



On 29 March 2020, the Treasurer announced that due to the impacts of the coronavirus outbreak, all monetary thresholds will be temporarily reduced to \$0, and that the FIRB will work with applicants to extend the timeframes for decision making to up to six months. Further information on these temporary changes can be found in 'Guidance Note 53: Temporary measures in response to the coronavirus', available on the FIRB website at www.firb.gov.au.

All other guidance material, including this note on mixed use land, should be read in light of those temporary changes. Within this note, the temporary changes may have particular impact on matters related to, but not exclusively including:

- the monetary thresholds for determining if the threshold test is met; and
- the acquisition of multiple titles of land under the one contract (such as car parking spaces along with residential dwellings).

Where there is any inconsistency between this note and Guidance Note 53, the information in Guidance Note 53 takes precedence.

MIXED USE LAND

Last update: 24 April 2020

Foreign persons may be required to notify and receive a no objection notification before acquiring an interest in land in Australia in which two or more land types coexist.

This Guidance Note sets out factors considered in determining whether an action to acquire an interest in mixed use land is notifiable.

DEFINITION OF AUSTRALIAN LAND

The *Foreign Acquisitions and Takeovers Act 1975* (Act) defines Australian land as agricultural land, commercial land, residential land, or a mining or production tenement.

Agricultural land means land in Australia that is used, or that could reasonably be used, for a primary production business. This includes land which is partially used for a primary production business, or land where only part of the land could reasonably be used for a primary production business. For more information, see [Guidance Note 17](#).

Commercial land means land in Australia (including any building on the land) or the seabed of the offshore area, other than land:

- used wholly and exclusively for a primary production business;
- on which the number of dwellings that could reasonably be built is less than 10; or
- on which there is at least one dwelling (except commercial residential premises). For more information, see [Guidance Note 14](#).

Residential land means land in Australia on which there is at least one dwelling, or the number of dwellings that could reasonably be built on the land is less than 10. It does not include land that is used wholly and exclusively for a primary production business, or on which the only dwellings are commercial residential premises.

A **mining or production tenement** is:

- a right (however described) under a law of the Commonwealth, a state or a territory to recover minerals (such as coal or ore), oil or gas in Australia or from the seabed or subsoil of the offshore area, other than a right to recover minerals, oil or gas for the purposes of prospecting or exploring for minerals, oil or gas; or
- a right preserving a right as defined above (for example, a retention licence); or
- a lease under which the lessee has a right mentioned above; or
- an interest in a right or lease mentioned above.

CONSIDERATION OF MIXED USE LAND

While acquisitions of interests in land are considered on a title-by-title basis, there are circumstances where different types of Australian land may coexist on the same title. Foreign persons should consider all types of Australian land they may be seeking to acquire, as there may be multiple notifiable actions in one acquisition. Notification and receipt of a no objection notification is only required if the relevant monetary thresholds are triggered for more than one of the types of Australian land (see table below).

When considering an application to acquire an interest in mixed use land, the decision maker will have regard to the actual and intended use of the land in imposing any conditions on a no objection notification. In these cases, any conditions imposed may not be the standard conditions that would normally apply to a single use land acquisition.

Proposed acquisitions of mixed use land that includes residential land will also generally be considered against the rules that apply to foreign investment in residential land, including eligibility to purchase established dwellings.

Threshold values – Land proposals

Foreign Person	Action	Value of the proposed investment (AUD)
All foreign persons	Residential land	\$0
	Vacant commercial land	\$0
	Agricultural land	For Chile, New Zealand and United States of America, \$1,192 million

Privately owned investors from FTA partner countries or regions ¹ that have the higher threshold		Others, \$15 million (cumulative)
	Developed commercial land	\$1,192 million
		Low threshold land ² , \$60 million
	Mining and production tenements	For Chile, New Zealand and United States of America, \$1,192 million
		Others, \$0
		For Thailand, where land is used wholly and exclusively for a primary production business \$50 million (otherwise the land is not agricultural land)
Privately owned investors from non-FTA countries or regions, and FTA countries or regions that do not have the higher threshold		
	Developed commercial land	\$275 million
		Low threshold land,\$60 million
	Mining and production tenements	\$0

¹ Agreement country or region investors are those from the United States of America, New Zealand, Chile, Japan, the Republic of Korea, China, Singapore, Peru, a country (other than Australia) for which the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago on 8 March 2018, is in force (CPTPP) (as at 1 January 2020, the CPTPP is in force for: Canada, Japan, Mexico, New Zealand, Singapore and Vietnam), and the region of Hong Kong, China.

² For Hong Kong and Peruvian investors, where developed commercial land is also sensitive land (see section 52(6) of the FATR), the threshold of \$60 million will apply. Low threshold land includes mines and public infrastructure (for example, an airport or port).

Foreign government investors	Any land ³	\$0
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RESIDENTIAL DWELLINGS INCIDENTAL TO OTHER LAND USE

Some acquisitions of agricultural land include a residential established dwelling on the same title and the residential dwelling may be incidental to the use of the land. Unless covered by the following, the acquisition of land with a residential dwelling will still be a notifiable action for residential land, irrespective of the value of the interest to be acquired.

RESIDENTIAL DWELLINGS INCIDENTAL TO LAND USED WHOLLY AND EXCLUSIVELY FOR A PRIMARY PRODUCTION BUSINESS

Land relating to farms may include a residential dwelling. In some situations, such land will **not** be treated as residential land when being purchased by a foreign person.

- Where a foreign person is proposing to acquire land from a primary production business and while there is one established dwelling used as the farmer's residence and the dwelling takes up a small portion of the area of the land to be acquired, the established dwelling will generally be considered incidental if the land to be acquired is otherwise used wholly and exclusively for a primary production business.
- Proposals where the farmer has not been residing in the dwelling; there is more than one dwelling on the land; the dwelling sits on a separate title from the farm land; or the dwelling takes up more than a small portion of the area of the land to be acquired will be considered on a case-by-case basis.
 - Consideration will be given to the nature and size of the dwelling(s), their existing use, and tax treatment (for example, is any rental income associated with a dwelling considered as income of the primary production business or separately).
- In the following situations, land with a dwelling on it will also be considered residential land, irrespective of whether it is also agricultural land (that is, the land cannot be considered to be used wholly and exclusively for a primary production business):
 - the vendor of the land has ceased carrying on a primary production business prior to the sale;
 - one or more of the dwellings on the land are used to carry on a business other than a primary production business (including when such use has ceased in the lead up to sale); or
 - the presence of one or more dwellings on land to be acquired is considered not incidental to a primary production business.

When considering if an acquisition would be otherwise contrary to the national interest, any conditions imposed may not be the standard conditions that would normally apply to a single use land acquisition.

³ Interests in Australian land, a legal or equitable interest in a tenement, or an interest of at least 10 per cent in securities in a mining, production or exploration entity.

Example 1

Angelo is a foreign person who is seeking to acquire agricultural land. The land includes an established residential dwelling where the current owner of the agricultural land resides. The dwelling only takes up a small portion of the land. The land is on a single title and is not considered to be a hobby farm. The proposed acquisition of the dwelling may be considered incidental to the acquisition of the agricultural land, and Angelo would be subject to the relevant agricultural land threshold (that is, the land would be considered to be used wholly and exclusively for a primary production business and thus not considered residential land).

COMMERCIAL BUILDINGS OR LAND WITH INCIDENTAL RESIDENTIAL DWELLINGS (OTHER THAN, COMMERCIAL RESIDENTIAL PREMISES)

Residential land that meets the following criteria will be considered to be developed commercial land and subject to the relevant commercial land thresholds if:

- the land has commercial buildings; and
- the area of land that is residential land (excluding any commercial residential premises) is less than 10 per cent of the total area of the land, based on a reasonable assessment; and
- the value of the land that is residential land (excluding any commercial residential premises) is less than 10 per cent of the total value of the land, based on a reasonable assessment.

Commercial residential premises has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999*. For further information, see [Guidance Note 15](#).

For purposes other than thresholds (for example, when considering if the acquisition would be otherwise contrary to the national interest), in some cases the proportion of residential land to commercial land may be higher than the criteria outlined above, and still be considered incidental to the commercial land.

Similar treatment applies for aged care facilities, retirement villages and certain forms of student accommodation, see [Guidance Note 15](#) for more information.

Example 2

Danielle is a foreign person who is seeking to acquire a highway roadhouse business that services large road trains and the general public. There is a modest residential dwelling attached to the title for the roadhouse which is being used as the business operator's residence. Danielle intends to continue to operate the business and retain the dwelling for the manager's use. The dwelling is of low value compared to the roadhouse facilities and could reasonably be assessed as less than 10 per cent of the total value of the land. However, it is of medium size and would reasonably be assessed as more than 10 per cent of the land. As such, the residential dwelling is not considered incidental and the acquisition will be subject to the residential land threshold value of nil dollars. So Danielle needs to notify and seek prior approval. However, when considering if the proposed acquisition of the land is contrary to the national interest, the dwelling may be considered as incidental to the commercial land and a no

objection notification given (with or without conditions).

MULTIPLE LAND TYPE ACQUISITIONS BY TITLE

Some acquisitions of interests in land will involve multiple titles with a different type of land on each title. In these cases, whether a foreign person is required to notify and receive a no objection notification, and the relevant application fee, will be determined on a title-by-title basis.

Example 3

Sebastian is a foreign person proposing to acquire an interest in a dwelling in an apartment complex. The proposal includes acquiring an interest in the title for the dwelling, as well as an interest in the title for a parking space in the complex's basement car park. Sebastian would generally be required to notify and receive a no objection notification for the proposed acquisition of the interest in the residential dwelling, which has a zero dollar threshold, while the proposed acquisition of the basement parking space would be subject to the relevant developed commercial land threshold. For more information, see [Guidance Note 14](#).

FEES

An application to acquire an interest Australian land will not be considered until the relevant application fee has been paid in full.

The fee payable on application for mixed use land will be determined by the highest fee that would be payable for each individual notifiable action.

For more information on the fees applying to foreign investment applications, see [Guidance Note 29](#) (residential land fees) and [Guidance Note 30](#) (business fees).

PENALTIES

Strict penalties (including civil and criminal penalties) may apply for breaches of Australia's foreign investment rules.

FURTHER INFORMATION

Further information is available on the [FIRB website](#) or by contacting +61 2 6263 3795.

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.