Industry Submission

Garden Area Requirements and Reformed Residential Zones

SUMMARY

1. Position Summary

The State Government introduced the Garden Area Requirement (GAR) in March this year with the intention of maintaining the green open character of neighbourhoods.

In principle, the Institute supports this objective, however we have three key concerns relating to the design and implementation of the new requirements. These are set out below.

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. Which one applies?

2. Definition of the GAR:
   The definition of "garden area" under Clause 72 is ambiguous and open to interpretation. Further, 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.

3. Enforcement of the GAR:
   Clause 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.

2. Recommendations

The Institute recommends that:

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, the Institute 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 this 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. Again, 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. We

suggest 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.

5. Include in Cl 54 or 55 – I suspect Govt unlikely to support this because:

    - Cl 54 will capture all lots less than 300 m2 which in theory are excluded from the GAR.
    - Cl 54 will capture some lots 300-500m2 depending on council requirements, only those over 400m2 need to comply.
    - Cl55 applies to residential buildings and two or more dwellings on a lot (which will likely be subdivided). Both trigger a planning permit. Could include the requirements here but it wouldn't capture subdivision and single dwellings.
    - This approach does not capture subdivisions.

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ABOUT US

Urban Development Institute of Australia (Victoria)

The Urban Development Institute of Australia (Institute) is the peak industry body for the urban development sector. In Victoria, we provide over 320 member companies with the benefits of policy and advocacy, industry intelligence, networking and business building.

Our members include developers, consultants, financial institutions, suppliers, government authorities and utilities. Together we drive industry discussion and debate and inform all levels of government to achieve successful planning, infrastructure, affordability and environmental outcomes.

1. Implications of the Garden Area Requirement

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 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.

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.
- 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.

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2. 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.
- 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 exempted, 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 exempted.

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.

Recommendation

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