

# **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Resources, Water and Northern Australia

*Northern Australia Infrastructure Facility Act 2016*

*Northern Australia Infrastructure Facility Investment Mandate Direction 2021*

## **Purpose**

Under the *Northern Australia Infrastructure Facility Act 2016* (the NAIF Act), the role of the Northern Australia Infrastructure Facility (the Facility) is to provide financial assistance to the States, Territories and other entities to support the development of Northern Australia economic infrastructure. Development includes activities to grow the capacity of existing infrastructure.

Under the NAIF Act, the Board of the Facility (the Board) is responsible for ensuring the proper, efficient and effective performance of the Facility's functions. The Board is also responsible for deciding the strategies and policies to be followed by the Facility, within the scope of the directions given to the Board about the performance of the Facility's functions under subsection 9(1) of the NAIF Act. Directions issued in this manner are known collectively as the Facility's Investment Mandate. The purpose of the Investment Mandate is to provide a mechanism for the Commonwealth Government to articulate its broad expectations on the functions of the Facility and how it invests.

The Facility has responsibility for making Investment Decisions. Within the scope of the Investment Mandate, the Facility will make individual Investment Decisions independently of the Commonwealth. Those decisions are subject only to the Minister's limited powers of rejection set out in section 11 of the NAIF Act.

The Facility will fill gaps in the infrastructure financing market for Northern Australia by providing financial assistance for Projects that produce benefits to the region. Any applicant must be able to demonstrate the ability to repay a debt investment, or deliver a positive return on an equity investment. The Facility will only provide a level of concession on debt investments where it is considered necessary to ensure the Project proceeds.

The *Northern Australia Infrastructure Facility Investment Mandate Direction 2021* (the 2021 Mandate) replaces the *Northern Australia Infrastructure Facility Investment Mandate Direction 2018* (the 2018 Mandate). The 2021 Mandate enhances the impact of the Facility in line with recommendations made by the 2020 Statutory Review of the NAIF, including expanding eligibility for NAIF financial assistance to include elements associated with the development of a project (such as purchase of plant and equipment), facilitating on-lending arrangements to support smaller projects, and removing the prohibition on the Commonwealth assuming the majority of risk in any project. The 2021 Mandate provides a clear framework on the use of higher-risk instruments such as derivatives and equity investments. It also provides some clarifications as to how the Facility should consider whether a project delivers public benefit.

Details of the 2021 Mandate are outlined in [Attachment A](#).

## **Background**

The Commonwealth Government announced the Facility in the 2015–16 Budget. It is a major initiative of the Commonwealth’s White Paper on Developing Northern Australia (*Our North, Our Future*), and integral to the Commonwealth’s strategy for Northern Australia. The Facility is a \$5 billion Corporate Commonwealth Entity offering equity, and/or concessional debt to encourage investment in infrastructure in Northern Australia.

## **Authority**

Subsection 9(1) of the NAIF Act provides that the responsible Ministers (the Minister for Northern Australia and the Minister for Finance) must, by legislative instrument, give directions to the Board about the performance of the Facility’s functions. Subsection 9(3) provides that the Board must take all reasonable steps to comply with those directions.

## **Consultation**

The Commonwealth undertook extensive consultation on the Facility when it was established. The changes implemented by the 2021 Mandate reflect the findings of the 2020 Statutory Review of the NAIF. The Statutory Review consulted widely with stakeholders including State and Territory governments, project proponents and the Facility.

Along with the Facility, the following Commonwealth agencies were consulted during the Statutory Review and development of the 2021 Mandate: Department of the Prime Minister and Cabinet, Department of the Treasury, Department of Finance, Department of Foreign Affairs and Trade, Attorney-General’s Department, Department of Infrastructure, Transport, Regional Development and Communications, Infrastructure and Project Financing Agency, and Department of Agriculture, Water and the Environment.

## **Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) was consulted in developing reforms to the NAIF. The OBPR reference numbers for this matter are 42887 and 43076.

**Details of the *Northern Australia Infrastructure Facility Investment Mandate Direction 2021***

**PART 1—PRELIMINARY**

Section 1—Name

Section 1 provides that the title of the Direction is the *Northern Australia Infrastructure Facility Investment Mandate Direction 2021*.

Section 2—Commencement

Section 2 provides that the Direction commences the day after it is registered. A note to section 2 further clarifies that the Direction, as a direction by a Minister to a body, is exempt from Parliamentary disallowance (see section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Section 3—Authority

Section 3 provides that the Direction is made under subsection 9(1) of the NAIF Act.

Section 4—Definitions

Section 4 provides the definitions of key terms used in the Direction.

The definition of ***Alternative Financing Mechanism*** covers the types of financing mechanisms the NAIF may use as an alternative to a loan. These alternative mechanisms should broadly fall into either ‘debt or debt-like’ instruments or ‘equity or equity-like’ instruments.

The definition of ***Project*** covers the overall Project that embodies or incorporates the Northern Australia economic infrastructure for which the Project Proponent is seeking financial assistance from the Facility. For example, a Project could be an agricultural venture that also includes transportation infrastructure to export its goods to the market, or a regional financier running a finance program for small infrastructure projects.

Section 5—Purpose

Section 5 provides that the purpose of the Direction is to direct the Board in relation to the performance of the Facility’s functions. As set out in section 7 of the NAIF Act, the function of the Facility is to provide financial assistance to states, territories and other entities for the development of Northern Australia economic infrastructure and to determine the terms and conditions for this financial assistance. The matters on which the Direction can provide detailed directions to the Board are covered in section 10 of the NAIF Act.

## **PART 2—DIRECTIONS**

### **Section 6—Making Investment Decisions**

Section 6 provides that the Facility has responsibility for making Investment Decisions, in relation to whether to provide financial assistance to states, territories and other entities to support the development of Northern Australia economic infrastructure.

Subsection 6(2) provides that upon making an Investment Decision, the Facility must notify the Project Proponent of the outcome of that Investment Decision as soon as practicable after the decision is made.

### **Section 7—Matters to be considered when making Investment Decisions**

Subsection 7(1) provides that before the Facility makes an Investment Decision to offer a Financing Mechanism, it must be satisfied the project meets all relevant Mandatory Criteria in Schedule 1 in the Direction.

The Facility aims to promote economic or population growth in Northern Australia through the development of new or enhanced infrastructure. Mandatory Criteria 1 reflects this, requiring projects to incorporate development or enhancement of physical structures, assets (including moveable assets), technology or facilities which underpin, facilitate or are associated with the transport or flow of people, goods, services or information, the establishment or enhancement of business activity in a region, an increase in economic activity in a region, including efficiency in developing or connecting markets, or an increase in population. Examples of the type of projects that may be eligible include, but are not limited to, ports, airports, rail, roads, water, energy and communications networks, social infrastructure (including health facilities, education facilities, research facilities, convention facilities, training and related accommodation facilities), processing facilities (including abattoirs and agricultural processing plants) and transshipment vessels. Preference should be given to Projects which bring new capacity online, however Projects involving the material modernisation or refurbishment of existing capacity may also be eligible for assistance, provided they can demonstrate the potential to increase capacity.

Mandatory Criteria 2 requires that the Project will be of public benefit. In assessing a Project to be of public benefit, the Facility must be satisfied that the Project will deliver benefits for the broader economy and community beyond an economic return to the Project Proponent. This includes economic benefits such as job creation, regional income, business for local suppliers and Indigenous employment opportunities. The quantifiable public benefit identified must exceed the value of any concessions offered.

Mandatory Criteria 3 requires the Project be located in or have a significant benefit for Northern Australia.

Mandatory Criteria 4 requires the Facility be satisfied that a loan will be able to be repaid or refinanced. The purpose of this Criterion is to ensure that prior to an Investment Decision the Project Proponent demonstrates to the Facility, through comprehensive financial modelling, its ability to repay or refinance the debt in full as set out in the proposed contract terms to the Facility. This Mandatory Criteria does not apply to equity investments.

Mandatory Criteria 5 requires Project Proponents to have an Indigenous engagement strategy.

Mandatory Criteria 6 replaces Criterion 4 in any instance of the Facility making an equity or equity-like investment, rather than a debt investment, and requires that the Project Proponent must demonstrate to the Facility's satisfaction that the Project will contribute positively to the target portfolio return in the medium term. It also requires the Facility be satisfied by its own assessments and modelling provided by the Project Proponent that the Project presents opportunities or mechanisms by which the equity or equity-like investment can be exited or monetised in the medium term. Exit or monetisation will be at the discretion of the Facility.

In addition to the Mandatory Criteria, paragraph 7(1)(b) requires that any return on the Facility's investment is likely to cover at least the Facility's administrative costs and the Commonwealth's cost of borrowing, which may include a risk premium.

Subsection 7(2) sets out the matters that the Facility must have regard to when making Investment Decisions.

Paragraph 7(2)(a) provides that these matters include the extent of any concession that can be offered under section 9 of the Direction.

Paragraph 7(2)(b) requires the Facility to have regard to an appropriate interest rate or target rate of return depending on the Financing Mechanism being used, in conjunction with 7(2)(c) which requires the inherent risk of the underlying project and its capital structure be considered. The purpose of these paragraphs is to ensure the Facility considers the specific characteristics of each Project and Financing Mechanism while maintaining an appropriate overall portfolio risk profile.

Paragraph 7(2)(d) requires the Facility to have regard to the potential effect of the Project on other economic infrastructure in the region, both existing and planned. For example, if for a particular Project to proceed other infrastructure in the region of the Project would be required to be upgraded, (such as roads, telecommunications and rail lines), then the Facility should consider these circumstances in making that Investment Decision.

Paragraph 7(2)(e) requires the Facility to have regard to the effects of the Financing Mechanism on the Australian infrastructure financing market. Financing Mechanisms include loans guarantees, letters of credit, the purchase of primary-issue bonds, and equity and equity-like instruments such as ordinary shares, units in trusts, interests in joint ventures, convertible notes and preference shares. The purpose of this paragraph is to ensure that the Facility fully considers the implications and any potential distortions the provision of financial assistance, and the type of financial assistance provided, may have on the operation of the Australian infrastructure financing market.

Paragraph 7(2)(f) requires the Facility to have regard to the potential of the investment to encourage private sector participation in the Project.

Paragraph 7(3)(a) provides that the Facility must have regard to the location and related industry sector of the Project and give preference to an overall portfolio of Projects with a diverse geographical and sector representation. It is the Commonwealth's preference for the Facility to invest in a range of different types of infrastructure which are spread across the three Northern Australia jurisdictions.

Paragraph 7(3)(b) provides that the Facility should have regard to whether a Project has been identified as a priority project through a Commonwealth, State or Territory assessment

process, pipeline or priority list. This reflects the Government's preference for the investments of the Facility to overcome identified economic infrastructure gaps. For the avoidance of doubt, it does not limit the Facility to investing only in projects identified in those processes, pipelines or lists.

Paragraph 7(3)(c) provides that the Facility should have regard to projects that either materially improve the infrastructure of a region, or provide public benefit of sufficient scale. This reflects the Government's preference for the Facility's investment to focus on those projects offering the greatest public benefit to affected communities.

#### Section 8—Discretion

Section 8 gives the Facility the discretion to decline an Investment Proposal for financial assistance.

#### Section 9—Determining loan concessions

Subsection 9(1) requires the Facility to provide only the level of concession the Facility considers necessary to allow the Project to proceed. The role of the Facility is not to increase the profitability of Project Proponents, but to support infrastructure Projects that provide a public benefit. Where a Project could proceed on non-concessional terms, the Facility may provide financial assistance on a commercial basis.

Paragraphs 9(2)(a) and 9(2)(b) require the Facility to have regard to the extent and mix of all concessions necessary for the Investment Proposal to proceed. The extent of the Project's public benefit should be greater than the value of any concessions provided.

Subsection 9(3) provides the Facility the flexibility to propose contract terms that provide for the reduction of concessions or exit from the investment altogether. For example, this could be if the Project is performing better than expected and is commercially viable on non-concessional terms. The purpose of this paragraph is to emphasise that while concessional assistance can be crucial for success of a Project in early stages, if a Project delivers larger than expected returns there should be a mechanism to increase compensation to the Commonwealth by reducing concessions. For the avoidance of doubt, the inclusion of such triggers are not mandatory but should be considered when negotiating the terms of financial assistance.

#### Section 10—Loan conditions

Section 10 provides that loans are the primary form of Financing Mechanism that the Facility should consider for all Investment Proposals. Subsection 10(2) sets out a non-exhaustive list of loan concessions that the Facility may propose.

Paragraph 10(2)(b) requires that interest rates offered by the Facility are not lower than the rate at which the Commonwealth borrows. The Commonwealth borrows at different rates for different loan tenors. For example, if the Facility is lending for a 10-year period, then the rate offered by the Facility should not be below the rate that the Commonwealth borrows at for a similar 10-year period. In determining the interest rates to be offered, the Facility should also take into account possible fluctuations to the Commonwealth's cost of borrowing that will occur over time. This paragraph should be read with paragraph 7(1)(b), which specifies that

any return the Facility generates from an investment needs at least cover the Commonwealth's cost of borrowing.

Paragraph 10(2)(f) allows for loans that rank lower than Commercial Financiers for cash flow purposes, giving the Facility's loans a lower priority in the event of a default.

Paragraph 10(3) notes that Mandatory Criteria 6 in Schedule 1 of the Direction does not apply to proposals providing financial assistance in the form of loans.

## Section 11—Alternative Financing Mechanisms

Subsection 11(1) allows the Facility to consider Alternative Financing Mechanisms where it is more appropriate for a particular Project. This includes where it is more efficient or effective to use an Alternative Financing Mechanism. This provides the Facility the ability to be flexible in its Financing Mechanism offerings to the unique needs of the Project. Any Alternative Financing Mechanisms fully count against the Facility's \$5 billion funding allocation.

Subsection 11(2) sets out the additional information that must be provided in the proposal notice if an Alternative Financing Mechanism is to be used for a Project.

Subsection 11(3) prohibits the Facility from committing to guarantees that would exceed the uncommitted balance of the Facility's appropriation.

Subsection 11(4) states that Mandatory Criteria 6 in Schedule 1 to the Direction only applies to Alternative Financing Mechanisms where the Facility is proposing to offer financial assistance in the form of an equity investment

Subsection 11(5) outlines the considerations that must be accounted for if the Facility is to make an equity or equity-like investment. To ensure that the costs of making and managing equity investments are recovered across the Facility's equity portfolio, a benchmark rate of return is set at subsection 11(5)(a).

Paragraph 11(5)(b) caps the size of the Facility's equity or equity-like investments to limit the Commonwealth's financial risk associated with equity investments.

Paragraph 11(5)(c) sets a minimum value for equity or equity-like investments of \$5 million, and a maximum value of \$50 million, determined at the time of making an Investment Decision.

Paragraph 11(5)(d) prohibits the Facility from making an investment that would result in the Commonwealth directly owning a majority or controlling stake in a Project. This prohibits the Facility from making an investment in a Project where other Commonwealth entities have an equity stake to an extent that would give the Commonwealth a controlling stake overall.

This clause is intended to reduce the Commonwealth's risk exposure and management obligations when making investments in infrastructure projects.

Paragraph 11(5)(e) prohibits the Facility from making equity or equity-like investments on concessional terms.

Paragraph 11(5)(f) reiterates that Mandatory Criteria 4 in Schedule 1 to the Direction does not apply to equity investments.

Subsection 11(6) provides for the Facility to seek an exemption to the minimum and maximum value limits imposed by 11(5)(c). The written agreement of both the Minister for Northern Australia and the Minister for Finance as the responsible Ministers must be secured by the Facility before the Investment Decision is made.

#### Section 12—Direct funding

Section 12 provides parameters for the Facility to provide financial assistance directly to other entities. In making the decision to provide financial assistance directly, the Facility must have consideration of the functions listed in subsection 7(1A) of the NAIF Act.

Subsection 12(2) provides that the Facility may make the decision to provide financial assistance directly at any point prior to contractual close.

Subsection 12(3) requires the Facility to obtain advice from relevant Commonwealth government agencies prior to making the decision to provide financial assistance directly. Relevant agencies may include the Department of Industry, Science, Energy and Resources, the Australian Government Solicitor and/or the Department of the Treasury.

Subsection 12(4) requires the Facility to notify the Minister of the decision to directly provide financial assistance to a Project proponent. Where the decision to provide financial assistance directly is made at the same time as an Investment Decision, this notification can be made through the proposal notice required under Section 11(2) of the NAIF Act.

Subsection 12(5) notes that where the Facility is providing financial assistance directly, the requirements at Subsections 14(4) and 14(5), which allow the relevant jurisdiction to provide written notification that financial assistance should not be provided for a project, do not apply.

#### Section 13—Investment risk

Subsection 13(1) sets out risk related matters that the Facility must have regard to for each Project it provides assistance to before making an Investment Decision.

Paragraphs 13(1)(a) and (b) are intended to ensure that there is a reasonable allocation of risk for the Project between the Facility and other sources of finance. Paragraph 13(1)(c) ensures that the Facility must be satisfied that it only takes on risks that it can appropriately manage, such as through the appropriate legal documentation for each Project, including but not limited to covenants and reporting mechanisms.

Paragraph 13(1)(d) requires the Facility to identify its exposure to risk in a Project, including factors such as reputational, legal and financial risk. This includes the risks to the Facility and the Commonwealth in the event that the project proponent breaches the terms of their financial assistance (for example, by failing to repay their loan). The due diligence undertaken should be proportionate to the nature, scale and risk of the Project under consideration.



For the avoidance of doubt, satisfaction of subsection 13(1) does not preclude the Facility from being the sole provider of financial assistance to a Project.

Subsection 13(2) requires the Facility to develop a Risk Appetite Statement, which will guide its Investments Decisions. Paragraph 13(2)(a) requires the Risk Appetite Statement to have a preference for a diversified portfolio.

Paragraph 13(2)(b) permits the Facility to have a greater tolerance for risk (relative to Commercial Financiers) due to factors unique to investing in Northern Australian economic infrastructure. Paragraph 13(2)(c) requires the Facility to review the Risk Appetite Statement at least annually.

Subsection 13(3) requires the Facility to actively manage the performance of each individual financial mechanism provided to Project Proponents. The purpose of the paragraph is to give Direction on reporting to the responsible Ministers on the management of impaired or troubled exposures.

Subsection 13(4) limits the use of derivatives by the Facility to the specific purposes stated. When using a derivative in this way, the instrument should be appropriately designed in a manner that represents an effective hedge per AASB9 – Financial Instruments.

Paragraph 13(5)(a) allows the Facility to enter into a derivative contract only where it is a more effective means of achieving an effective hedge than less complex mechanisms (including loans, guarantees and equity investments), while 13(5)(b), (c) and (d) requires the NAIF to consider the risks associated with the derivative and the counter-party, and only enter into a derivative contract where expected benefits of acquisition outweigh the risk and associated costs.

Subsection 13(6) requires the Facility to actively manage and monitor the risks associated with the use of derivatives and provides ways in which the risks must be managed.

Paragraph 13(6)(a) requires the Facility to develop a derivatives risk policy and review it annually to ensure it remains appropriate. It is expected that the risk policy would provide guidance on appropriate due diligence practices, such as including minimum counter-party credit quality requirements.

Paragraph 13(6)(b) requires the Facility to ensure that there are appropriate contracts in place between the Facility and counterparties. Paragraph 13(6)(c) requires the Facility to incorporate derivative exposure and risk management into its regular reporting. This will ensure that the Government is appropriately informed of the Facility's use of derivative contracts.

To limit the financial risk to the Commonwealth, paragraph 13(6)(d) stipulates that at no time can derivative liabilities exceed the uncommitted balance of the Facility's appropriation.

## Section 14—Consultation

Section 14 provides information on the consultation processes the Facility is to undertake with jurisdictions, reflecting the high level of interaction between infrastructure projects and State or Territory governments. It specifies that the Facility's consultation process with relevant jurisdictions must commence as soon as practicable after receiving an Investment

Proposal. The relevant jurisdiction is where the Project is located, and can include multiple jurisdictions. The purpose of this section is for the relevant jurisdiction to be fully engaged on a Project, and for the Project Proponent to be informed as soon as possible if the Project will not be supported. Where a Project impacts multiple jurisdictions, consultation is to occur with all jurisdictions in which the Project falls, but this does not preclude the jurisdictions agreeing to appoint a lead jurisdiction for a particular Project.

#### Section 15—Relationship with other Government entities

Section 15 specifies that the Facility must consult with Infrastructure Australia on Investment Decisions where the Facility would provide financial assistance of greater than \$250 million, whether through use of a single investment tool or in aggregate. This consultation should allow a reasonable time for considered assessment. As appropriate, the Facility must consult with relevant government stakeholders including, for example, Commonwealth departments and local councils.

#### Section 16—Regulatory and environmental approvals

Section 16 requires that financial assistance cannot be provided to a Project Proponent unless such approvals are in place in order to ensure that Projects for which the Facility provides financial assistance are compliant with all relevant regulatory, environmental and Native Title approvals and arrangements for each stage of the Project. Where financial assistance is being provided while a project is in the early stages of development, the Investment Decision must be conditional on the Project Proponent obtaining all relevant approvals.

For the avoidance of doubt, where the Facility is providing financial assistance to a project intended to support the delivery of infrastructure works through the on-lending of funds, the Facility need only consider regulatory approvals required to permit the on-lending of funds. However, as a condition of the financial assistance, the Facility should require the Project Proponent responsible for on-lending to only provide financial assistance to projects with all relevant regulatory and environmental approvals in place.

#### Section 17—Reputation

Section 17 provides that the Facility has a responsibility to act in a way that is not likely to cause reputational damage to the Commonwealth, or the Northern Territory, Queensland, and Western Australia governments.

#### Section 18—Corporate governance

Subsection 18(1) provides that in undertaking its investment function, the Facility must have regard to Australian best practice government governance principles and Australian best practice corporate governance for Commercial Financiers. This is so the Facility has credibility in financial markets and maintains a positive commercial reputation.

Subsection 18(2) provides, for the purposes of transparency, that the Facility is required to publish information regarding the Facility's Investment Decisions on its website within 15 business days of the end of the Minister's consideration period in section 11 of the NAIF Act. Final Investment Decisions can only be made after the Ministerial consideration period as required by Section 11 of the NAIF Act has elapsed. Subsection 18(3) specifies that the Facility will publish guidance on its website to assist Project Proponents in their development of Investment Proposals.

## Section 19—Providing information to the Minister for Northern Australia

Section 19 allows the Minister for Northern Australia to request information from the Facility on an ad hoc basis, and requires the Facility to respond to that request for information within 30 days. The paragraph also allows for the Minister for Northern Australia to seek information on behalf of the Minister for Finance, and specifies that responses to information requests must be provided to both responsible Ministers.

## Section 20—Application of Australian Industry Participation (AIP) plans

Section 20 provides that Projects must comply with the Commonwealth's Australian Industry Participation (AIP) plan policy and legislation, where applicable, either before an Investment Decision is made or as a condition of the Investment Decision on an Investment Proposal. The policy requires Projects receiving a Commonwealth investment (loan, grant or equity) of \$20 million or more to develop an AIP plan. If the Project has an estimated capital expenditure of \$500 million or more it may need to comply with the AIP plan requirements of the *Australian Jobs Act 2013*, regardless of the value of the Commonwealth investment. An AIP plan developed under the legislation will satisfy the requirements of the policy. AIP plans are designed to provide details on the expected opportunities to supply goods and/or services to the Project; how these opportunities will be communicated to potential Australian suppliers; how Australian suppliers may bid for the opportunities and how Australian businesses will be assisted in longer term participation, including encouraging capability development and integration into global supply chains. The purpose of this section is to maximise the opportunities for Australian businesses, including small-to-medium and regional enterprises, to participate in major Projects.

## Section 21—Repeal of previous Direction

Section 21 provides that the Direction repeals the Facility's previous Investment Mandate (the *Northern Australia Infrastructure Facility Investment Mandate Direction 2018*).

The power to repeal a previous investment mandate is implied in the power of the responsible Minister under subsection 9(1) of the NAIF Act to issue new investment mandates to the Facility. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

## **SCHEDULE 1—ELIGIBILITY FOR FINANCIAL ASSISTANCE—MANDATORY CRITERIA**

Schedule 1 to the Direction specifies the Mandatory Criteria that an Investment Proposal must satisfy. To be eligible for financial assistance from the Facility, Project Proponents must satisfy all relevant criteria. These criteria are discussed in section 7 above.