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Memorandum

To: Jillian Gardner, Mary Nicholson
Date: March 23, 2007
Re: Canadian Taxes

As requested, we have reviewed the documents (the "Documents") provided to us by you in respect to the *in specie* distribution of units of Sydney Roads Trust ("SRT") and of shares of Sydney Roads Ltd. ("SRL") to holders of units of Macquarie Infrastructure Trust (I) ("MIT(I)") and units of Macquarie Infrastructure Trust (II) ("MIT(II)") respectively. Together with Macquarie Infrastructure Group International Ltd. ("MIGIL"), MIT(I) and MIT(II) make up the Macquarie Infrastructure Group ("MIG"). The following is a summary of the principal Canadian federal income tax considerations generally applicable at the date hereof to a holder of interests in MIG:

- that is resident in Canada (a "Canadian Holder"),
- that, together with any party dealing not at arm's length with the holder, holds less than 10% of the interests of each class of interests of each entity that makes up MIG,
- that, for purposes of the *Income Tax Act (Canada)* (the "ITA") has held all of its interests in MIT(I) or MIT(II), as the case may be, and will hold all of its interests in SRT or SRL, as the case may be, as capital property, and
- deals, and will deal, at arm's length with MIT(I), MIT(II), SRT and SRL.

These comments do not apply to a Canadian Holder that is a "financial institutions" as defined in the ITA for purposes of the "mark-to-market" rules.

These comments are of a general nature only and are not intended to be, nor should they be construed to be, legal or tax advice to any particular Canadian Holder. Accordingly, Canadian Holders are urged to consult their own tax advisors with respect to their particular circumstances.

These comments are based upon the current provisions of the Act, the regulations thereunder, all specific proposals to amend the Act and the regulations publicly announced by the Minister of Finance prior to the date hereof and our understanding of the current administrative practices of the Canada Revenue Agency ("CRA"). These comments do not

otherwise take into account or anticipate any changes in law, whether by legislative, governmental or judicial decision or action, or in the administrative practices of the CRA, nor does it take into account or consider any provincial, territorial or foreign income tax considerations.

Background

From the information provided to us we understand that both MIT(I) and MIT(II) are trusts formed under and governed by the laws of Australia. For Australian tax purposes:

- MIT(I) is an Australian resident public unit trust; and
- MIT(II) is an Australian resident public trading trust and, as such, is taxed as if it were a corporation.

Pursuant to the demergers effected on August 1, 2006 holders of MIG securities received units of SRT and shares in SRL. The demerger of MIT(I) was conducted by way of a capital reduction, effected by an *in specie* distribution of all of MIT(I)'s units in SRT. The demerger of MIT(II) was conducted by way of a capital reduction and a distribution of accumulated surplus profits, effected by an *in specie* distribution of all of MIT(II)'s shares in SRL. MIT(II) accounted for the demerger by debiting its contributed equity account by A\$0.322 per MIT(II) unit and its retained earnings account by A\$0.043 per MIT(II) unit.

Canadian Tax Treatment

First, as discussed, the treatment of particular transactions, entities or legal relationships under Canadian tax law is governed principally by the legal form of the transaction. In other words, unlike some jurisdictions in which concepts such as “economic substance” can affect significantly the tax treatment of particular transactions, entities or legal relationships, for Canadian income tax purposes the legal form of a transaction will generally govern. However, when the particular transactions, entities or legal relationships involve persons or entities outside of Canada and that are governed, in whole or in part, by foreign laws, one must look at the foreign transactions, entities or legal relationships from a Canadian perspective. For example, the characterization of a particular foreign entity as a corporation, partnership, trust or other entity for Canadian tax purposes must be undertaken against the background of Canadian legal principles.

In this regard, we have not reviewed the actual legal documents that created and govern each of MIT(I), MIT(II) and MIGIL, but have assumed that both of MIT(I) and MIT(II) will be considered to be trusts for Canadian legal and tax purposes and that MIGIL will be considered to be a corporation. We are not aware of anything from our discussions with you or in the Documents that would cause us to question this assumption.

Current Specific Non-Resident Trust Rules

The *Income Tax Act* (Canada) contains specific rules in respect of the taxation of a trust that is not resident in Canada and any beneficiary of such a trust who is resident in Canada. In general terms, these rules can have application in two circumstances, being as follows.

Discretionary Trusts

The first circumstance in which these rules can apply is if the amount of any income or capital of the trust to be distributed depends on the exercise by any person of a discretionary power. In general, these rules will not be applicable to a unitized business trust where the amount to be distributed to any particular beneficiary depends solely on the number of units held by the beneficiary. As mentioned above, we have not been provided with the constating documents for MIT(I) nor for MIT(II) but it is our understanding that the trustees' discretion in respect of income distributions extends only to the quantum to be distributed in a year and not to its allocation among beneficiaries. In other words, income to be distributed must be distributed pro rata among the beneficiaries and may not be distributed to some at the exclusion of others. On the basis of this understanding, the trusts are not discretionary trusts and the current rules applicable to a discretionary non-resident trust would not be applicable to them.

Foreign Affiliate Circumstances

The second circumstance in which these rules can apply is to a beneficiary under the trust whose interest in the trust has a fair market value ("FMV") of 10% or more of the aggregate FMV of all beneficial interests in the trust. In such a case, for the purposes of certain rules in the ITA dealing with corporations that are not resident in Canada and their shareholders, which rules apply where the corporation is a "foreign affiliate", the trust is deemed to be a corporation that is a foreign affiliate of the beneficiary. We will assume that no Canadian Holder holds an interest in MIT(I) or MIT(II) that would be sufficiently great as to subject the holder to the application of these rules. However, if this is not a reasonable assumption, please advise us and we will provide you with a review of these rules as they would apply in the circumstances.

Current Offshore Investment Fund Rules

The ITA also includes a set of rules generally referred to as the "offshore investment fund rules". In very general terms, these rules were introduced into the ITA as a form of anti-abuse rule aimed at investment funds established outside of Canada for the purpose of permitting residents of Canada to participate in, essentially, passive investments on a tax-deferred basis from a Canadian tax perspective. In very general terms, these rules will be applicable in respect of a Canadian taxpayer's interest in a particular offshore entity only if:

- it may reasonably be considered that the interest derives its value principally from portfolio investments, direct or indirect, in such property as shares of corporations, commodities, indebtedness or similar property, and
- it may reasonably be considered, having regard to all the circumstances, including the nature, organization and operation of the entity, and the extent to which the income and profits of the entity are subject to tax, that one of the main reasons for the Canadian taxpayer acquiring or holding the interest was to derive a benefit from the portfolio investments in a manner such that the taxes in any year on the income or profit from such

assets are significantly less than they would have been had they been earned directly by the Canadian taxpayer.

Based on our understanding of the facts, we believe that these “purpose tests” have not been satisfied in respect of any of MIGIL, MIT(I) and MIT(II) (in particular the test relating to one of the main reasons for any investors resident in Canada having acquired or holding their interests in the funds being to significantly reduce their tax liability as compared to what it would be if they held their interests in the underlying assets directly) and, therefore, these rules would have no application.

Rules of General Application

As outlined above, based on the assumptions made above and our understanding of the facts, neither the current offshore trust rules nor the current offshore investment fund rules would be applicable to either MIT(I) or MIT(II). Accordingly, the rules of general application under the ITA would govern the tax treatment of any Canadian Holder of interests in MIT(I) and MIT(II).

Under the general rules in the ITA, a Canadian Holder would be required to include in his or her income for a year the income of MIT(I) or MIT(II) for that year to the extent that such income is distributed to the particular Canadian Holder. Based on our discussions and our understanding of the facts from our review of the Documents, to the extent that the distributions described above by MIT(I) and MIT(II) effected as part of the demerger were not distributions of trust income of MIT(I) or MIT(II) but were distributions of capital by each of MIT(I) and MIT(II), the amounts received by a Canadian Holder would not be included in the income of the Canadian Holder. Instead, the FMV of the property received, computed at its Canadian dollar amount at the date of receipt, will reduce the adjusted cost base (“ACB”) of the Canadian Holder for his or her interest in MIT(I) and MIT(II), as the case may be. If, as a result of such reduction, the ACB of a Canadian Holder for his or her interest in MIT(I) or MIT(II), becomes negative, the Canadian Holder will be deemed to have realized a capital gain in respect of that interest at that time equal to such negative amount. The cost to a Canadian Holder of the SRT Units and SRL Shares so received would be equal to the fair market value of the Units or Shares at the time they are received.

We would note that the resolution effecting the distribution from MIT(II) was passed on July 27, 2006, and that the fiscal year end of MIT(II) is June 30. We would also note that it is our understanding that the distribution was not effected as a distribution of MIT(II) income and that MIT(II) had not computed income for any period or partial period following the completion of its fiscal period of June 30, 2006. Under Canadian tax and trust law and practice, income of a trust that is not distributed nor distributable to a beneficiary or beneficiaries at the end of a fiscal period of the trust will be added to the capital of the trust. Accordingly, we are of the view that the distribution would not be characterized as a distribution of income of MIT(II) to any Canadian Holder for the purposes of the ITA.

Proposed Non-Resident Trust and Foreign Investment Entity Rules

On November 9, 2006 the Canadian Department of Finance released revised proposed legislation dealing with the Canadian taxation of non-resident trusts and their beneficiaries (the “Non-

Resident Trust Rules”) as well as the Canadian taxation of “foreign investment entities” or “FIEs” (the “FIE Rules”). These proposals were originally announced in the 1999 Federal Budget and have been the subject of various announcements and draft proposed legislation since that time. One of the most significant changes to the proposed amendments is the deferral of their application. In the case of the Non-Resident Trust Rules, their application will be to taxation years of a trust commencing after 2006. In the case of the FIE Rules, they will be applicable to taxation years that begin after 2006. Accordingly, neither the proposed Non-Resident Trust Rules nor the proposed FIE Rules should be applicable to the distributions by MIG.

For future reference, we would note that it is likely that it is the proposed FIE Rules that will have more relevance for Canadian Holders.

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