



VACANT LAND – CONDITIONS ON DEVELOPMENT

Foreign persons are generally required to notify and receive a no objection notification before acquiring an interest in vacant commercial or vacant residential land in Australia, regardless of the value of the proposed acquisitions (\$0 threshold). Such proposals are normally approved subject to development conditions. These rules and this guidance note do not apply to agricultural land that is vacant, where the land is used wholly and exclusively for a primary production business.

Vacant land (which is not being used wholly and exclusively for primary production) will be either vacant commercial land or vacant residential land.

Commercial and residential land is vacant if there is no substantive permanent building on the land that can be lawfully occupied by persons, goods or livestock. However, land is not considered vacant if a wind or solar power station is located on the surface of the land.

For example, an asphalt carpark in the city with no substantive permanent building would be vacant land, in comparison a multistorey carpark is considered to be a substantive permanent building that can be lawfully occupied by goods, consequently the multistorey carpark is considered non-vacant land.

This Guidance Note outlines the conditions that will normally apply to a no objection notification for foreign investment in vacant land.

VACANT COMMERCIAL LAND

Vacant land would be considered to be vacant **commercial land** if it is land in Australia or the seabed of the offshore area, other than land:

- used wholly and exclusively for a primary production business; or
- on which the number of dwellings that could reasonably be built is less than 10.

Vacant land (which is not being used wholly and exclusively for primary production) on which no dwellings could reasonably be built is treated as vacant commercial land. For example, land that is usually under water, land where the zoning does not allow for dwellings, and land on which development is legally prohibited such as a green zone or belt.

No objection notifications and exemption certificates to acquire vacant commercial land will normally be subject to conditions that the foreign person:

- commences continuous construction of the proposed development on the land within five years of the date of approval; and
- does not sell the land until construction is complete.

Example 1

A property developer is seeking to purchase vacant land to develop into an apartment complex. The developer wishes to sell the apartments off the plan. The approval to purchase the land would normally be subject to a condition that the land not be sold until construction is

complete. The developer would not breach this condition by selling the apartments off the plan as apartments sold off the plan are not considered sold until the development is complete and settlement takes place.

In exceptional circumstances where conditions cannot be met, foreign persons should raise this at the earliest opportunity, including in their application if this is already known. If this becomes apparent after the receipt of a no objection notification or exemption certificate, foreign persons should apply for a variation to the no objection notification or exemption certificate as soon as possible. A fee applies. Applications for variations will be considered on a case-by-case basis with regard to:

- has the foreign person taken steps to meet the condition in a timely manner (for example, the foreign person has not unnecessarily delayed taking any steps to meet the condition).
- why construction of the development is unable to commence within the five years. Significant and unexpected delays to processes by relevant local government authorities, failure of key businesses involved in the supply of trade services, and unexpected and extensive delays in sourcing core materials would normally be considered genuine reasons for delay;
- the length of time reasonably expected to be required to commence construction of the development;
- whether variations extending the time period for commencing construction had previously been granted for the specified development; and
- the compliance history of the applicant, and any related persons or entities.

Foreign persons would normally need to demonstrate extenuating circumstances if seeking release from a condition that does not allow them to sell land until construction is complete, as actions involving land banking are inconsistent with the national interest and Australia's foreign investment framework. For more information on variations, see [Guidance Note 40](#).

Conditions requiring a foreign person 'not sell the land until construction is complete' does not prevent the following:

- the sale of a completed stage of the development if a stage by stage approach to the development construction and sale was foreshadowed in the application; and
- the sale of blocks within a newly developed subdivision, if the development covered by the no objection notification or exemption certificate was the subdivision.

A foreign person subject to this condition who enters into a sale contract for a block, land or dwelling does not breach the condition so long as completion or settlement of the sale occurs after construction of the development or stage is completed.

VACANT RESIDENTIAL LAND

Vacant land would be considered to be vacant **residential land** if it is land in Australia on which the number of dwellings that could reasonably be built is less than 10, other than land used wholly and exclusively for a primary production business

Proposals to acquire vacant residential land for dwelling development will normally receive a no objection notification or exemption certificate subject to conditions that:

- the development is completed within four years from the date of approval; and

- evidence of completion of the dwellings is submitted within 30 days of being received. This could include a final occupancy or builder's completion certificate.

In exceptional circumstances where conditions cannot be met, foreign persons should raise this at the earliest opportunity, including in their application if this is already known. If this becomes apparent after the receipt of a no objection notification or exemption certificate, foreign persons should apply for a variation to the conditions as soon as possible. A fee applies. Applications for variations will be considered on a case-by-case basis with regard to:

- has the foreign person taken steps to meet the condition in a timely manner (for example, the foreign person has not unnecessarily delayed taking any steps to meet the condition).
- why the development is unable to be completed within the four years. Significant and unexpected delays to processes by relevant local government authorities, failure of businesses involved in the supply of trade services, and unexpected and extensive delays in sourcing core materials would normally be considered genuine reasons for delay;
- the length of time expected to be required to complete construction of the dwelling;
- whether variations extending the time period for completion had previously been granted for the specified dwelling; and
- the compliance history of the applicant, and any related persons or entities.

For more information, see [Guidance Note 10](#).

PENALTIES

Persons who fail to comply with conditions of a no objection notification may be subject to strict penalties (including civil and criminal penalties).

FURTHER INFORMATION

Vacant commercial land

Further information is available on the FIRB website at www.firb.gov.au or by contacting +61 2 6263 3795.

Vacant residential land

Further information is available on the FIRB website at www.firb.gov.au or by contacting 1800 050 377 from Australia or +61 2 6216 1111 from overseas.

Important notice: This Guidance Note provides a summary of the relevant law. As this Note tries to avoid legal language wherever possible it may include some generalisations about the law. Some provisions of the law referred to have exceptions or important qualifications, not all of which may be described here. The Commonwealth does not guarantee the accuracy, currency or completeness of any information contained in this document and will not accept responsibility for any loss caused by reliance on it. Your particular circumstances must be taken into account when determining how the law applies to you. This Guidance Note is therefore not a substitute for obtaining your own legal advice.