Industry Submission – December 2017

Garden Area Requirements (GAR)

Position Summary

The State Government introduced the Garden Area Requirement (GAR) in March 2017 with the intention of maintaining the green open character of neighbourhoods. While the UDIA recognises the importance of maintaining the green open character of suburbs, we harbour significant concerns about the unintended implications that have presented themselves through implementation of the GAR.

Key Issues

1. Application of the GAR:

The requirements as they are set out in Cl32.08-3/ Cl32.09-3 Subdivision and Cl32.08-4/ Cl32.09-4 Construction or extension of a dwelling or residential building are inconsistent and unclear. The provisions under Subdivision require that when a vacant lot less than 400 square metres is created, 25% of the lot must be garden area. However:

- There are no equivalent provisions when constructing a dwelling – lots less than 400 square metres are excluded; and
- Where the parent lot is greater than 650 square metres, 35% of the lot area should be set aside as garden area. It is unclear which one applies.

2. Definition of the GAR:

The definition of 'garden area' under Clause 72 is ambiguous and open to interpretation. Furthermore, it excludes land that is outdoor but subject to an overhang from the floor above which may be required to achieve passive solar design objectives. The definition of 'garden area', particularly in relation to the exclusion of roofed areas, is therefore both unclear and problematic.

3. Enforcement of the GAR:

Clauses 32.08-4 and 32.09-4 require that a lot must provide the minimum garden area in accordance with the relevant tables, regardless of whether a planning permit is required. It is unclear how this will be enforced without a planning permit mechanism and whether it is assumed that building surveyors will fulfill this role. Furthermore, the mandatory nature of the garden area requirements prevents a proper site contextual analysis of a development proposal. If it is to be implemented, the GAR needs to be done so on a discretionary basis, where the necessity of this character control can be considered within the appropriate context.

4. GAR trigger points:

There is considerable confusion as to when, and the process to which, these garden area provisions are attached to. There are three alternative scenarios in a medium density setting, each with different levels of clarity.

5. Implications of the GAR

The garden area requirements have the potential to stifle innovative housing proposals and are a threat to a legitimately accepted and preferred form of living for a broadening range of households, for example dwellings where balconies are the principal secluded private open space above ground level.

UDIA Recommendations

1. Clarify the definition – This is an urgent requirement to enable the design (and potentially redesign) of house and land packages and provide certainty about what type of outdoor space can be confidently included in the calculation of the garden area requirement. Critically, UDIA suggests allowing outdoor areas subject to an overhang from a balcony, eave or floor above to be included in the garden area calculation assuming it is not an enclosed space.

2. Clarify how GAR applies to residential subdivisions where the parent lot is greater than 650 square metres and the proposed subdivided lots are less than 400 square metres – This is urgently required to enable the design of residential subdivisions to proceed with confidence and bring land to market in a timely manner.

3. Clarify how the GAR will be enforced where a planning permit is not required – UDIA suggests a GAR is included in Part 4 of the Victoria Building Regulations 2006 which will enable building surveyors to enforce it when issuing a building permit.

4. Clarify whether the transitional provisions apply to planning permit amendments or applications for secondary consent to amend an existing planning permit where the permit was issued prior to the approval date of VC110, which would otherwise be exempt from the requirements.

About Us

Urban Development Institute of Australia (Victoria)

The Urban Development Institute of Australia (UDIA) is the peak industry body for the urban development sector. In Victoria alone, we represent the collective views of over 320 member companies including developers, consultants, financial institutions, suppliers, government authorities and utilities. Together we drive industry discussion and debate, which serves to assist key regulators and all levels of government in achieving successful planning, infrastructure, affordability and environmental outcomes.

Contact

Hyatt Nidam Advocacy and Communications Manager Urban Development Institute of Australia (VIC) E: hyatt@udiavic.com.au	Olivia O'Connor Policy Advisor Urban Development Institute of Australia (VIC) E: olivia@udiavic.com.au
General Policy Enquiries E: policy@udiavic.com.au	

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Definition of the GAR

The definition of garden area regulations (GAR) needs to be clarified, particularly, in relation to the exclusion of roofed areas. For example, UDIA questions why an area under a balcony that projects beyond the building facade over a ground level garden space should result in the area beneath the balcony from being excluded. Similarly, it is not logical that an area under eaves or where there are cantilevered sections of a building above the ground level be excluded.

Implications of the GAR

The provisions of the GAR as they are currently articulated are likely to have the following implications:

- Delays in bringing serviced, subdivided residential land to market due to uncertainty about how to apply the provisions to residential subdivisions, especially those where the parent lot is greater than 650 square metres and the subdivided lots are less than 400 square metres;
- Delays in obtaining planning permits for dwellings on subdivided lots due to uncertainty about how to calculate the GAR;
- Councils applying Section 173 Agreements (S173) to certificates of title for residential subdivision to enforce the GAR where a building envelope is not appropriate or not required. Councils generally require the applicant to pay the costs of preparing and giving effect to a S173 agreement;
- Applications to VCAT to appeal council decisions due to the overall uncertainty about how to apply the GAR and the scope for discretion in how they are interpreted; and
- Restrictions on affordable development of necessary medium-density development, i.e. 2-bedroom townhouses (please see studies on pages 7-11).

All of these outcomes will result in project delays, an increase in holding costs, and a higher cost to the end purchaser of these housing products.

Recommendations

- Provide clarity about the definition of garden area;
- Ensure consistency between the requirements of Cl32.08-3/ Cl32.09-3 Subdivision and Cl32.08-4/ Cl32.09-4 construction or extension of a dwelling or residential building; and
- Clarify how the requirements under Cl32.08-3/ Cl32.09-3 Subdivision should be applied where the parent lot is greater than 650 square metres and the subdivided lots are less than 400 square metres.

Enforcement of the GAR

Another issue is where a subdivision might propose a subdivision of lots greater than 400 square meters. There is uncertainty as to whether the garden area provisions apply to each individual lot and how those garden areas are to be enforced, for example, in terms of a restriction. If the GAR were to be enforced in the case of a restriction, that then raises the question as to whether there the restriction should lapse on completion of a development on each lot or whether the restriction should continue inperpetuity.

As the garden area requirements are mandatory, they prevent a proper site contextual analysis of a development proposal. For example, where clear that the character of an area does not include a garden area as sought to be protected by the control, the mandatory nature of the control means that it has to be applied even though it does not achieve any character outcomes.
Industry recommendation is that the GAR not be used as a character control that implies all suburbs under its mandate have special or unique qualities that require protection. If the GAR is to be enforced, UDIA strongly suggests this is as a discretionary control that can be assessed within a context, not applied as a blanket rule.

Trigger Points of the GAR

There is considerable confusion as to when, and the process to which, these garden area provisions are attached to. For example, in a medium density scenario, there are three alternatives:

a. An application for the development of land for a medium density development without a concurrent subdivision application;

b. An application from the development of land for a medium density development with a concurrent planning permit application for subdivision; and

c. The subdivision of vacant land intended for further residential development.

In the first scenario, it is reasonably clear that the garden area requirement applies to the whole of the lot. Therefore, even though subdivision might follow the garden area requirement is not to be applied to which lot that might be assumed to be created once the development is completed.

In the second scenario, it is not as clear because there is a subdivision proposal as well as a medium density development proposal before the Responsible Authority. In those circumstances, a Responsible Authority might say that it is entitled to apply the garden area requirements to each lot that would be created upon completion of the development. This issue needs to be clarified.

In the third scenario, an issue has arisen as to what constitutes an equivalent strategic plan. For example, there is ambiguity around whether a development plan for a single site is the equivalent of a Precinct Structure Plan (PSP) which of itself is not defined.

Transitional Arrangements

Under Clause 32.08-14 and Clause 32.09-14, transitional provisions apply to exempt the following from the GAR:

- A planning permit application for the construction or extension of a dwelling or residential building lodged before the approval date of Amendment VC110; and
- A planning permit application to subdivide land for a dwelling or a residential building lodged before the approval date of Amendment VC110.

An existing planning permit is obviously exempt, however it is not clear whether an application to amend a planning permit or an application for secondary consent to make a minor amendment to a planning permit are also exempt.

There is a risk councils will arbitrarily decide whether they consider any applications to amend an existing planning permit a "new" application and therefore require compliance with the provisions of the GAR. This could have the effect of requiring a full redesign of residential subdivisions and any associated dwellings.
Clarity is required as to the transitional provisions and it is submitted that they should not apply to an amendment to an existing permit whether under S72 or S87(A) or indeed by way of secondary consent.

Recommendation

Include any applications to amend an existing planning permit under the transitional provisions and exempt them from the GAR.

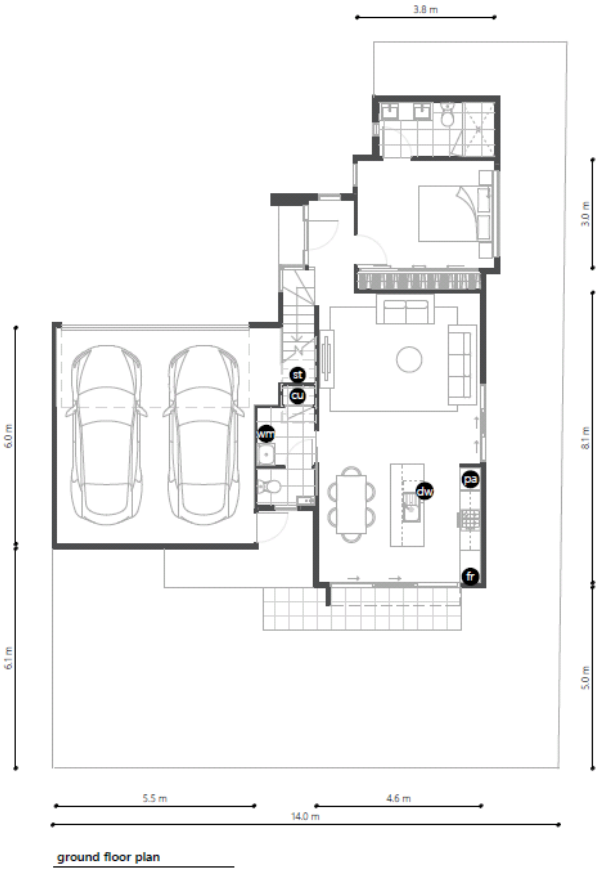
Case Study: Townhouses under the GAR

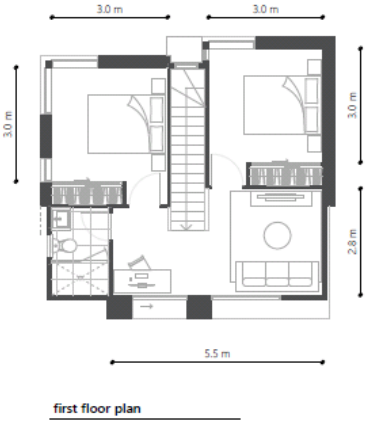
There are two distinct typologies of townhouses across Melbourne: traditional living townhouses and reverse living townhouses.

Traditional Living Townhouse Characteristics

A traditional living townhouse is a low-medium density typology which typically provides living space at ground level, in addition to utilities, parking space, and garden area, thus making it larger in form. This typology closely resembles more conventional, free-standing homes in both character and function.

This typology demands larger land footprint than a reverse living townhouse, thus is usually found in quiet neighbourhood areas which caters to established families, those purchasing their second or third dwelling, or whom can otherwise afford them.



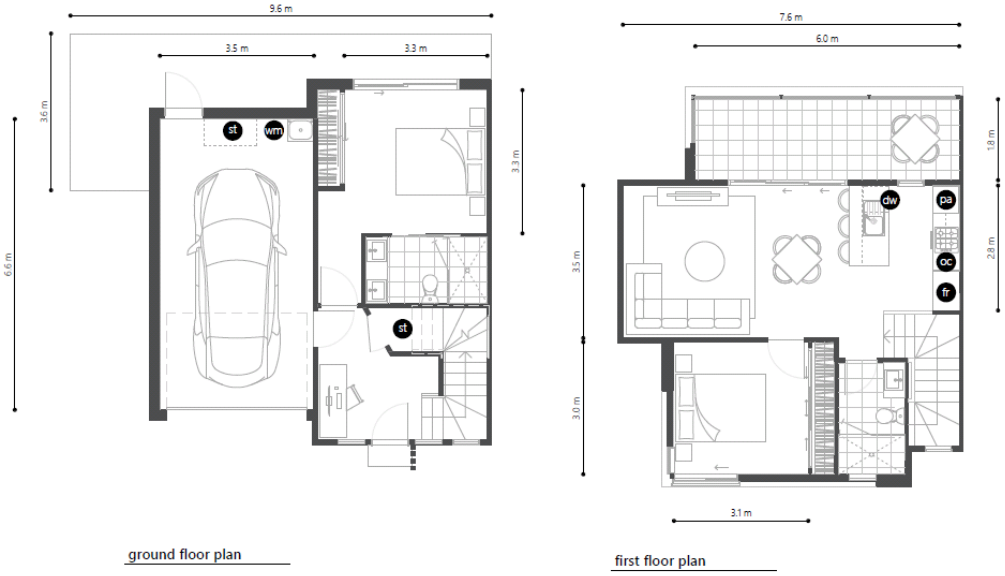


Reverse Living Townhouse Characteristics

A reverse living townhouse is a hybrid between an apartment and a regular home. Due to a having a much smaller land footprint, they are more affordable than traditional living townhouses, yet still on a freehold land title.

Reverse living townhouses will usually be made up of two levels, but can easily include a third level where context and policy deem it suitable. Living spaces are placed on the first floor and become the centre, or 'hub' of the dwelling and serve as a connection between bedrooms, a balcony for open space and ground level access/utilities/car parking.

Reverse living townhouses are well-suited to locations close to activity centres and amenities such as public transport, shops, employment, and public open space.



Case Studies

The following case studies (based on genuine site considerations when assessing development feasibility) illustrate the unintended consequences associated with implementation of the GAR, particularly with respect to the delivery of reverse living townhouses in the GRZ.

Each case study demonstrates how the GAR being applied within the GRZ, effectively encourages the development of higher-end townhouses (3-4 bedroom traditional living dwellings), while discouraging the development of more affordable townhouses (2-bedroom reverse living dwellings).

The case studies are based on the following definitions:

Pre-GAR

This scenario shows medium density townhouse development as was typical prior to the introduction of the garden controls. The designs utilise a reverse living housing typology. For simplicity all typology is a two level 2-bedroom reverse living configuration, however in reality 3-bedroom reverse living would also have been proposed where suitable.

Post-GAR

Low-medium density townhouse development designed to comply with garden controls. The designs utilise a traditional living housing typology driven by the need for greater ground level open space. The designs shown for each case study are currently the most commercially viable townhouse outcome for the site.

Case Study 1: Mordialloc

SCENARIO 1: Pre-GAR

LAND SIZE: 653m2

TYPOLOGY: 5 x 2 bed reverse living townhouses

AVERAGE SALE PRICE: $650,000 per dwelling

SCENARIO 2: Post-GAR

LAND SIZE: 653m2

TYPOLOGY: 2 x 3 bed traditional living townhouses

AVERAGE SALE PRICE: $1,200,000 per dwelling

Why this configuration?
A third dwelling will not fit under the GAR. This is therefore the most profitable development for this site.

RESULT OF GAR ON THIS SITE:

- Average sale price increases by $550,000 per dwelling
- Number of dwellings delivered reduces by 3

Case Study 2: Footscray

SCENARIO 1: Pre-GAR

LAND SIZE: 1586m2

TYPOLOGY: 11 x 2 bed reverse living townhouses
AVERAGE SALE PRICE: $620,000 per dwelling

SCENARIO 2: Post-GAR

LAND SIZE: 1586m2

TYPOLOGY: 6 x 3 bed traditional living townhouses

AVERAGE SALE PRICE: $770,000 per dwelling

Why this configuration?
This is the most profitable development for this site.

RESULT OF GAR ON THIS SITE:

- Average sale price increases by $150,000 per dwelling
- Number of dwellings delivered reduces by 5

Case Study 3: Clayton

SCENARIO 1: Pre-GAR

LAND SIZE: 3513m2

TYPOLOGY: 33 x 2 bed reverse living townhouses

AVERAGE SALE PRICE: $600,000 per dwelling

SCENARIO 2: Post-GAR

LAND SIZE: 3513m2

TYPOLOGY: 17 x 3 bed traditional living townhouses

AVERAGE SALE PRICE: $790,000 per dwelling

Why this configuration?
This is the most efficient way to meet the garden area controls having regard to the irregular shape of the lot.

RESULT OF GAR ON THIS SITE:

- Average sale price increases by $190,000 per dwelling
- Number of dwellings delivered reduces by 16

Additional Comments

Why a shift from reverse living?

As demonstrated by the case studies, the introduction of the garden area requirements results in lots having to contain a far greater amount of outdoor space. Applying the reverse living typology to a larger lot results in a mismatched house and land combination. Whilst a reverse living townhouse is an appealing prospect for those who seek an affordable dwelling on a compact block, the increased land area drives up the sale price and the additional land is of little value to the occupier as it has no connection to the elevated living space. As a result, the dwelling must have its living space brought down to ground level and naturally becomes larger and more proportionate to the lot size.

Why no 2-bedroom dwellings?

As can be seen on the diagram below, once the GAR has been applied to a lot, a developer can increase the width of the garage by 2 metres to include a second car space. 3-4 bedrooms can then be built on top of the now larger garage. Construction costs from a 2 bedroom to a 3-bedroom townhouse have increased significantly. It therefore makes commercial sense for developers to opt for a 3-4 bedroom typology rather than the 2-bedroom typology.