultation

Each of the Trustees and the Company must consult with each other prior to causing any act to be done or omission to be made which may materially affect the value of the Share Stapled Securities.

3.3 Distributions

Each of the Trustees and the Company must consult with each other:

- (a) Prior to announcing or paying a distribution or dividend out of or by MIT(I), MIT(II) or the Company; and
- (b) In relation to the operation of any dividend reinvestment policy by MIT(I), MIT(II) or the Company.

3.4 Information

- (a) Each of the Trustees and the Company agrees to make available to each other all information in their possession as may be necessary or desirable to fulfil their respective obligations under this deed or any other document, deed or arrangement relating to the Share Stapled Securities.
- (b) Subject to clause 3.4(c), each party must keep confidential any information obtained concerning the affairs or assets of each other party and not use it for any purpose other than those set out in clause 3.4(a).
- (c) A party may disclose any information:
 - (i) with the prior written consent of each other party (which consent shall not be unreasonably withheld or delayed);
 - (ii) if it is required to do so by law, by any regulatory or governmental agency or by the ASX;
 - (iii) if the information has come within the public domain, other than by a breach of this clause 3.4 by any party; and

- (iv) to the party's bankers or professional advisers.

3.5 Financial Accounts

- (a) The Trustees and the Company must make available to each other all information and provide all assistance in relation to the preparation of financial accounts of each Trust and the Company.
- (b) Without limiting clause 3.5(a), the MIT(I) Trustee, the MIT (II) Trustee and the Company must make available to each other all information and provide all assistance to enable the provision of all other reports, circulars or other information which are required by law or the Listing Rules or which may be reasonably desirable to provide to holders of the Share Stapled Securities.
- (c) MIIML will use valuations prepared in relation to the assets of MIT (I), MIT (II) and the Company in the preparation and lodgement with the relevant authority or body of:
- (i) the consolidated financial statements for MIT (I), MIT (II) and the Company required to be prepared by MIIML in accordance with the *Corporations Act, 2001* (Cth.); and
 - (ii) the Appendix 4D and Appendix 4E for MIT (I), MIT (II) and the Company required by the ASX Listing Rules.
- (d) Without limiting clauses 3.5(a) and 3.5(b), where the Company does not revalue its assets in its accounts, MIIML will arrange for the preparation of the revaluation of the Company's assets in accordance with the Australian Accounting Standards.

The revaluation of the Company's assets in accordance with this clause 3.5(c) fulfils any obligations that the Company has under this deed to provide valuations of its assets to MIIML.

3.6 Valuation Policies

- (a) While Unit Stapling applies, the MIT(I) Trustee and the Company must to the extent permitted by law adopt the valuation policies and methods of the MIT(II) Trustee.
- (b) If Unit Stapling does not apply but Stapling does, the Company must to the extent permitted by law adopt the valuation policies and methods of the Trustee of the Trust of which Units are Stapled to Shares.
- (c) If the Company must adopt the valuation policies and methods of a Trustee, the Trustee must not alter, amend or replace those policies or methods without consulting the Company and, if Unit Stapling applies, the other Trustee.

3.7 Accounting Standards and Policies

- (a) While Unit Stapling applies, the MIT(I) Trustee and the Company may, but is not obliged to, and to the extent permitted by law, adopt the accounting standards and policies of the MIT(II) Trustee.
- (b) If Unit Stapling does not apply but Stapling does, the Company may, but is not obliged to, and to the extent permitted by law, adopt the accounting standards and policies of the Trustee of the Trust of which Units are Stapled to Shares.

3.8 Listing Rules

Each of the Trustees and the Company must cooperate with each other to:



- (a) ensure that each party complies with the obligations imposed by the Listing Rules, including (without limitation) the disclosure obligations; and
- (b) co-ordinate disclosure to the ASX and investors.

3.9 ASX point of contact

The parties must nominate an officer of the MIT(II) Trustee or, if Unit Stapling does not apply, the Trustee of the Trust of which Units are Stapled to Shares as the ASX point of contact in relation to Listing Rule matters for the Share Stapled Securities.

3.10 Enhancing the market value of the Share Stapled Securities

Each party must perform its obligations under this deed and carry out its duties under its respective constitution (including the raising of capital by debt or equity) with a view to enhancing the market value of the Share Stapled Securities.

3.11 Major Acquisition or disposal

Each of the Trustees and the Company must:

- (a) Give 15 days written notice to the other parties of its intention to acquire or sell an asset the value of which is 5% or greater of the net tangible assets of MIT(I), MIT(II) or the Company (as the case requires) at the time of giving such notice; and
- (b) Not make an acquisition or disposal of an asset as contemplated by clause 3.11 (a) without having first consulted with the other parties.

3.12 Investment Policy

(a) While Unit Stapling applies, the MIT(I) Trustee and the Company must:

- (i) act consistently with the principal investment policy of the MIT(II) Trustee determined in accordance with the MIT(II) Constitution, and any changes to that policy notified to investors, in making any investments; and
- (ii) consult with each other and the MIT(II) Trustee on how to implement that investment policy and any changes as to how the investment policy is to be implemented.

(b) If Unit Stapling does not apply but Stapling does, the Company must:

- (i) act consistently with the principal investment policy of the Trustee of the Trust of which Units are Stapled to Shares determined in accordance with the relevant Trust Deed, and any changes to that policy notified to investors, in making any investments; and
- (ii) consult with the Trustee of that Trust on how to implement that investment policy and any changes as to how the investment policy is to be implemented.

3.13 Borrowings

- (a) The Company must not borrow or raise money unless the Trustees agree or, if Unit Stapling does not apply, the Trustee of the Trust of which Units are Stapled to Shares agrees.
- (b) If any loans or other financial accommodation are undertaken jointly by any two or more of the MIT(I) Trustee, the MIT(II) Trustee and the Company for any reason, whichever of the MIT(I) Trustee, the MIT(II) Trustee or the Company that receives the proceeds of the loan or financial accommodation must:

- (i) repay the loan or financial accommodation;
 - (ii) pay all fees, interest, expenses and other amounts in respect of the loan or financial accommodation; and
 - (iii) indemnify each of the other joint borrowers in respect of any amount referred to in paragraphs (1) and (2) which are paid by it.
- (c) The indemnity referred to in clause 3.13(b)(3) survives the termination of this deed.
- (d) Any amount payable under any loans or other financial accommodation undertaken jointly by two or more of the MIT(I) Trustee, the MIT(II) Trustee and the Company which is not by its terms payable by one of them or is not payable by one of them pursuant to clause 3.13(b), must be apportioned between each of the others who are parties to the loan or financial accommodation on the basis agreed between them on or prior to entry into the loan or financial accommodation and in the absence of such agreement must be repaid by the party that has received the proceeds of the loan or financial accommodation.

3.14 Co-ordinate Share Stapled Security Holder meetings

The Trustees and the Company agree that they will co-operate to ensure that where it is necessary for any two or more of the Unitholders in any Trust and Shareholders (to the extent permitted by the Companies Act 1981 (Bermuda) and the Bye-laws) to have a meeting that those meetings be held concurrently or, where necessary, consecutively.

3.15 Restructuring

Each of the Trustees and the Company must:

- (a) consult with each other in relation to:
 - (i) the stapling of another entity's securities to any Units or Shares;
 - (ii) effecting any reorganisation or restructure of the capital of MIT(I), MIT(II), the Company or any other entity whose securities are Stapled to any Units or Shares other than in respect of a Corporate Action under clause 8; or
 - (iii) effecting any changes to the stapling arrangements contemplated by this deed in order to comply with any law, regulation or rule or to otherwise overcome the adverse effect of any law, regulation or rule; and
- (b) agree to make any changes to this deed which are reasonably required by the MIT(II) Trustee or, if Unit Stapling does not apply, the Trustee of the Trust of which Units are Stapled to Shares in relation to any of the matters contemplated by clause 3.15(a).

4 Dealings in Share Stapled Securities

4.1 Units and Shares to be Stapled

- (a) From the time this clause 4.1(a) comes into effect:
 - (i) each Unit issued or to be issued must be Stapled to a Share on issue or to be issued (and vice versa);
 - (ii) a Trustee must not issue a Unit unless a Share is issued at the same time and to the same person; and

- (iii) the Company must not issue a Share unless a Unit is issued at the same time and to the same person.
- (b) Each Unit must be Stapled to a Share (and vice versa) immediately after later of:
- (i) the date of issue of a Unit; and
 - (ii) the date of issue of a Share .

4.2 Dealings in Share Stapled Securities

- (a) Subject to clause 4.5(a), on and from the time referred to in clause 4.1(a), each Trustee and the Company must not:
- (i) do any act, matter or thing (including registering any transfer of any Unit or any Share); or
 - (ii) refrain from doing any act, matter or thing,
 - (iii) if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit or any Share no longer being Stapled as a Share Stapled Security.
- (b) Without limiting the provisions of clause 4.2(a), but subject to clause 4.3, each Trustee:
- (i) must not offer any Units in a Trust for subscription or sale unless an offer is made at the same time and to the same person for an identical number of Shares for issue or sale;
 - (ii) must not offer any Units in a Trust for subscription or sale unless the terms of that offer require each offeree to subscribe for or buy a number of Shares equal to the number of Units subscribed for or bought;
 - (iii) must not issue or sell any Units in a Trust to any person unless an identical number of Shares are also issued or sold to the same person at the same time;
 - (iv) must not consolidate, sub-divide, cancel, buy-back or redeem any Units in a Trust unless at the same time there is a corresponding consolidation, subdivision, cancellation, buy-back or redemption of Shares; and
 - (v) must not register any transfer of any Unit unless there is a matching transfer of the Share to which it is Stapled.
- (c) Without limiting the provisions of clause 4.2(a), but subject to clause 4.4, the Company:
- (i) must not offer any Shares for subscription or sale unless an offer is made at the same time and to the same person for an identical number of Units in each Trust for issue or sale;
 - (ii) must not offer any Shares for subscription or sale unless the terms of that offer require each offeree to subscribe for or buy a number of Units in each Trust equal to the number of Shares subscribed for or bought;
 - (iii) must not issue or sell any Shares to any person unless an identical number of Units in each Trust are also issued or sold to the same person at the same time;
 - (iv) must not consolidate, sub-divide, cancel, buy-back or redeem any Shares unless at the same time there is a corresponding consolidation, subdivision, cancellation buy-back or redemption of the Units in each Trust; and

- (v) must not register any transfer of any Shares unless there is a matching transfer of the Unit in each Trust to which it is Stapled.
- (d) A party is not obliged to effect a capital reduction in a manner inconsistent with any contractual or fiduciary obligations or laws by which the party is bound.

4.3 Issue of Units by a Trustee

- (a) Subject to clause 4.3(b), if a Trustee notifies the Company that the Trustee proposes to issue Units, the Company must cause the issue of an identical number of Shares to the persons to whom the Units are issued.
- (b) The obligations of a Trustee under clause 4.3(a) are subject to the requirements of any applicable law, the relevant Trust Deed and any consent or other approval from any necessary authority.
- (c) The obligations of the Company under clause 4.3(a) are subject to the requirements of any applicable law, the Bye-laws and any consent or other approval from any necessary authority.
- (d) Each Trustee acknowledges that where the other Trustee proposes to issue Units in accordance with clause 4.3(a), it will do all things necessary to issue an identical number of Units in the Trust of which it is the Trustee to the persons to whom the Units are issued in accordance with clause 4.3(a), in accordance with its obligations under the relevant Trust Deed, subject to the requirements of any applicable law and any consent or other approval from any necessary authority.

4.4 Issue of Shares by the Company

- (a) Subject to clause 4.4(b), if the Company or Macquarie notifies a Trustee that the Company proposes to issue Shares, it must also give notice to the other Trustee of the proposed issue of Shares and each Trustee must cause the issue of an identical number of Units in the Trust of which it is trustee to the persons to whom the Shares are issued.
- (b) The obligations of the Company under clause 4.4(a) are subject to the requirements of any applicable law, the Bye-laws and any consent or other approval from any necessary authority.
- (c) The obligations of each Trustee under clause 4.4(a) are subject to the requirements of any applicable law, the relevant Trust Deed and any consent or other approval from any necessary authority.
- (d) Other than any issue of Shares in accordance with the Restructure and the issue of any A Special Shares and B Special Shares, the Company may not issue any Shares without the consent of the Trustees.

4.5 Units and Shares to remain Stapled

- (a) Unless each Trustee otherwise determines in accordance with the relevant provisions of the relevant Trust Deed or Trust Deeds, all Units will remain Stapled to the Shares and the Shares will remain Stapled to the Units to which they are Stapled:
 - (i) until they are Unstapled; and
 - (ii) otherwise for so long as the Share Stapled Securities remain on issue.
- (b) The Trustees and the Company must not procure that the Units in one of the Trusts cease to be Stapled to the Shares and to the Units in the other Trust unless this has been approved by the holders of Share Stapled Securities.

- (c) Unstapling must not occur unless:
- (i) it has been approved by the holders of Share Stapled Securities and the Company has arranged any necessary funding to enable it to operate independently including meeting all its financial commitments; or
 - (ii) the winding up of the Company has commenced.

4.6 Quotation as Share Stapled Securities

Unless and until Share Stapled Securities are Unstapled in accordance with this deed, the parties must use reasonable endeavours to ensure that:

- (a) Each Share Stapled Security continues to be Stapled; and
- (b) Each Share Stapled Security which is listed for quotation on ASX continues to be so listed for quotation and quoted as a Share Stapled Security.

4.7 Company to remain listed

Unless and until Share Stapled Securities are Unstapled in accordance with this deed, the Company must ensure that:

- (a) The Company remains admitted to the official list of ASX; and
- (b) All Shares continue to be listed for quotation on ASX.

4.8 Joint certificates or joint holding statements

The Company and the Trustees must procure that joint certificates and joint holding statements are issued to each holder of Share Stapled Securities.

5 Macquarie as Advisor

- (a) Macquarie must act in accordance with its powers as advisor as provided in the Advisory Agreement and subject to the obligations and the limitations imposed under the Advisory Agreement. Macquarie must not do anything in its capacity as advisor which would cause the Company or MEIP to breach the terms of this deed.
- (b) So long as MIIML or any of its related bodies corporate is the trustee of either or both of MIT(I) and MIT(II) the Company must not, prior to Unstapling, exercise its powers under clause 10.2(a)(i) of the Advisory Agreement.

6 Allocation of issue price and Auditor

6.1 Parties to agree issue price

- (a) The Trustees and the Company must agree from time to time what part of the amount payable for the issue of a Share Stapled Security is to represent the issue price of:
 - (i) the Units in each Trust; and
 - (ii) the Shares.

- [REDACTED]
- (b) If any Share Stapled Security is to be issued on a partly paid basis, the Trustees and the Company must agree as to which of the Units and Shares are to be partly paid and must agree to the terms of issue of that partly paid Share Stapled Security (including, subject to clause 7, in relation to the making of calls).
 - (c) The proportion determined under clause 6.1(a) or clause 6.1 (b) (as the case requires) must be consistent for each Unit and Shares issued to each Unitholder and Shareholder at the same time.
 - (d) Each Trustee and the Company must ensure that the amount which is determined from time to time under clause 6.1(a)(2) to represent the issue price of the Shares is equal to or greater than the par value of the Shares as determined under the Bye-laws

6.2 Auditor to resolve dispute

- (a) If the parties are unable to reach agreement under clause 6.1 within 5 Business Days after either of them notifies the other that an agreement must be reached, the Auditor must be instructed to determine what part of the amount payable for the issue of a Share Stapled Security is to represent the issue price of:
 - (i) the Units in each Trust; and
 - (ii) the Shares.
- (b) The Auditor's decision under clause 6.2(a) is, in the absence of manifest error, binding on the parties.

6.3 Auditor

The Company will decide who to appoint to audit the Company. The Trustees and the Company agree that they will ensure that the auditor of MIT(I) and MIT(II) and the Company's auditor cooperate with each other to assist the other in the performance of their role as auditor.

7 Calls and forfeiture

7.1 Making calls

- (a) Each of the Trustees must consult with the Company prior to making any calls in respect of any partly paid Units in MIT(I) or MIT(II) (as the case may be).
- (b) The Company must consult with the Trustees prior to making any calls in respect of any partly paid Shares.

7.2 Payment of calls

If in respect of any issue of a Share Stapled Security two or more of the Units and Shares are partly paid, any payment of a call must be applied between the partly paid Units and Shares (as the case requires) on the basis of the ratio that the unpaid portion of the Unit bears to the sum of that unpaid portion plus the unpaid portion of the other Unit or Shares (as the case requires) at the time of issue of the partly paid Share Stapled Security.

7.3 Notification of intention to forfeit

- (a) Each of the Trustees must notify the Company if the Trustees propose to take action under their respective Trust Deeds to forfeit and offer for sale any Units.

- (b) The Company must notify each of the Trustees if the Company proposes to take action under the Bye-laws to forfeit and offer for sale any Shares.

7.4 Forfeiture of Share Stapled Securities

- (a) If any Shares or Unit forming part of a Share Stapled Security is offered for sale by the Company or a Trustee then the Company and the Trustees must procure that the whole Share Stapled Security of which it forms part is forfeited and offered for sale.
- (b) The parties must determine what part of the amount received upon sale of a forfeited Share Stapled Security is to represent payment in respect of:
 - (i) the Unit in each Trust; and
 - (ii) the Shares,in the same manner as the apportionment of issue price is determined under clause 6.
- (c) Where a Share Stapled Security is forfeited and offered for sale under this clause the obligations of the Company and each of the Trustees is subject to the requirements of any applicable law; any consent or other approval from any necessary authority and the terms of the Bye-laws and each of the Trust Deeds.

8 Corporate Actions

- (a) No party may cause a placement, rights issue, distribution or dividend reinvestment plan or perform any other Corporate Action without the prior consent of all the parties.
- (b) No party may buy-back, re-purchase or redeem Units or Shares (as the case requires) without the prior consent of all other parties.

9 Options

- (a) Subject to clause 11, each Trustee and the Company acknowledges that where a Trustee or the Company issues Units or Shares on the exercise of an option in respect of those Units or Shares:
 - (i) the other Trustee will do all things necessary to issue an identical number of Units in the other Trust to the persons to whom the Units or Shares are issued; and
 - (ii) the Company will do all things necessary to issue an identical number of Shares in the Company to the persons to whom the Units are issued,subject to the requirements of any applicable law and any consent or other approval from any necessary authority.
- (b) The Trustees and the Company must consent to the issue of and agree on the terms, including the issue price, of any options to be issued under either the Trust Deed or the Bye-laws before any offer to subscribe for options is made.



10 Registers

10.1 Register of Share Stapled Securities

- (a) The Trustees and the Company must maintain, or procure the maintenance, of the Share Stapled Securities Register. This includes, without limitation, appointment of a common registrar.
- (b) All details of Share Stapled Securities and dealings in those Share Stapled Securities must be entered in the Share Stapled Securities Register.
- (c) All details of the Units and the Shares which comprise the Share Stapled Security and dealings in those Units and Shares must be entered in the subregister of the Share Stapled Securities Register.

10.2 Registers must be consistent

The Trustees and, the Company must ensure that the Share Stapled Securities Register, the register of the holders of Units in each Trust, and (to the extent relevant) the register of Shareholders for the Company are entirely consistent with one another.

10.3 The Company's Register

- (a) The Company must do all things reasonably necessary to establish and maintain a branch register of Shareholders in Australia. The Company must transact business in Australia if it may not lawfully establish and maintain a register in Australia unless it transacts business in Australia.
- (b) The Shares must, to the extent permitted by law, be entered on a branch register established and maintained in Australia and all details of the Shares and dealings in those Shares must be entered in the branch register.

11 Unstapling

11.1 Unstapling of Shares

- (a) On and from such date as may be determined pursuant to clause 4.5:
 - (i) each Trustee and the Company must procure that the Units and Shares are Unstapled; and
 - (ii) subject to clause 11.1(b), this deed ceases to be of any force or effect.
- (b) If, as a consequence of Unstapling, the Shares are no longer Stapled to Units in both Trusts:
 - (i) the Company must promptly:
 - (A) repay any outstanding amounts under any loans given to the Company by the Trustee of either Trust prior to Unstapling unless the party to whom the amounts are owed otherwise agrees;
 - (B) repay any outstanding amounts which the relevant parties have agreed in accordance with clause 3.13(b) is the responsibility of the Company to repay unless such parties otherwise agree; and



12 Duties and obligations of the parties

12.1 Parties must comply

- (a) The:
- (i) MIT(I) Trustee must at all times perform and comply with its duties and obligations contained in the MIT(I) Constitution and, subject to those obligations, in any other deed or deed to which the MIT(I) Trustee is a party; and
 - (ii) MIT(II) Trustee must at all times perform and comply with its duties and obligations contained in the MIT(II) Constitution and, subject to those obligations in any other deed or agreement to which the MIT(II) Trustee is a party.
- (b) Each of the Company and Macquarie must at all times perform and comply with its duties and obligations contained in the Bye-laws and, subject to those obligations, in the Advisory Agreement.

12.2 Duties in relation to Stapling

- (a) Notwithstanding any other provision of this deed, or any rule of law or equity to the contrary, in exercising any power or discretion each Trustee and the Company may, subject to the Corporations Act, 2001 (Cth) in the case of each Trust and the Companies Act 1981 (Bermuda) in the case of the Company, while Stapling applies, have regard to the interests of the holders of Share Stapled Securities as a whole and not only to the interests of the Shareholders or Unitholders in each Trust.
- (b) The reference to any power or discretion includes carrying out functions and duties and identifying rights and interests of Shareholders or Unitholders in each Trust.

12.3 Capacity

Subject to clause 14, MIIML acknowledges that it is bound by this deed in its capacity as trustee of each of MIT(I) and MIT (II) in addition to any personal capacity in which it is bound by or under this deed.

13 Retirement of Trustees


13.1 Retirement of the MIT(I) Trustee

If the MIT(I) Trustee retires as trustee of MIT(I):

- (a) the MIT(I) Trustee must procure that any new trustee appointed under the MIT(I) Constitution executes a deed in a form acceptable to the Company undertaking to be bound by all of the obligations of the MIT(I) Trustee under this deed; and
- (b) upon the new trustee assuming the obligations of the MIT(I) Trustee under this deed, the MIT(I) Trustee shall be discharged and released from its obligations under this deed other than in relation to any negligence, default or breach of this deed by the MIT(I) Trustee.

13.2 Retirement of the MIT(II) Trustee

If the MIT(II) Trustee retires as trustee of MIT(II):

- 
- (a) the MIT(II) Trustee must procure that any new trustee appointed under the MIT(II) Constitution executes a deed in a form acceptable to the Company undertaking to be bound by all of the obligations of the MIT(II) Trustee under this deed; and
 - (b) upon the new trustee assuming the obligations of the MIT(II) Trustee under this deed, the MIT(II) Trustee shall be discharged and released from its obligations under this deed other than in relation to any negligence, default or breach of this deed by the MIT(II) Trustee.

13.3 Retirement of Macquarie as Advisor of the Company

If Macquarie retires as advisor of the Company under the Advisory Agreement:

- (a) Macquarie must procure that any new advisor appointed as advisor to the Company executes a deed in a form acceptable to the MIT(I) Trustee and the MIT(II) Trustee undertaking to be bound by all of the obligations of Macquarie under this deed; and
- (b) upon the new advisor assuming the obligations of Macquarie under this deed, Macquarie shall be discharged and released from its obligations under this deed other than in relation to any negligence, default or breach of this deed by Macquarie.

14 Limitation of liability of the Trustees

- (a) MIIML enters into this deed only in its capacity as trustee of:
 - (i) MIT(I); and
 - (ii) MIT(II),and in no other capacity.
- (b) A liability arising under or in connection with this deed can be enforced against MIIML:
 - (i) in the case of MIT(I): only to the extent to which MIIML can be satisfied out of property of MIT(I) out of which MIIML is actually indemnified for the liability.
 - (ii) in the case of MIT(II): only to the extent to which MIIML can be satisfied out of property of MIT(II) out of which MIIML is actually indemnified for the liability.
- (c) This limitation of MIIML's liability applies despite any other provision of this deed and extends to all liabilities and obligations of MIIML in their capacity as trustee of MIT(I) or MIT(II) (as the case may be) in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this deed.
- (d) The provisions of this clause 14 do not apply to any obligation or liability of MIIML in its capacity as trustee of MIT(I) or MIT(II) (as the case may be) to the extent that it is not satisfied because under the MIT(I) Constitution or MIT(II) Constitution (as the case may be) or by operation of law there is a reduction in the extent of MIIML's indemnification out of the assets of MIT(I) or MIT(II) (as the case may be) as a result of fraud, negligence or breach of trust of MIIML.

15 Fees

15.1 Management fees

- (a) MIIML and Macquarie agree, and the remaining parties acknowledge, that for so long as this deed has effect, but subject to paragraph (ii), the allocation of the Base Fee and the Performance Fee (as defined in each of the Trust Deeds and the Advisory Agreement) between MIIML (in its role as responsible entity of MIT (I) and MIT (II) respectively) and Macquarie is to be at the ratio of that amount of the net assets (adjusted for the net market value of its investments) of MIT(I), MIT(II) or the Company (as the case requires) at the end of the relevant period bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of MIT(I), MIT(II) and the Company at the end of the relevant period and on the basis that:
- (i) in respect of the Base Fee, the allocation is made after determining "the market value of the Share Stapled Securities" for the purpose of the definition of Market Value of the Funds in each of the Trust Deeds and the Advisory Agreement and before any other determination for the purposes of such definitions; and
 - (ii) in respect of the Performance Fee, the allocation made in respect of the "First Instalment" will then apply to the "Second Instalment" and "Third Instalment", including any "Second Instalment" or "Third Instalment" payable in respect of a "First Instalment":
 - (A) payable prior to the termination of this deed; or
 - (B) paid under the Old Management Agreement,in the same ratio.
- (b) For the purpose of this clause 15.1 all amounts must be determined in Australian dollars at the exchange rate determined by Macquarie Bank Limited as applying at the close of business in Sydney at the end of each relevant period.

15.2 Appointments

The parties acknowledge that for as long as this deed has effect each Trustee and Macquarie must:

- (a) agree on the determination of "Actuary" for each of the Trust Deeds and the Advisory Agreement;
- (b) if Bloomberg Financial Markets ceases or fails to calculate or publish any index of indices for the purposes of the Trust Deeds and the Advisory Agreement, agree to the selection of such other person which calculates or publishes that information; and
- (c) agree on the determination of the "Pricing Service" for each of the Trust Deeds and the Advisory Agreement.

16 Subordination

16.1 Trust Deed to prevail over this deed

- (a) Nothing in this deed shall be taken to amend or alter the Trust Deeds.



- (b) If there is any inconsistency between this deed and the Trust Deeds the provisions of the Trust Deeds apply to the extent of the inconsistency.

16.2 Bye-laws to prevail over this deed

- (a) Nothing in this deed shall be taken to amend or alter the Bye-laws.
- (b) If there is any inconsistency between this deed and the Bye-laws the provisions of the Bye-laws apply to the extent of the inconsistency.

17 Dispute Resolution

17.1 No proceedings

A party must not start court proceedings about a dispute arising out of this deed unless it first complies with this part, except:

- (a) where a party seeks urgent injunctive relief; or
- (b) where the dispute relates to compliance with this clause.

17.2 Notice

A party claiming that a dispute has arisen must notify each other party giving details of the dispute.

17.3 Best efforts to resolve

Each party to the dispute must use its best endeavours to resolve the dispute within 10 Business Days of receiving notice of the dispute or a longer period agreed by the parties to the dispute.

17.4 Negotiate in good faith

If the parties do not resolve the dispute under clause 17.3, the chief executive officer or other senior employee of each party must negotiate in good faith to resolve the dispute for a period of up to 10 Business Days after the end of the period referred to in clause 17.3.

18 General

18.1 Notices

- (a) Any notice or other communication to or by any party to this deed:
 - (i) must be in legible writing and in English addressed as shown below:
 - (A) if to the MIT(I) Trustee:

Address: Level 15, 1 Martin Place
Sydney NSW 2000

Attention: Christine Williams/Mary
Nicholson

Facsimile: 8232 4713; and

- (B) if to the MIT(I) Trustee:



Address: Level 15, 1 Martin Place Sydney NSW 2000

Attention: Christine Williams/Mary Nicholson

Facsimile: 8232 4713; and

(C) if to the Company:

Address: c/o Butterfield Fund Services (Bermuda) Limited
Rosebank Centre
11 Bermudiana Road
Pembroke HM 09
Bermuda

Attention: Roslyn O'Brien, company secretary

Facsimile: +1 441 295 6759; and

(D) if to Macquarie:

Address: Level 30, Citypoint
1 Ropemaker Street
London EC2Y 9HD

Attention: James Brasher/Annabelle Helps

Facsimile: +44 20 7065 2041

or as specified to the sender by any party by notice;

(ii) must be signed by an officer, or under the common seal, of the sender;

(iii) is regarded as being given by the sender and received by the addressee:

(A) if by delivery in person, when delivered to the addressee;

(B) if by post, 3 Business Days from and including the date of postage or 10 Business Days if addressed to an address outside Australia; or

(C) if by facsimile transmission, whether or not legibly received, when transmitted to the addressee,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and

(iv) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

(b) A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after the transmission is received or regarded as received under clause 18.1(a)(3)(C) and informs the sender that it is not legible.

- (c) In this clause 18.1 a reference to an addressee includes a reference to an addressee's officers, agents or employee

18.2 Governing law

- (a) This deed is governed by the laws of New South Wales.
- (b) Each of the parties irrevocably submits to the exclusive jurisdiction of the courts of New South Wales.
- (c) Macquarie, MEIP and the Company appoint MIIML of Level 15, 1 Martin Place, Sydney, NSW, 2000 in respect of proceedings in Australia as its agent to receive service of any legal process on its behalf without excluding any other means of service permitted by the law of the relevant jurisdiction.

18.3 Prohibition and enforceability

Any provision of, or the application of any provision of, this deed which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

18.4 Waivers

- (a) Waiver of any right arising from a breach of this deed or arising upon default under this deed must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of a right arising from a breach of this deed does not result in a waiver of that right.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right arising from a breach of this deed or on a default under this deed as constituting a waiver of that right.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right by that other party.
- (e) This clause may not itself be waived except by writing.

18.5 Variation

A variation of any term of this deed must be in writing and signed by the parties.

18.6 Assignment

Rights arising out of or under this deed are not assignable by one party without the prior written consent of the other party.

18.7 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this deed.

18.8 Entire deed

This deed supersedes all previous deeds in respect of its subject matter and embodies the entire deed between the parties.

18.9 Counterparts

- (a) This deed may be executed in any number of counterparts.



- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this deed by signing any counterpart.

18.10 To the extent not excluded by law

The rights, duties and remedies granted or imposed under the provisions of this deed operate to the extent not excluded by law.



Schedule 1

Trustees' Determination

To: Macquarie European Infrastructure plc
Macquarie Infrastructure Bermuda Limited
Macquarie Investment Management (UK) Limited

Trustees' Determination

Reference is made to a Share Stapling Deed ("Deed") dated [] 2005 between:

1. Macquarie Infrastructure Investment Management Limited as responsible entity of MIT(I)
2. Macquarie Infrastructure Investment Management Limited as responsible entity of MIT(II)
3. Macquarie Infrastructure Bermuda Limited
4. Macquarie European Infrastructure Public Limited Company
4. Macquarie Investment Management (UK) Limited

Terms defined in the Deed have the same meaning in this instrument.

The Trustee, pursuant to clause 27B.2 of the MIT(I) Constitution and the MIT(II) Constitution, makes the following determinations in respect of each Trust:

- (a) Share Stapling (as defined in the Old Deed) in respect of CUFS over MEIP Shares shall cease immediately prior to the Effective Time; and
- (b) Share Stapling with respect to the Shares shall commence on the later to occur of:
 - (i) the Effective Time; and
 - (ii) the issue of Shares pursuant to the Scheme.

Signed

for and behalf of

Macquarie Infrastructure Investment Management Limited as responsible entity of MIT(I).

Date:



for and behalf of

Macquarie Infrastructure Investment Management Limited as responsible entity of MIT(II).

Date:



Execution

MIT(I)

Signed for and on behalf of
**Macquarie Infrastructure Investment
Management Limited**
by a duly appointed attorney
in the presence of:

Christine Williams

Signature of witness

CHRISTINE ELIZABETH WILLIAMS

Name of witness (please print)

Stephen Mentzines

Signature of attorney (I have no notice of
revocation of the power of attorney under
which I sign this document)

STEPHEN MENTZINES

Name of attorney (please print)

MIT(II)

Signed for and on behalf of
**Macquarie Infrastructure Investment
Management Limited**
by a duly appointed attorney
in the presence of:

Christine Williams

Signature of witness

CHRISTINE ELIZABETH WILLIAMS

Name of witness (please print)

Stephen Mentzines

Signature of attorney (I have no notice of
revocation of the power of attorney under
which I sign this document)


STEPHEN MENTZINES

Name of attorney (please print)



Signed for and on behalf of
Macquarie Infrastructure Bermuda Limited


by a duly appointed attorney
in the presence of:



Signature of witness

CHRISTINE ELIZABETH WILLIAMS

Name of witness (please print)




Signature of attorney (I have no notice of
revocation of the power of attorney under
which I sign this document)

STEPHEN MENTZINES

Name of attorney (please print)

Signed for and on behalf of
Macquarie European Infrastructure Public Limited Company

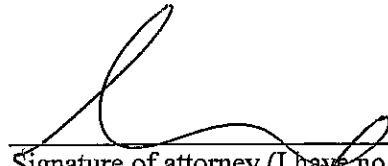
by a duly appointed attorney
in the presence of:



Signature of witness

CHRISTINE ELIZABETH WILLIAMS

Name of witness (please print)



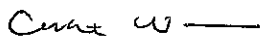
Signature of attorney (I have no notice of
revocation of the power of attorney under
which I sign this document)

STEPHEN MENTZINES

Name of attorney (please print)

Signed for and on behalf of
Macquarie Investment Management (UK) Limited

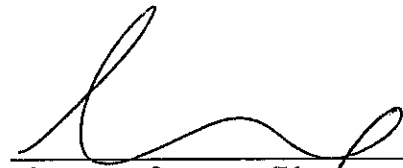
by a duly appointed attorney
in the presence of:



Signature of witness

CHRISTINE ELIZABETH WILLIAMS

Name of witness (please print)



Signature of attorney (I have no notice of
revocation of the power of attorney under
which I sign this document)

STEPHEN MENTZINES

Name of attorney (please print)