



Northern Australia Infrastructure Facility Investment Mandate Direction 2016

Northern Australia Infrastructure Facility Act 2016

I, JOSH FRYDENBERG, Minister for Resources, Energy and Northern Australia, make this Direction under subsection 9(1) of the *Northern Australia Infrastructure Facility Act 2016*.

Dated 4 May 2016

JOSH FRYDENBERG

JOSH FRYDENBERG
Minister for Resources, Energy and Northern Australia

PART 1 – PRELIMINARY

1. Name of Instrument

This Direction is the *Northern Australia Infrastructure Facility Investment Mandate Direction 2016*.

2. Authority

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

3. Commencement

This Direction commences the day after registration.

Note: Section 42 of the *Legislation Act 2003* (which deals with the disallowance of legislative instruments) does not apply to this instrument: see section 9(1) of the Act.

4. Definitions

In this Direction:

Act means the *Northern Australia Infrastructure Facility Act 2016*.

Board has the same meaning as in the Act.

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

Facility has the same meaning as the Act.

Financing Mechanism means a loan or any grant of financial assistance as determined by the responsible Minister in accordance with section 11 of this Direction.

Infrastructure Australia is an independent statutory body established by the *Infrastructure Australia Act 2008 (Cth)*.

Investment Decision means a decision by the Board to offer, or not to offer, a Financing Mechanism.

Investment Proposal means the application submitted by a Project Proponent.

Northern Australia has the same meaning as in the Act.

Project means the infrastructure activity that is the subject of the Project Proponent's Investment proposal.

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 Facility in relation to the performance of the functions of the Facility as set out in section 10 of the Act.

PART 2 – DIRECTIONS

6. Making Investment Decisions

- (1) The Board must make Investment Decisions.
- (2) When the Board makes an Investment Decision, the Facility must notify Project Proponents if their project will receive financial assistance as soon as practicable after an Investment Decision has been made.

7. Matters to be considered when making Investment Decisions

- (1) The Facility must not provide a Financing Mechanism unless the Board is satisfied the Project would not otherwise have received sufficient financing from other financiers.
- (2) Before making an Investment Decision, the Board must be satisfied:
 - (a) the Investment Proposal has met all mandatory criteria in Schedule 1 to this Direction; and
 - (b) there is an expectation that the Commonwealth will be repaid, or that the investment can be refinanced; and
 - (c) that any return will cover at least the Facility's administrative costs, and the Commonwealth's cost of borrowing.
- (3) In making an Investment Decision, the Board must have regard to:
 - (a) whether the Investment Proposal meets any non-mandatory criteria in Schedule 2 to this Direction; and
 - (b) the extent of any concession that may be offered to a Project Proponent, in accordance with section 9 of this Direction; and
 - (c) the potential effect of the Project on other infrastructure; and
 - (d) the potential effect of the Financing Mechanism on the Australian infrastructure financing market; and
 - (e) the necessity of the investment to encourage private sector participation in financing a Project.
- (4) The Board, in making an Investment Decision, must consider a preference for a diversified portfolio, including with respect to industrial and geographic spread across the States and Territory that comprise Northern Australia.

8. Discretion

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

9. Determining Concessions

- (1) In determining any concession to be granted in an Investment Decision, the Board must have regard to:
 - (a) the extent and mix of all concessions necessary for the Investment Proposal to proceed; and
 - (b) the extent of the project's public benefit.
- (2) The Board must limit the concessions offered to the minimum required for the Investment Proposal to proceed.
- (3) The Board may propose contract terms to ensure that the Facility is not providing greater concessions than necessary. This may include, but is not limited to:
 - (a) removing, relaxing or minimising concessions provided; or
 - (b) having the ability to seek early exit from an investment.

10. Loan conditions

- (1) Loans will be the default Financing Mechanism considered for all Investment Proposals.
- (2) The Facility may propose, but is not limited to, the following loan concessions:
 - (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 at;
 - (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;
 - (f) ranking lower than Commercial Financiers for cash flow purposes.

11. Alternative Financing Mechanisms

- (1) The Board may consider using alternative Financing Mechanisms to a loan where:
 - (a) it may be more appropriate for a specific Project; or
 - (b) it is necessary to encourage private sector participation in financing a Project.
- (2) All sections and schedules to this Direction apply to any alternative Financing Mechanisms, other than section 10 and Criteria 5 and 6 of Schedule 1.

- (3) Where the Board considers that an alternative Financing Mechanism is preferable to a loan, the Board must write to the responsible Minister seeking agreement and outlining:
 - (a) why the alternative Financing Mechanism is preferable;
 - (b) the estimated commercial value of any concession proposed with the alternative Financing Mechanism; and
 - (c) the impact the alternative Financing Mechanism will have on the Risk Appetite Statement (see section 12 of this Direction) and on the Facility's appropriation.
- (4) The responsible Minister will seek the agreement of the Minister for Finance prior to determining if the alternative Financing Mechanism will be provided, and will consult with the relevant jurisdiction.
- (5) The Facility will not offer an alternative Financing Mechanism that would provide for equity to be provided for any Project.

12. Investment risk

- (1) The Facility will develop a Risk Appetite Statement to guide its Investment Decisions, in consultation with the responsible Minister and the relevant Northern Australia jurisdictions.
- (2) In order to drive economic development in Northern Australia, the Risk Appetite Statement must have regard to a preference for a diversified portfolio, including industry and geographic spread across the States and Territory that comprise Northern Australia.
- (3) The Risk Appetite Statement may have a high risk tolerance in relation to factors that are unique to investing in Northern Australia Economic Infrastructure as defined in the Act, including but not limited to, Northern Australia's:
 - (a) distance;
 - (b) remoteness; and
 - (c) climate.
- (4) The Risk Appetite Statement will be reviewed annually to address emerging risks, changes to existing risks, and changes to Government policy.

13. 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 infrastructure Project is located in for single jurisdiction Investment Proposals; or
 - (b) for Investment Proposals that cross 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:
 - (a) an outline of the details of the Project; and
 - (b) the Investment Proposal.
- (4) The Facility must not make an Investment Decision if at any time the relevant jurisdiction provides written notification that financial assistance should not be provided to a Project.
- (5) The Project Proponent will be informed of a decision not to progress an Investment Proposal within five (5) business days of the Facility receiving written notification, in accordance with subsection 13(4) of this Direction.

14. Relationship with other Government entities

- (1) Where an Investment Decision is greater than \$100 million, the Facility must consult Infrastructure Australia.
- (2) As appropriate, the Facility consults with relevant government stakeholders including Commonwealth departments.

15. Regulatory and environmental approvals

- (1) The Facility may consider and approve Investment Proposals 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 financial assistance to Projects that have not received all relevant regulatory, environmental and Native Title approvals.

16. Reputation

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

17. Corporate governance

- (1) The Facility must have regard to Australian best practice government governance principles, and Australian best practice corporate governance for Commercial Financiers, when performing its functions, including developing and annually reviewing policies with regard to:
 - (a) environmental issues;

(b) social issues; and

(c) governance issues.

(2) Within 30 business days of an Investment Decision, the Facility must publish information regarding all transactions on its website, subject to commercial confidentiality, including:

(a) the name of the Project Proponent;

(b) the goods/services involved;

(c) the location;

(d) the type of Financing Mechanism; and

(e) the amount of the Financing Mechanism.

(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.

18. Application of Australian Industry Participation (AIP) Plans

The Project must comply with the Commonwealth's AIP Plan policy, before the Board can make an Investment decision on the Investment proposal.

SCHEDULE 1 - ELIGIBILITY FOR FINANCIAL ASSISTANCE – MANDATORY CRITERIA

To be eligible for financial assistance, project proponents need to meet all the following mandatory criteria:

Mandatory criteria	Description
1. The proposed Project involves construction or enhancement of economic infrastructure.	<p>The Project Proponent must demonstrate that the Project incorporates physical structures associated with the flow of people, goods, services and information between buyers and sellers or that enables an increase in economic activity, including efficiency in developing and connecting markets, and population in a region. It includes, but is not limited to, rail, water, energy and communications networks, ports and airports.</p> <p>The Project must bring new capacity online either through the construction of new infrastructure or by materially enhancing existing infrastructure.</p> <p>The refinancing of existing debt that does not involve the creation of new capacity is ineligible.</p>
2. The proposed Project will be of public benefit.	<p>In considering public benefit, the Board will give preference to those Projects that will:</p> <ol style="list-style-type: none">serve or have the capacity to serve multiple users; andproduce benefits to the broader economy and community beyond those able to be captured by Project Proponents.
3. The proposed Project is unlikely to proceed, or will only proceed at a much later date, or with a limited scope, without financial assistance.	<p>The Project Proponent must demonstrate to the Board's satisfaction that financial assistance is necessary to enable the Project to proceed, or to proceed much earlier than it would otherwise.</p>
4. 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 and Wiluna which have boundaries that intersect with the Tropic of Capricorn. Territorial seas up to twelve 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>

5. Facility's loan monies are not the majority source of debt funding.

The Project proponent must show that the finance (provided by way of a Financing Mechanism from the Facility) will not exceed 50 per cent of total debt for the proposed Project. This is in keeping with the principle that the Facility will work in partnership with Commercial Financiers and any other financiers, who should provide an equal or majority source of finance.

A relevant substitute for this criterion should be used for assessing Projects which request alternative Financing Mechanisms, as determined by the Board.

6. The loan will be able to be repaid, or refinanced.

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 Board.

A relevant substitute for this criterion should be used for assessing Projects which request alternative Financing Mechanisms, as determined by the Board.

7. 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.

SCHEDULE 2 - ELIGIBILITY FOR FINANCIAL ASSISTANCE – NON-MANDATORY CRITERIA

Preference will be given to projects which meet one or both of the non-mandatory criteria:

Non-mandatory criteria	Description
1. The proposed Project is seeking financing from the Facility for an amount of \$50 million or more.	A Project proponent may aggregate multiple pieces of infrastructure into a single Project.
2. There is an identified need for the Project.	A Project proponent may demonstrate that the Project meets an infrastructure need if it has been identified through a Commonwealth, State or Territory assessment process, pipeline, or priority list such as the <i>Northern Australia Infrastructure Audit</i> .