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# Purpose

1. This Guideline provides information relevant to determining if vacant land, or an **unoccupied** commercial lot at the ground level of a building is ‘activated’ for the purposes of section 4 of the *Property Activation Act 2019* (PAA).
2. Satisfying the activation requirements of the PAA allows a property owner of such a lot to be exempt from the levy under the PAA for the period of activation.
3. Owners of vacant land or unoccupied commercial lots are required to lodge returns setting out whether their properties are activated for the purposes of the levy. These returns are to be lodged through the Territory Revenue Office via the [INTRA system](https://treasury.nt.gov.au/dtf/revenue/intra), accessible on the Territory Revenue Office website.
4. The levy does not apply to residential property regardless of whether it is occupied or activated.
5. This Guideline is issued by the Commissioner of Territory Revenue (Commissioner) under section 18 of the PAA.

#  How is a lot activated?

1. Activation consists of two requirements under the PAA. A lot will be activated where both of these requirements are met.
2. A lot is activated if the lot is both:
	1. utilised in a manner that does not detract from the amenity of any other part of the levy area
	2. maintained to an adequate standard.
3. This Guideline sets out relevant considerations in respect of each of these requirements.

# Does the property detract from the amenity of the levy area?

## What is the amenity of the levy area?

1. For the PAA, ‘amenity’ takes its meaning from the *Planning Act 1999*, to mean “*any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable*” in relation to a locality or building.
2. Amenity may change depending on the lot and its surrounding area. Amenity may also change over time, particularly if lots are developed, repurposed or rezoned, or community sentiments and expectations change.
3. Broadly, amenity refers to the wide range of factors and attributes that contribute to the enjoyment of an area and quality of life of residents and visitors.

## Factors taken into account in determining impacts on amenity

1. There is no fixed test for what constitutes amenity, however some of the factors which may be relevant to determining the impact of a lot on the amenity of the levy area are set out below. These factors are not determinative in isolation, but instead should be considered as part of the overall amenity in efforts to achieve activation of a lot.
	1. **Visual appearance** – the primary contributor to the amenity of an area will be the overall standard of the site’s appearance to the public and neighbouring lots. A site with amenity will be visually agreeable to passers-by and surrounding residents, whereas an eyesore site will detract from the amenity of the levy area.

Improving the appearance of a site to benefit the broader community can be achieved by introducing positive elements such as landscape gardening or artistic installations or by mitigating the effect of unattractive elements through rectification and maintenance works or screening.

* 1. **Cohesion with surrounding properties** – to contribute to the amenity of the levy area, a lot should complement its surroundings. Cohesion depends on the lot locality and use of properties in the area. For example, a lot in a retail site may seek to maximise cohesion with its retail environment by facilitating continuous pedestrian flows, improving marketability through facades and lighting. Lots in other areas, such as large vacant land sites on the outskirts of the levy area with fewer surrounding buildings, may have less focus on facilitating pedestrian flows but instead improve the amenity of the city for passing road traffic and surrounding residential communities.
	2. **Landscaping and vegetation** – can play an important role in contributing to the amenity. Appropriately vegetated urban spaces can significantly improve the visual appearance of a site. Greening a site can also prevent a lot detracting from the amenity of the area through heat mitigation, and reduction of dust generation, soil erosion and noise pollution.

A lot is not required to be densely vegetated or comprehensively landscaped, provided the greening works are appropriate in the context of the site and are cared for on an ongoing basis.

A lot containing vegetation that is overgrown, not maintained or otherwise unsightly detracts from the amenity of the area would not be activated for the purpose of the levy.

* 1. **Community recreational facilities** – recreational activities promote physical and mental health related benefits for individuals and foster social bonds in communities. Such facilities may include individual or group exercise areas, outdoor installations on vacant land and designated rooms for community groups or classes in buildings.

The provision or facilitation of suitable facilities or services for use by the community is a way to contribute to the amenity of the CBD, without requiring substantive redevelopment of a site.

* 1. **Cultural, heritage or other significant features** – the presence of historical buildings or displays to promote the Darwin CBD and Northern Territory are relevant for activation purposes. While some sites have intrinsic historical value, property owners of other sites may also use their land or buildings to provide information or displays to contribute to the character of the levy area. Such activities may provide valuable additions to encourage tourism in the city and improve visitor experience.

The presence of any historical site, site maintenance (noting restrictions around any heritage listed building), and efforts to educate or otherwise engage the public about the CBD and Territory’s cultural or natural heritage are to be taken into account.

* 1. **Climate** – ambient climate factors in Darwin’s tropical environment such as temperature, sunshine, rainfall and wind impact on the comfort of CBD pedestrians and cooling initiatives can improve the pedestrian experience. Measures to mitigate the impacts of heat and weather, through shade, walkways (where located on the lot), shelter from wet season storms and green areas are likely to contribute to the amenity of the levy area.
	2. Public safety and accessibility–as health and safety can be negatively affected by inappropriate development or land use, it is critical that public safety and accessibility are considered as part of the amenity of the levy area. Safety can be promoted in a number of ways, including adhering to crime prevention through environmental design principles. These principles are encompassed in the Community Safety Design Guide published by the Department of Infrastructure, Planning and Logistics.

Considerations include avoiding hidden spaces, promoting foot traffic and passive surveillance through adequate levels of permeability, encouraging people to care and respond to situations if appropriate. Sites which implement strong environmental design concepts are less likely to facilitate anti‑social behaviour and may improve the amenity of nearby sites.

* 1. **Construction and development** – development activity can have a negative impact on the amenity of an area during the construction phase. However where development occurs in a timely manner, in conformity with all appropriate planning, building and other rules, it is acknowledged that it will contribute to economic activity during the construction phase, and will eventually improve the amenity of the city through the addition of new or improved buildings once completed. The negative impacts of construction work will therefore typically be disregarded, on the basis that they are short‑term only and are in pursuance of a genuine improvement to the lot or levy area.

Accordingly, lots with a current development permit and displaying tangible construction progress will be activated for the PAA.

However, lots on which construction has stalled, or where there is only nominal activity will generally be considered to have a negative impact the amenity of the levy area will not be activated for the PAA unless other factors, such as those set out above, are present.

# Is the property maintained to an adequate standard?

1. Lots in the levy area need to be maintained on an ongoing basis in order to be activated. This means there is an obligation on the property owner to not merely implement activation measures, but also to continue to maintain the property to an adequate standard.
2. This phrase takes its general meaning that, having regard to the overall condition of the property, the lot may be considered by the average person to be in a reasonable state of repair, maintenance or upkeep.
3. Short periods of low maintenance may be acceptable in some circumstances, especially if there are special factors beyond the property owner’s control, such as extreme conditions (including cyclones, fires or vandalism) causing substantial damage, debris or hampering clean‑up efforts. However, where a property is not maintained for a prolonged basis, the lot will not be activated regardless of the use to which it is put.
4. Depending on the type of property, maintenance requirements include:
	1. cleaning and removal of rubbish and debris
	2. painting and making good of façades and awnings
	3. rectification of vandalism
	4. repair of wear and tear or other visible defects
	5. upkeep of landscaping and vegetation, including irrigation, mowing and pruning works
	6. removal or control of weeds and pests
	7. addressing all relevant health and safety issues
	8. keeping properties neat, tidy and secure.
5. In the event that a property is not maintained to an adequate standard, the property will not be activated.
6. Factors that may result in a site failing to be maintained to an adequate standard include:
	1. Vacant land

A site contains litter and dead or overgrown vegetation and weeds. Bitumen or concrete is broken, uneven or weathered. The fencing may be warped, rusted or damaged for extended periods without being repaired. Bare earth is not covered. Waste materials are stored on‑site on an ad‑hoc basis.

* 1. Unoccupied commercial building

The building has peeling, weathered and/or substantially faded paint. Rectification, maintenance or new fit‑out works have not been completed after the last tenancy ended. Mould or rust is easily visible on the outside. Panels on facades or windows are broken or missing. The site is not cleaned, with cobwebs and dust covering visible areas. Miscellaneous items or goods are stored on‑site on an ad‑hoc basis.

# Examples of activation options

1. Example 1 – Vacant land
	1. A site is vacant land with a chain‑link fence. The site has broken concrete or bitumen, overgrown weeds and debris. As the site is not maintained and detracts from the amenity of the CBD, the site is not activated.

Example of activation option – landscaping

* 1. The owner of the site removes the broken bitumen and weeds from the property. Lawn is laid over the site and other landscaping works are undertaken to improve the overall appearance of the site. The existing chain‑link fence is kept as each neighbouring property has the same style of fence, the fence is in good repair and the fence allows permeability and visibility to the landscaped site.
	2. Due to the landscaping, the site no longer detracts from the amenity of the levy area and is activated. The chain‑link fence is appropriate in the circumstances of the lot and there is no requirement to replace the fence. The owner is only required to continue to maintain the property, such as by ensuring adequate watering and weeding.

Example of activation option – appropriate fencing and screening

* 1. Instead of landscaping the site, the property owner undertakes rectification works to the verge of the property and installs an architecturally designed and artistically significant fence. Due to its design, the fence is visually attractive in its own right and generally obscures the remainder of lot from public view.
	2. As the fence contributes to a positive visual experience, and the verge of the property is maintained, the property does not detract from the amenity of the levy area and is activated. The owner is required to adequately maintain the fence and verge of their lot, but is not required to undertake any substantial landscaping works on the remainder of the site provided that it remains reasonably neat and tidy.
	3. However, if the owner instead merely installed a basic corrugated iron or flat‑panel colour bond fence with no architectural or artistic significance, the lot would not be activated as the existence of a large blank panel fence detracts from the amenity of the levy area. Such fencing, while structurally adequate, detracts from the amenity of the levy area by creating an area devoid of interest to passers‑by.

Example of activation option – make site open to a public or specific use

* 1. Instead of fencing or landscaping, rectification works are undertaken on the site to bring it to a safe standard for public use. Basic headworks or facilities are installed to allow the site to be opened as a market site, garden or some other use. These rectification works and specific uses mean the site no longer detracts from the amenity of the levy area and is activated for the purposes of the levy.
	2. Note: in considering these options, property owners are not required to open their site to the public. This may not be appropriate for various reasons in the context of any specific site. Property owners are encouraged to consider options that suit their property in choosing an activation option.
1. Example 2 – Vacant land – site under construction
	1. A site is an excavated construction site surrounded by panel fencing as required for safety and planning reasons.
	2. As set out above, where a site is under active construction, the site will be activated for the purposes of the levy.
	3. If however the site is left idle or only nominal construction work is occurring, the site will not be activated unless some other works are undertaken to prevent the property from detracting from the amenity of the levy area, in addition to the property owner maintaining the lot to an adequate standard.
2. Example 3 – Vacant land – ground‑level car‑park
	1. A site which is used (and permitted to be used) as a ground‑level car park prior to the commencement of the levy will be activated while that use continues.
	2. A site where the property owner is seeking to install a new ground‑level car park must comply with all planning and other approvals associated with this change in use of the site. The factors set out in this guideline will also apply and must be met for the site to be activated. Merely allowing cars to park on‑site will not be sufficient for the lot to be activated for the levy.
3. Example 4 – Unoccupied commercial building
	1. A commercial building is unoccupied. The building has no material fit‑out and bare glass windows, allowing easy visibility to the empty space. The outside of the building is in poor repair, with damaged sections, weathered paint and dust easily visible from the outside.

Example of activation option – installation of graphics and/or displays

* 1. The outside of the site is painted and cleaned. The damaged areas are repaired. The windows are covered by window dressing, facades or displays that are vibrant and appropriate in the context of the levy area. Some open window space is maintained to allow prospective lessees see into the site from the outside.
	2. The site is activated as the façade or display obscures the lack of an internal fit‑out and causes the property to no longer detract from the amenity of the levy area. The owner is required to continue to maintain the property, however further work on the inside of the building is not required. The minor open spaces to allow prospective lessees to see into the site is appropriate in the context of the building and does not cause the building to cease to be activated.
	3. If the façade was not visually attractive, and, for example, merely consisted of curtains, blank screens, blinds or frosting, or the site is shuttered or boarded shut, the property would not be activated. This is because significant blank spaces are visually unattractive and detract from the amenity of the levy area. Likewise, a site with displays that are inappropriate in the context of the levy area, such as offensive displays or displays that are seasonal but are not updated over time, detract from the amenity of the levy area and the building will not be activated.

# Opinions on proposals to activate

1. The PAA also allows property owners to seek an opinion on whether a proposal to activate a lot will cause the lot to be activated. Where the Commissioner provides an opinion in support of the proposal, and the proposal is implemented in accordance with the opinion, the site will be activated subject to the requirement for ongoing maintenance.

# Commissioner’s Guidelines

1. Commissioner’s Guideline [CG-GEN-001](https://treasury.nt.gov.au/__data/assets/word_doc/0006/480984/CG-GEN-001.docx), which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Circulars and Guidelines are available from the TRO website.

# Date of effect

1. This version of the Guideline takes effect from 1 July 2019.



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### COMMISSIONER OF TERRITORY REVENUE

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