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ASX RELEASE

MACQUARIE

MACQUARIE AIRPORTS (MAp)
LETTER ON BEHALF OF MESSRS BINGER AND FRAZER

MAp notes the attached letter sent on behalf of Messrs Kjeld Binger and Scott Frazer alleging that the Explanatory Memorandum released on 7 September 2009 is deficient.

The Explanatory Memorandum and MAp's communications to the market contain all information material to the internalisation. MAp does not believe that the letter has substance and the Special General Meetings scheduled for 2pm on 30 September 2009 will proceed.

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22 September 2009

Ms Sally Webb, Company Secretary
Macquarie Airports Management Limited
as Responsible Entity of the Macquarie Airports Trust (1) ARSN 099 597 921
and the Macquarie Airports Trust (2) ARSN 099 597 869
No 1 Martin Place
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Ms Anne Bennett-Smith, Company Secretary
Macquarie Airports Limited
c/o ISIS Fund Services Ltd
2nd Floor, 50 Parliament St
Hamilton HM12
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By facsimile: (02) 8232 9634
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Dear Ms Webb and Ms Bennett-Smith

Proposed Internalisation of Management of Macquarie Airports

We act for Kjeld Binger and Scott Frazer, and we are instructed that Mr Binger and Mr Frazer are respectively the holders of 976,000 and 23,013 stapled securities in Macquarie Airports (**MAp**).

We refer to:

(a) the announcement made by MAp on 24 July 2009 that it had reached agreement with Macquarie Group Limited (**Macquarie**) to internalise the management of MAp, subject to MAp securityholder approval, and the announcement made by MAp on 28 August 2009 of an amendment to the internalisation proposal;

(b) the Notice of Meeting for each of MAT1, MAT2 and MAL dated 7 September 2009 convening general meetings of MAp's securityholders on 30 September 2009 to consider approving the internalisation (**Notice of Meeting**);

(c) the Explanatory Memorandum (**EM**), Chairman's Letter and Frequently Asked Questions and Independent Expert Report accompanying the Notices of Meeting (together, the **Securityholder Materials**); and

(d) the announcement made by MAp on 21 September 2009 that the maximum adjustment to the internalisation payment had been increased from $100m to $345m.

Unless otherwise indicated, terms defined in the EM have the same meaning in this letter.

You will know that where directors recommend or advise members to exercise their powers in general meeting in a particular way, they are required to make a full and fair disclosure of all matters within their knowledge which would enable the members to make a properly informed judgment on the matters in question. That principle applies equally to fiduciaries such as responsible entities of listed managed investment schemes who recommend that the members of those schemes vote in a particular way at a meeting.

In this particular case, where the directors of MAML and MAL put to the members of the MAP trusts and MAL resolutions that would provide for a substantial payment to a related party of MAML and MAL (i.e. Macquarie) and for the acquisition of a substantial asset from an entity in a position of influence in relation to MAML and MAL (i.e. Macquarie), the directors' and responsible entities' general law obligations are reinforced by additional obligations arising under the Corporations Act and the Listing Rules of the ASX (such as Chapter 2E and section 1041H of the Corporations Act and Listing Rule 10.1).

In short, the MAp securityholders are entitled to receive all of the information that is material to the question whether the transaction proposed by the directors of MAL and MAML as responsible entity should be approved, including all information that is material to that question; that includes the material commercial information known to the directors, and also other commercial information that is material and accessible to the directors even if they are not aware of it (see *ENT v Sunraysia* [2007] NSWSC 270).

We are concerned that it may not be the case that the EM sets out all of this required material information. Following our review of the Securityholder Materials, we have identified a number of significant issues which were not addressed in the Securityholder Materials and which we consider to be of material importance to MAp securityholders.

In the absence of this material information, MAp securityholders cannot make a properly informed judgment as to voting on the proposed resolutions and consequently the Securityholder Materials are deficient.

A brief discussion of certain of these issues and material deficiencies follows.

Trevor Gerber states in the Chairman's Letter to members (page 4 of the Securityholder Materials) that "*MAp needs the cooperation of Macquarie and its managed funds to avoid triggering change of control and pre-emptive rights clauses in debt facilities and shareholders' arrangements, in particular, the Brussels and Copenhagen airports' debt facilities*".

This same point is then repeated numerous times, with slightly different phraseology, in the EM and Notice of Meeting; see pages 7, 16 and 17. The Independent Expert also repeatedly notes the existence of the change of control clauses in debt facilities in support of its conclusion that the proposed internalisation, and in particular the payment of $345m to Macquarie to ensure its cooperation, is fair and reasonable.

It is however impossible for a member to assess the relevance and materiality of the change of control and pre-emptive right provisions, and the necessity of making the $345m payment to Macquarie, without knowing the answers to some further questions:

- **First**, what are the precise terms of the relevant change of control and pre-emptive provisions?

- **Second**, if the internalisation proposal proceeds with Macquarie's cooperation, on what basis are the Independent Directors confident that the threatened adverse consequences under these provisions will be avoided?
- **Third**, on what basis do the Independent Directors believe that Macquarie would not cooperate with an alternative internalisation proposal that does not provide for a $345m payment to Macquarie?

As regards the first and second questions, although aspects of the change of control and pre-emptive clauses in the relevant debt facilities are mentioned in the Securityholder Materials, the precise language of the relevant provisions has never been made public. The Independent Expert notes (in Appendix 2 of its report) that the "documents associated with potential change of control triggers" are "non-public information".

Indeed, far from providing any assurance that Macquarie's cooperation will suffice to avoid adverse consequences in the debt facilities, the EM expressly contemplates (at page 18) the possibility that, even with Macquarie's cooperation, "*costs are incurred in relation to the change of control arrangements*", and that it may be necessary to provide for "*managing any potential issues arising from these change of control arrangements*", and that to avoid these change of control costs it will be necessary – even with Macquarie's cooperation – for MAp to commit to "*reasonable mitigation strategies to the maximum extent possible*".

As RiskMetrics Group has noted in its report on the internalisation proposal, "*On the information available to securityholders, there is no certainty that these adverse debt consequences will not occur regardless of Macquarie's assistance*".

As regards the third question, Macquarie is a significant holder of MAp securities and, moreover, has a significant reputational investment in MAp. That causes us to ask why Macquarie would "punish" MAp securityholders (itself among them, for about $1bn) for refusing to make the internalisation payment to Macquarie. No evidence is provided in the Securityholder Materials that would lead to the conclusion that Macquarie would not cooperate with and facilitate an alternative internalisation proposal if, for example, MAp securityholders were to vote to replace MAML as responsible entity of MAT1 and/or MAT2.

However, if in fact there is no basis for believing that Macquarie would refuse to cooperate in an alternative internalisation proposal (i.e. one that does not involve a $345m payment to Macquarie) then there is no basis for the argument that the $345m payment must be made to ensure its cooperation.

Simply put, the risk of non-cooperation by Macquarie is presented as a fact in the Securityholder Materials, but no information is provided to MAp securityholders to assist them to assess the likelihood of that risk eventuating.

Finally on this point, we note that the risk of significant costs being incurred in connection with the internalisation (even with Macquarie's cooperation) has apparently always been considered significant enough that Macquarie initially considered it necessary to commit to making an adjustment of up to $100m under a "Facilitation Deed Poll" to cover costs arising under the debt facilities from an actual or deemed change of control.

Macquarie's decision – only announced after the close of the market yesterday, some eight weeks after the announcement of the internalisation proposal and less than ten days before the scheduled meetings of MAp securityholders – to amend the Facilitation Deed Poll to increase the amount of this indemnity payment to $345m in fact enhances, rather than diminishes, our clients' concern that the precise terms of the change of control and pre-emptive provisions constitute material information that must be disclosed to MAp securityholders, particularly since the indemnity

provisions are limited both in amount and time. One assumes that if there were no concern beyond these limits, Macquarie would not have limited the indemnity.

Mr Gerber, in yesterday's announcement, indicated that Macquarie was now "*placing its entire internalisation payment at risk*". If Mr Gerber's statement is true, then it indicates an awareness on the part of the Independent Directors that there has always been a risk that the costs of internalisation would exceed the $100m payment initially agreed – a fact that was never expressly disclosed in the Securityholder Materials. Indeed, the fact that Mr Gerber now indicates that there is a possibility that Macquarie will lose the entire $345m payment strongly suggests that there is risk that the costs will *exceed* $345m, and that the revised indemnity payment is still not sufficient to cover all of these potential costs.

We note that the EM indicates (at page 7) that there could be increased costs of at least $120m per annum arising from a renegotiation of debt facilities triggered by the internalisation. With the Brussels debt facility maturing in roughly six years' time, and Copenhagen maturing in roughly three years, it would appear from the available information that the aggregate cost of renegotiation could exceed $500m.

However, MAp securityholders have not been provided with sufficient information to properly quantify this risk and consequently they must rely solely on the judgment of the independent directors who initially argued that $100m was sufficient coverage but who now acknowledge that the costs may reach (at least) $345m.

This in turn leads to the following further unanswered questions:

- **Fourth**, what are the precise terms of the Facilitation Deed Poll as amended?
- **Fifth**, on what basis did the Independent Directors initially determine that a $100m indemnity was sufficient, and on what basis did the Independent Directors determine that it was not necessary for Macquarie to provide an indemnity for the amount of $345m that the Independent Directors now concede is at risk?
- **Sixth**, on what basis are the Independent Directors now confident that the $345m indemnity offered by Macquarie for a period of six months under the Facilitation Deed Poll will be sufficient to cover all change of control or pre-emptive costs incurred as a result of the internalisation?
- **Seventh**, what legal or other advice (independent of Macquarie and based on full access to supporting documents and information) have the Independent Directors received regarding the operation of the change of control provisions in the relevant debt facilities and the effect of an internalisation proposal on these facilities?
- **Eighth**, does this advice (if obtained) support the statements made in the Securityholder Materials (in particular on pages 17 and 18 of the EM) concerning the effectiveness of the actions to be taken by Macquarie to avoid triggering a renegotiation of the debt facilities for Brussels and Copenhagen airports?
- **Ninth**, what are the precise terms of the amendments to the shareholder and management arrangements that are proposed to be entered into in connection with the internalisation?
- **Tenth**, on what basis are the Independent Directors confident that the proposed amendments to the various shareholder and management arrangements referred to in the Securityholder Materials will have their intended effect?
- **Eleventh**, are the 'change of control' issues in relation to the shareholder and management arrangements and the debt facilities the only exposures that MAp might incur as a result of the internalisation proposal? In particular, will there be any continuing obligations to

Macquarie entities which may require MAp to pay fees or commissions or provide benefits to Macquarie entities or to acquire services from Macquarie entities?

The above list of issues is not intended to be exhaustive. Further issues may well continue to emerge, particularly once our clients, together with the other MAp securityholders and their respective advisers, have had an opportunity to consider the further information which we trust MAML and MAL will provide following the raising of the concerns set out in this letter.

We request that you provide further information regarding the material issues raised in this letter as soon as possible. Specifically, we request that by no later than 3:00pm on Wednesday 23 September 2009 you release it to our clients and to the Australian Securities Exchange and that you distribute such information to MAp securityholders by way of supplementary explanatory memorandum at least two weeks before any vote is taken by those securityholders.

In our view, such information should have been provided as part of the Securityholder Materials and, in the absence of such information, the Securityholder Materials are deficient. In light of this deficiency, our clients hereby further request that the meetings scheduled for 30 September be adjourned until a later date in order to provide MAp securityholders adequate time to receive, evaluate and consider the new information.

Should a proper response (including an adjournment of the meetings) not be forthcoming, our clients reserve the right to take such further action as is appropriate, including without limitation either or both to seek an injunction preventing the holding of the scheduled 30 September meetings and an order of inspection of the books and records under s247A of the Corporations Act.

In the light of our stated and material concerns regarding the deficiencies in the disclosure surrounding the Securityholder Materials, we will provide a copy of this letter to the Australian Securities Exchange for its consideration.

We request your written reply to this letter on an urgent basis.

Yours faithfully
ATANASKOVIC HARTNELL

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