



Northern Australia Infrastructure Facility Investment Mandate Direction 2021

We, KEITH PITT, Minister for Resources, Water and Northern Australia, and SIMON BIRMINGHAM, Minister for Finance, give the following Direction under subsection 9(1) of the *Northern Australia Infrastructure Facility Act 2016*.

Dated: 30 June 2021

KEITH PITT
BIRMINGHAM

Minister for Resources, Water and Northern Australia
Finance

SIMON

Minister for

PART 1 – PRELIMINARY

1. Name

This Direction is the *Northern Australia Infrastructure Facility Investment Mandate Direction 2021*.

2. Commencement

This Direction commences the day after it is registered.

Note: Section 42 of the *Legislation Act 2003* (which deals with the disallowance of legislative instruments) does not apply to this Direction: see regulations made for the purposes of paragraph 44(2)(b) of that Act.

3. Authority

This Direction is made under subsection 9(1) of the *Northern Australia Infrastructure Facility Act 2016*.

4. Definitions

Note: A number of expressions used in this Direction are defined in the Act, including the following:

- (a) Board;
- (b) Facility;
- (c) financial assistance
- (d) Northern Australia;
- (e) Northern Australia economic infrastructure;
- (f) responsible Ministers.

In this Direction:

Alternative Financing Mechanism means debt and debt-like instruments such as 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.

Commercial Financier means a private sector body that provides finance or investment into economic infrastructure projects.

Financing Mechanism means a form of financial assistance as determined by the Facility in accordance with sections 10, 11 and 12 of this Direction.

Infrastructure Australia has the same meaning as in the *Infrastructure Australia Act 2008*.

Investment Decision means a decision by the Facility to offer, or not to offer, financial assistance in the form of a particular Financing Mechanism, which may be conditional on the negotiation and execution of the legal documentation, and on the satisfaction of conditions precedent to funding.

Investment Proposal means the application submitted by a Project Proponent.

Project means the subject of the Project Proponent's Investment Proposal which relates to supporting the development of Northern Australia economic infrastructure.

Project Proponent means the entity responsible for a Project.

Risk Appetite Statement means the statement approved by the Board outlining the risk strategy that will guide the Facility's Investment Decisions.

5. Purpose

The purpose of this Direction is to direct the Board in relation to the performance of the functions of the Facility.

PART 2 – DIRECTIONS

6. Making Investment Decisions

- (1) The Facility has responsibility for project origination and making Investment Decisions.
- (2) When the Facility makes an Investment Decision, it must notify the Project Proponent whether or not the Project will be offered financial assistance, in the form of a particular Financing Mechanism as soon as practicable after an Investment Decision has been made.

7. Matters to be considered when making Investment Decisions

- (1) Before making an Investment Decision to offer a Financing Mechanism, the Facility must be satisfied:
 - (a) the Investment Proposal has met all relevant Mandatory Criteria in Schedule 1 to this Direction; and
 - (b) any return is likely to cover at least the Facility's administrative costs and the Commonwealth's cost of borrowing.
- (2) In making an Investment Decision, the Facility must have regard to the:
 - (a) extent of any concession that may be offered to a Project Proponent, in accordance with section 9 of this Direction;
 - (b) appropriate interest rate or target rate of return for the Financing Mechanism used;
 - (c) inherent risk of the underlying Project and its capital structure;
 - (d) potential effect of the Project on other economic infrastructure;
 - (e) potential effect of the Financing Mechanism on the Australian infrastructure financing market; and
 - (f) potential of the investment to encourage private sector participation in financing a Project.
- (3) In making an Investment Decision, the Facility must consider a preference for:

- (a) a diversified portfolio, including with respect to industry and geographic spread across the States and Territory that comprise Northern Australia;
- (b) projects that address an economic infrastructure need identified through a Commonwealth, State or Territory assessment process, pipeline, or priority list; and
- (c) projects that materially improve the infrastructure of a region, or provide public benefit of sufficient scale.

8. Discretion

The Facility maintains the discretion to decline to offer a Financing Mechanism for an Investment Proposal.

9. Determining loan concessions

- (1) The Facility maintains the discretion to offer non-concessional financial assistance where appropriate. The Facility must limit any concessions offered to the minimum concessions the Facility considers necessary for an Investment Proposal to proceed.
- (2) In determining any concession to be granted in an Investment Decision, the Facility must have regard to the:
 - (a) extent and mix of all concessions necessary for the Investment Proposal to proceed; and
 - (b) extent of the Project's public benefit, that should be greater than the value of any concessions.
- (3) The Facility may propose and utilise contract terms or conditions which reduce or remove the concessions over time where a Project becomes viable on non-concessional terms. This may include, but is not limited to:
 - (a) removing or relaxing concessions provided; or
 - (b) having the ability to seek early exit from an investment.

10. Loan conditions

- (1) Loans will be the primary Financing Mechanism considered by the Facility for all Investment Proposals.
- (2) The Facility may propose loan concessions, including the following:
 - (a) longer loan tenor than offered by Commercial Financiers, not exceeding the longest term of Commonwealth borrowings;

- (b) lower interest rates than offered by Commercial Financiers, which must not be lower than the rate at which the Commonwealth borrows;
 - (c) extended periods of capitalisation of interest beyond construction completion;
 - (d) deferral of loan repayments or other types of tailored loan repayment schedules;
 - (e) lower or different fee structures than those offered by Commercial Financiers; and/or
 - (f) subordination to Commercial Financiers.
- (3) Mandatory Criteria 6 in Schedule 1 of this Direction does not apply to loans.

11. Alternative Financing Mechanisms

- (1) The Facility may consider using Alternative Financing Mechanisms as an alternative or in addition to a loan where it:
- (a) may be more appropriate for a specific Project Proposal; or
 - (b) is necessary to encourage private sector participation in financing a Project.
- (2) Where the Facility considers that an Alternative Financing Mechanism is preferable to a loan, it must include in the proposal notice required under s11(2) of the Act the following:
- (a) why the Alternative Financing Mechanism is preferable;
 - (b) the estimated commercial value of any concession proposed with the Alternative Financing Mechanism;
 - (c) the alignment between the Alternative Financing Mechanism and the Risk Appetite Statement (see section 13 of this Direction);
 - (d) any impacts on the Facility's appropriation; and
 - (e) the proposed exit strategy for the Financing Mechanism.
- (3) At no time may the total potential liability under outstanding guarantees exceed the amount of the uncommitted balance of the Facility's appropriation.
- (4) Mandatory Criteria 6 in Schedule 1 of this Direction applies only where the proposed Alternative Financing Mechanism includes an equity or equity-like investment.

- (5) In offering an Alternative Financing Mechanism in the form of an equity or equity-like investment, the Facility must:
- (a) target a portfolio return for the Facility's equity or equity-like investments before Facility operating expenses, over the medium to long term, being at least the five-year Australian Government bond rate plus a premium of 3 per cent per annum;
 - (b) not make an Investment Decision that would result in the Facility allocating more than \$500 million to equity or equity-like investments;
 - (c) not make an Investment Decision allocating less than \$5 million or more than \$50 million in equity or equity-like investment to a particular Project;
 - (d) not make an Investment Decision that would result in the Commonwealth directly taking a majority or controlling equity or equity-like interest in a particular Project;
 - (e) not make an Investment Decision on concessional terms; and
 - (f) apply all Mandatory Criteria in Schedule 1 of this Direction except for Mandatory Criteria 4.
- (6) The Facility can be exempted from the limitations in 11(5)(c) by written agreement of the responsible Ministers.

12. Direct funding

- (1) The Facility will primarily seek to provide financial assistance through grants of financial assistance to a State or Territory.
- (2) However, the Facility may, at any point prior to contractual close of a Financing Mechanism, decide to provide financial assistance via a particular Financing Mechanism directly to other entities in accordance with section 7(1A) of the Act.
- (3) The Facility must obtain advice from relevant Commonwealth Government agencies prior to making a decision under subsection (2).
- (4) Once the Facility has made a decision under subsection (2), it must notify the Minister for Northern Australia in writing within five business days.
- (5) Subsections 14(4) and 14(5) of this Direction do not apply to an Investment Decision that will be made directly to a Project Proponent.

13. Investment risk

- (1) Before making an Investment Decision, the Facility must satisfy itself that:

- (a) the Facility is not the sole holder of financial risk in the Project; and
 - (b) there is a reasonable allocation of risk for the Project between the Facility and other sources of finance for the Project; and
 - (c) it can appropriately manage the Facility's risk exposure to the Project including via methods such as covenants or reporting mechanisms; and
 - (d) its due diligence identifies that the Facility's exposure amounts to an acceptable but not excessive level of risk in the Project.
- (2) The Facility will develop a Risk Appetite Statement to guide its Investment Decisions, in consultation with the responsible Ministers, which must:
- (a) have regard to a preference for a diversified portfolio, including industry and geographic spread across the States and Territory that comprise Northern Australia;
 - (b) have a high risk tolerance in relation to factors that are unique to investing in Northern Australia economic infrastructure, including Northern Australia's distance, remoteness, and climate; and
 - (c) be reviewed at least annually to address emerging risks, changes to existing risks, and changes to Government policy.
- (3) The Facility must actively manage loans performance, including:
- (a) developing management plans for impaired or troubled exposures; and
 - (b) providing a report on these to the responsible Ministers by 30 September of each year.
- (4) The Facility must only enter into a derivative contract for the purpose of providing an effective hedge and not for the purpose of speculation or leverage.
- (5) The Facility may only enter into a derivative contract where:
- (a) it is a more effective means of achieving an effective hedge than less complex mechanisms;
 - (b) the costs of derivative risk is considered and priced into the Financing Mechanism;
 - (c) the counter-party's credit profile is considered appropriate; and

- (d) the expected benefits, financial or otherwise, are sufficient to outweigh the level of risk and associated costs of acquiring a derivative.
- (6) The Facility must actively monitor and manage the risks associated with the use of derivatives including through ensuring:
 - (a) that a derivatives risk policy is in place and is reviewed annually;
 - (b) appropriate contracts must exist between the Facility and counterparties;
 - (c) a derivative exposure and risk management report must be included in regular reporting; and
 - (d) at no time may the net liabilities under derivatives arrangements exceed the amount of the uncommitted balance of the Facility's appropriation.

14. Consultation

- (1) The Facility must commence consultation with the relevant jurisdiction as soon as practicable after receiving an Investment Proposal.
- (2) The relevant jurisdiction is:
 - (a) the State or Territory the Project is located in for single jurisdiction Investment Proposals; or
 - (b) for Investment Proposals that impact multiple jurisdictions, it is all jurisdictions where the Project takes place.
- (3) Consultation with the relevant jurisdiction is to commence by providing them with a notification of assessment ('assessment notification'), which includes an outline of the details of the Project and/or of the characteristics and criteria which the Project must satisfy.
- (4) The Facility must not make an Investment Decision utilising a grant of financial assistance to a State or Territory jurisdiction if at any time the relevant jurisdiction provides written notification that financial assistance, should not be provided for a Project.
- (5) The Project Proponent will be informed of a decision not to progress an Investment Proposal within five business days of the Facility receiving written notification from the relevant jurisdiction.

15. Relationship with other Government entities

- (1) Where an Investment Decision would provide financial assistance greater than \$250 million in aggregate, the Facility must consult Infrastructure Australia in relation to the public benefit analysis of the Project.
- (2) As appropriate, the Facility must consult with relevant government stakeholders including Commonwealth departments.

16. Regulatory and environmental approvals

- (1) The Facility may make Investment Decisions conditional upon the Project Proponent obtaining all relevant regulatory, environmental and Native Title approvals and arrangements as required by the relevant jurisdiction.
- (2) The Facility must not provide a Financing Mechanism for a Project that has not received all relevant regulatory, environmental and Native Title approvals and arrangements, either before an Investment Decision or as a condition of the Investment Decision.

17. Reputation

The Facility must not act in a way that is likely to cause damage to the Commonwealth Government's reputation, or where a State or Territory government is participating in a Project, that Government's reputation.

18. Corporate governance

- (1) The Facility must have regard to Australian best practice government governance principles, and relevant Australian best practice corporate governance for Commercial Financiers, when performing its functions, including developing and annually reviewing policies with regard to:
 - (a) environmental issues; and
 - (b) social issues; and
 - (c) governance issues.
- (2) Within 15 business days of the conclusion of the Minister's consideration period under section 11 of the Act, the Facility must publish information regarding the Investment Decision on its website, subject to commercial confidentiality, including the:
 - (a) name of the Project Proponent;
 - (b) nature of investment;
 - (c) Project's location;
 - (d) type of Financing Mechanism;

- (e) amount of the Financing Mechanism; and
 - (f) description of the public benefit.
- (3) The Facility must publish guidance on its website on:
- (a) the format of an Investment Proposal;
 - (b) Investment Decision processes; and
 - (c) any other matters it considers necessary.

19. Providing information to the Minister for Northern Australia

- (1) The Minister for Northern Australia may, at any time either on their own initiative or as requested by the Minister for Finance, request information from the Facility regarding its policies, Investment Decisions or the management of its portfolio.
- (2) The Facility must respond to a request for information from the Minister for Northern Australia within 30 days and provide its response to both the Minister for Northern Australia and the Minister for Finance.

20. Application of Australian Industry Participation (AIP) Plans

The Project must comply with the Commonwealth's Australian Industry Participation Plan policy and legislation where applicable, either before an Investment Decision or as a condition of the Investment Decision.

21. Repeal of previous Direction

The *Northern Australia Infrastructure Facility Investment Mandate Direction 2018* made on 24 April 2018 is repealed.

SCHEDULE 1 – ELIGIBILITY CRITERIA FOR FINANCIAL ASSISTANCE – MANDATORY CRITERIA

To be eligible for financial assistance, the Facility must be satisfied that the Investment Proposal meets all relevant Mandatory Criteria:

Mandatory Criteria	Description
<p>1. The proposed Project involves development or enhancement of Northern Australia economic infrastructure.</p>	<p>The Facility must be satisfied that the Project incorporates, or will incorporate, the development or enhancement of physical structures, assets (including moveable assets), technology or facilities which underpin, facilitate or are associated with:</p> <ul style="list-style-type: none"> (a) the transport or flow of people, goods, services or information; or (b) the establishment or enhancement of business activity in a region; or (c) an increase in economic activity in a region, including efficiency in developing or connecting markets; or (d) an increase in population. <p>The Project must either bring new capacity online or represent material modernisation which enhances or improves existing capacity.</p> <p>The Project may involve the Project Proponent:</p> <ul style="list-style-type: none"> (a) conducting a program of works over a specified time involving expenditure or procurement for the development or enhancement of economic infrastructure; or (b) providing financing that facilitates the development or enhancement of economic infrastructure. <p>The refinancing of existing debt that does not involve the creation of new capacity is ineligible.</p>
<p>2. The proposed Project will be of public benefit.</p>	<p>The Facility must be satisfied that the Project will produce benefits to the broader economy and community beyond an economic return to the Project Proponent. Such benefit could include, but is not limited to, employment opportunities, regional income, business for local suppliers, and Indigenous employment opportunities. The quantifiable value of the public benefit must exceed</p>

	the value of any concessions offered.
3. The Project is located in, or will have a significant benefit for, Northern Australia.	<p>Northern Australia is defined in the Act. It includes all of the Northern Territory, and those parts of Queensland and Western Australia above the Tropic of Capricorn.</p> <p>It also includes areas which intersect with the Tropic of Capricorn and the regional centres of Gladstone (Queensland), Carnarvon (Western Australia) and Exmouth (Western Australia), as well as the Local Government Areas of Meekatharra, Wiluna and Ngaanyatjarraku which have boundaries that intersect with the Tropic of Capricorn. Territorial seas up to 12 nautical miles offshore adjacent to these areas are also included in the definition.</p> <p>Projects do not need to be entirely within these boundaries if they produce significant benefits to Northern Australia. For example, a Project that enhances north-south connectivity may be eligible.</p>
4. The loan will be able to be repaid, or refinanced.	<p>The Project Proponent must present comprehensive financial modelling to demonstrate the ability of the Project to repay the debt in full and on time, or refinance, based on assumptions acceptable to the Facility.</p> <p>A relevant substitute for this criterion should be used for assessing Projects which request Alternative Financing Mechanisms, as determined by the Facility.</p>
5. Indigenous engagement strategy.	The Project Proponent must provide a strategy which sets out objectives for Indigenous participation, procurement and employment that reflect the Indigenous population in the region of the proposed Project.
6. The equity or equity-like investment will generate a return to Government.	<p>The Project Proponent must present comprehensive financial modelling to demonstrate the ability of the Project to contribute positively to the target portfolio return in the medium term.</p> <p>Based on its own assessments and modelling provided by the Project Proponent, the Facility must be satisfied that there will be opportunities or mechanisms for the Facility to exit or monetise the equity investment within the medium term.</p>