

Applying the minimum garden area requirement

Planning Practice Note 84

MAY 2018

This practice note gives guidance about the operation of the minimum garden area requirement in the Neighbourhood Residential Zone and General Residential Zone.

What is the minimum garden area requirement?

The minimum garden area requirement forms part of the Government's response to the recommendations of the Managing Residential Development Advisory Committee (July 2016).

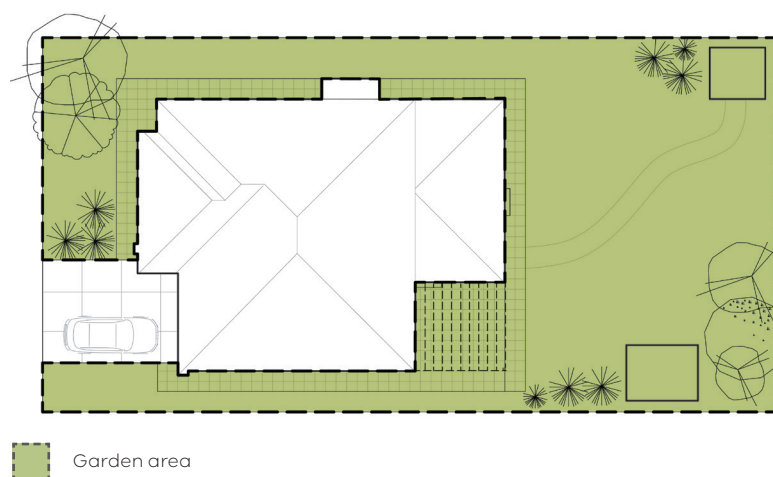
The minimum garden area requirement specifies the percentage of a lot that must be set aside to ensure the open garden character of suburbs is protected.

A dwelling or residential building, including any associated driveway and car parking cannot be included in the area set aside as garden area.

Where does it apply?

The minimum garden area requirement applies to land in the Neighbourhood Residential Zone and General Residential Zone and must be met when:

- constructing or extending a dwelling or a residential building; or
- subdividing land to create a vacant residential lot less than 400 square metres in area.





How much garden area must be provided?

When subdividing land that creates a vacant lot that is capable of being developed for a dwelling or a residential building in the Neighbourhood Residential Zone or General Residential Zone, 25 percent must be set aside as garden area on each vacant lot created that is less than 400 square metres in area.

When constructing or extending a dwelling or a residential building in the Neighbourhood Residential Zone or General Residential Zone the size of the existing lot determines the minimum percentage of the lot that must be set aside as garden area.

Lot size	Minimum percentage of a lot set aside as garden area
400 – 500 sqm	25%
Above 500 – 650 sqm	30%
Above 650 sqm	35%

How is garden area defined?

Garden area is defined in Clause 72 of all planning schemes as:

Garden area

Any area on a lot with a minimum dimension of 1 metre that does not include:

- a) a dwelling or residential building, except for:
 - an eave, fascia or gutter that does not exceed a total width of 600mm;
 - a pergola;
 - unroofed terraces, patios, decks, steps or landings less than 800mm in height;
 - a basement that does not project above ground level;
 - any outbuilding that does not exceed a gross floor area of 10 square metres; and
 - domestic services normal to a dwelling or residential building;
- b) a driveway; or
- c) an area set aside for car parking.

Why are some buildings, works and hard surface areas allowed to be included in the garden area?

The minimum garden area requirement allows the construction of buildings and works that are typically associated with the use and enjoyment of the outdoor areas of a dwelling or residential building.

Consequently, outbuildings and structures such as garden sheds, covered barbeque areas, swimming pools, tennis courts and paved areas including pathways and outdoor entertaining areas can be included in the garden area.



Other relevant planning definitions

A number of land use and general definitions in Clauses 72 and 74 of all planning schemes are also relevant when applying the minimum garden area requirement:

Dwelling A building used as a self-contained residence which must include: a) a kitchen sink; b) food preparation facilities; c) a bath or shower; and d) a closet pan and wash basin. It includes outbuildings and works normal to a dwelling.	Residential Building Land used to accommodate persons, but does not include camping and caravan park, corrective institution, dependent person's unit, dwelling, group accommodation, host farm, residential village or retirement village.
Domestic services normal to a dwelling A domestic appliance or apparatus that is normal to and services a dwelling. It includes disabled access ramps and handrails, an air conditioner, cooling or heating system, a hot water service, security systems and cameras, shade sails, a barbeque, downpipes and flues, a skylight, security screens, and the like.	Basement A storey below ground level, or that projects no more than 1.2 metres above ground level.
Ground level The natural level of a site at any point.	Lot A part (consisting of one or more pieces) of any land except a road, a reserve, or common property) shown on a plan, which can be disposed of separately and includes a unit or accessory unit on a registered plan of strata subdivision and a lot or accessory lot on a registered cluster plan.

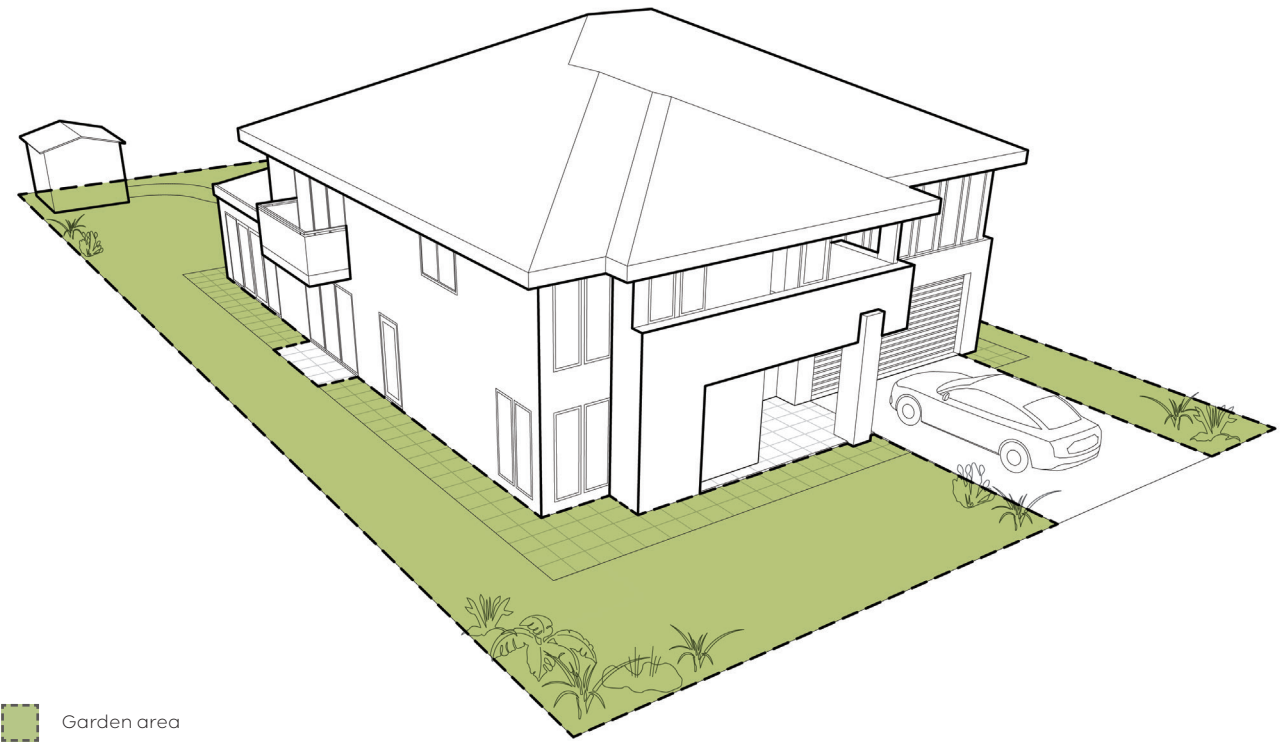


Garden area inclusions and exclusions

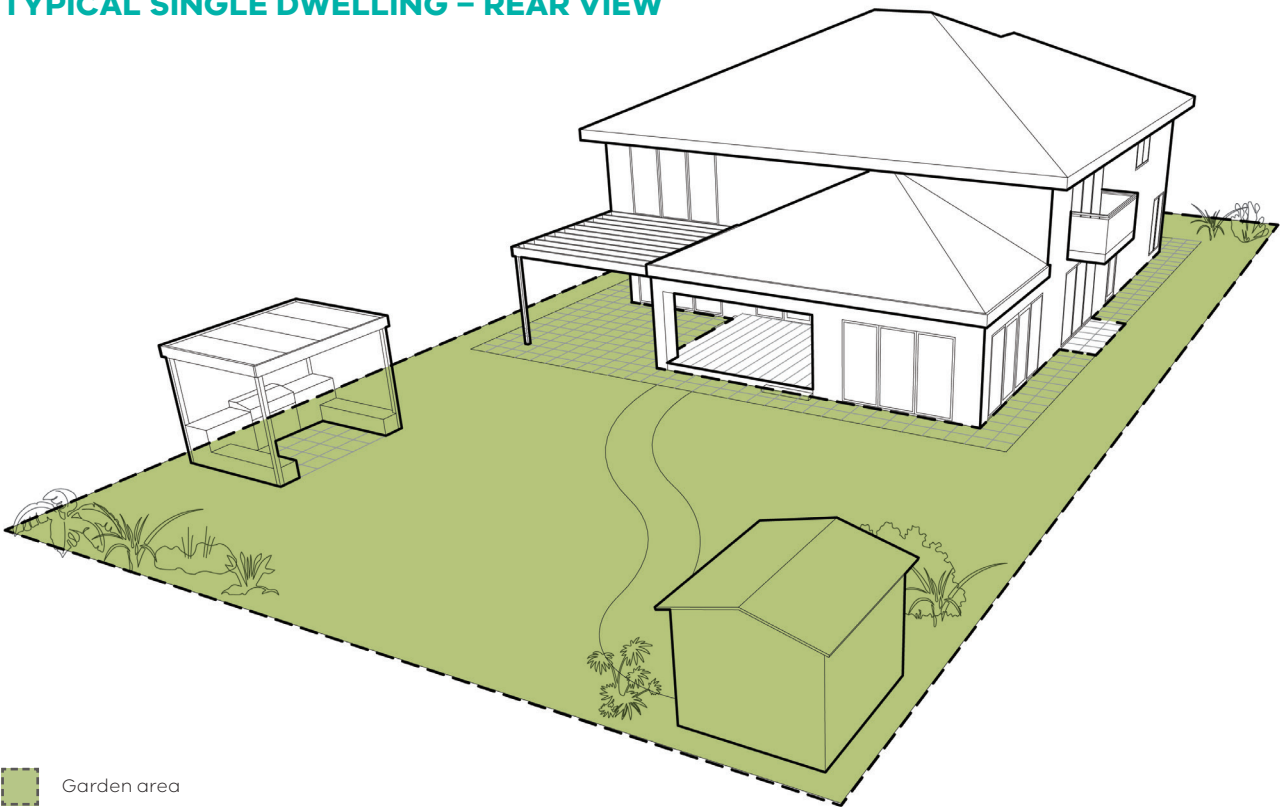
What can be included in the garden area?	What is excluded from the garden area?
<ul style="list-style-type: none">• The width of any eave, fascia or gutter of a dwelling that does not exceed a total width of 600mm• A pergola• Unroofed terraces, patios, decks, steps or landings less than 800mm in height• A basement that does not project above ground level• Any outbuilding that does not exceed a gross floor area of 10 square metres such as:<ul style="list-style-type: none">• A garden shed• A gazebo• An arbor• A pool house• A green house• A covered barbeque area• Domestic services normal to a dwelling or residential building including:<ul style="list-style-type: none">• Sunblinds and shade sails• Flues and pipes• Domestic fuel tanks and water tanks, heating and cooling equipment and other services• Waste receptacle enclosures• Letterboxes• Other structures:<ul style="list-style-type: none">• A swimming pool or spa• A tennis court• A retaining wall• A fence• A paved area• A private bushfire shelter	<ul style="list-style-type: none">• A dwelling (including any roofed outdoor area forming part of the dwelling)• A basement that projects above ground level• Any area set aside as a driveway providing vehicle access to car parking• Any uncovered or covered car parking including a garage and carport• Any area that has a dimension of less than 1 metre



TYPICAL SINGLE DWELLING – FRONT VIEW



TYPICAL SINGLE DWELLING – REAR VIEW

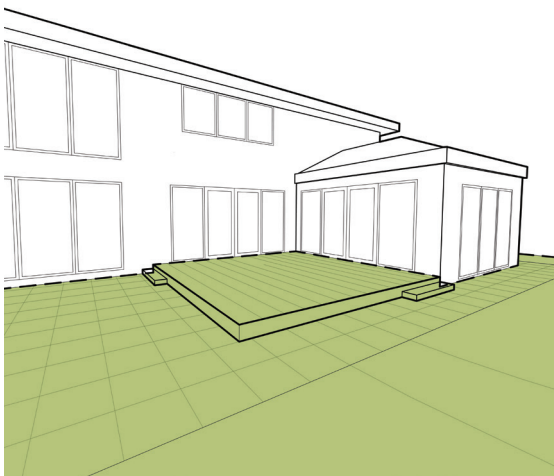




GARDEN AREA INCLUSIONS

Basement below ground level

Any area over a basement that does not project above ground level can be included in garden area.



Unroofed terraces, patios, decks, steps or landings

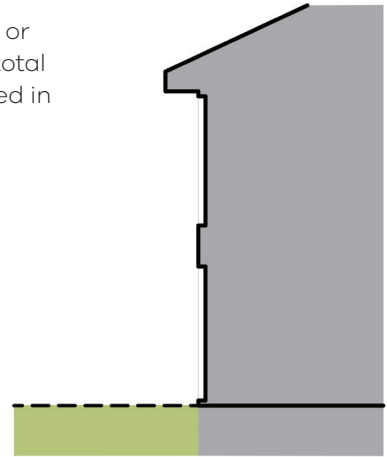
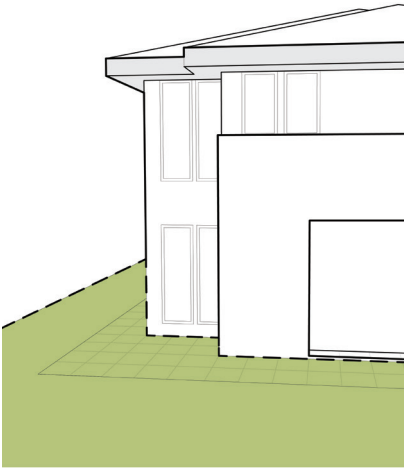
Any unroofed terraces, patios, decks, steps or landings less than 800mm in height can be included in garden area.



Garden area inclusions (cont.)

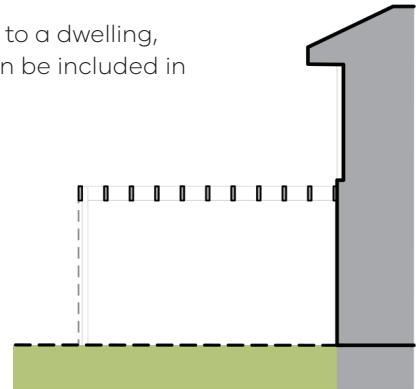
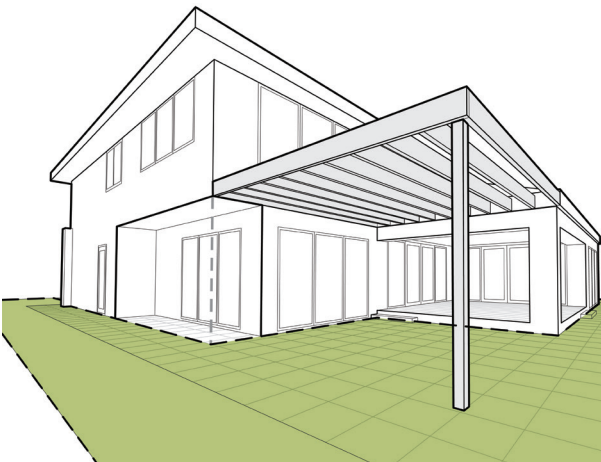
Eaves

Any area under an eave, fascia or gutter that does not exceed a total width of 600mm can be included in garden area.

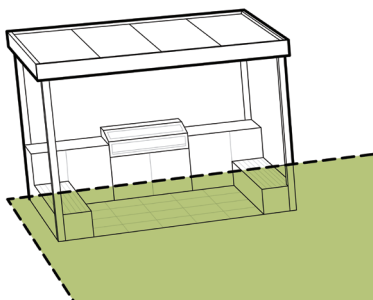


Pergola

Any structure normal to a dwelling, such as a pergola, can be included in garden area.

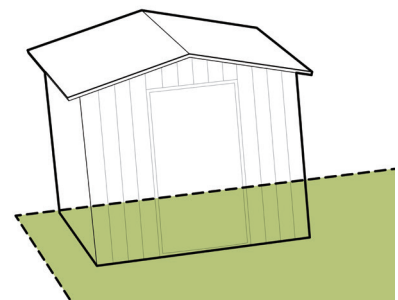


Covered barbeque



Any outbuilding that does not exceed a gross floor area of 10 square metres can be included in garden area.

Garden shed

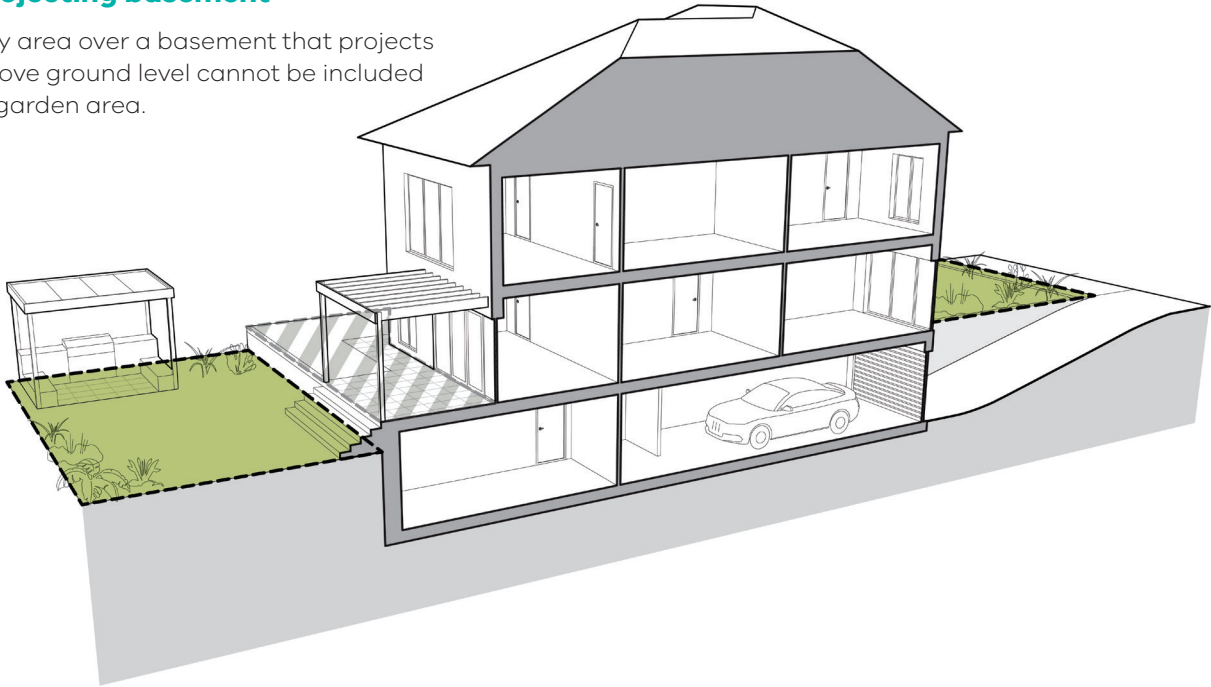




GARDEN AREA EXCLUSIONS

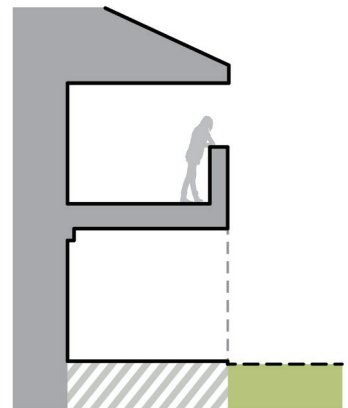
Projecting basement

Any area over a basement that projects above ground level cannot be included in garden area.



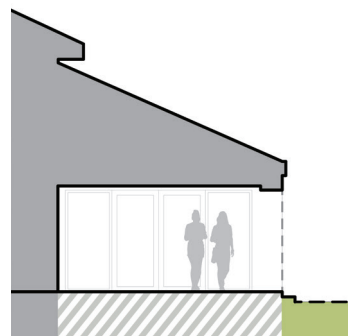
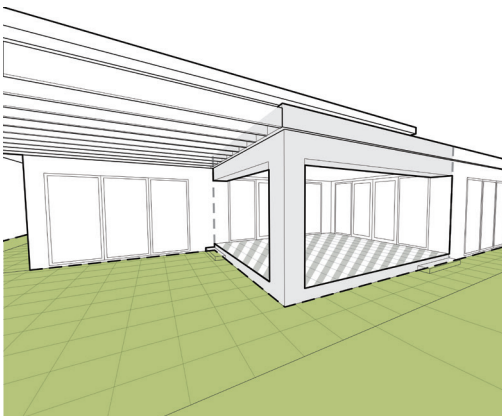
Verandah and porch

Any area under a porch or verandah forming part of a dwelling cannot be included in garden area.



Roofed alfresco area

Any area under a roofed outdoor area forming part of the dwelling cannot be included in garden area.

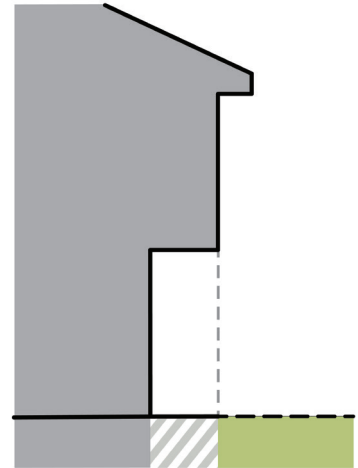




Garden area exclusions (cont.)

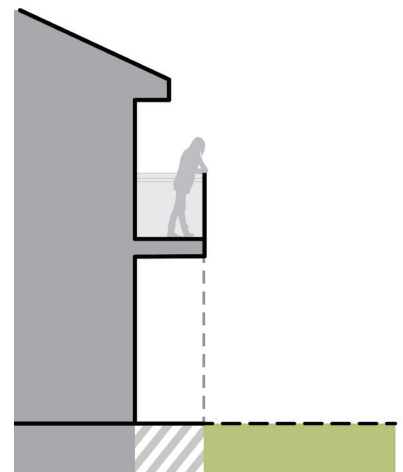
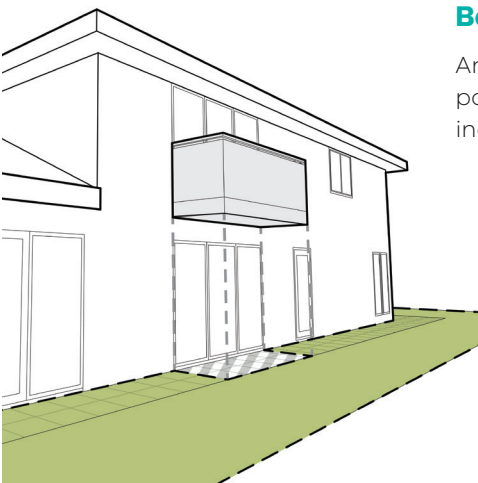
Upper storey building projection

Any area under a building projection forming part of the dwelling cannot be included in garden area.



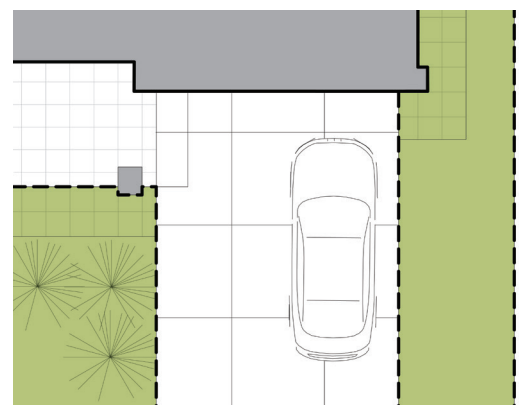
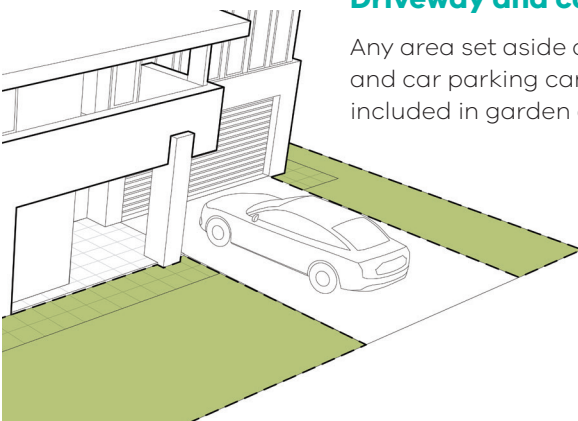
Balcony

Any area under a balcony forming part of the dwelling cannot be included in garden area.



Driveway and car parking

Any area set aside as a driveway and car parking cannot be included in garden area.





How do the subdivision provisions operate?

The minimum garden area requirement applies to a permit application to subdivide land to create a vacant lot that is less than 400 square metres in area capable of being developed for a dwelling or a residential building.

A vacant lot is a lot that does not have an existing dwelling or residential building.

A minimum garden area of 25 percent must be set aside on each vacant lot created that is less than 400 square metres in area. The minimum garden area requirement is based on the area of the vacant lot being created, not the area of the lot that is being subdivided.

For example, a proposal to subdivide a vacant corner lot of 900 square metres into 3 x 300 square metres vacant lots will require a 25 percent garden area to be provided on each vacant lot created, not 25 percent of the original lot.

This ensures that where a dwelling or residential building does not form part of the subdivision application any housing that is subsequently developed on the vacant lot respects the existing open garden character of the neighbourhood.

Where a vacant lot is used for another purpose such as a local road widening or public open space the minimum garden area requirement does not apply to that non-residential use.

Where a vacant lot less than 400 square metres is proposed council should satisfy itself as to the best way to secure the 25 percent minimum garden area. Options include:

- Requiring the garden area to be included as a restriction on the plan of subdivision submitted for certification. This could be in the form of a text notation.
- Entering into an agreement with the owner of the land under section 173 of the *Planning and Environment Act 1987* which requires the approved minimum garden area to be implemented to the satisfaction of the responsible authority.

It is important when securing the minimum garden area that it only applies to residential development of the land so that other non-residential purposes that may occur on the lot are not affected.

Exclusions from the garden area requirement

The minimum garden area requirement does not apply to an application to subdivide land:

- To create a vacant lot that is 400 square metres or greater
- To create a vacant lot less than 400 square metres where there is an approved precinct structure plan or equivalent strategic plan.
- To create a vacant lot less than 400 square metres where there is an incorporated plan or approved development plan.



How do the development provisions operate?

The minimum garden area requirement applies to a planning permit to construct or extend a dwelling or a residential building.

When constructing or extending a dwelling or a residential building in the Neighbourhood Residential Zone or General Residential Zone the minimum percentage of the lot that must be set aside as garden area is determined by the lot size.

Lot size	Minimum percentage of a lot set aside as garden area
400 – 500 sqm	25%
Above 500 – 650 sqm	30%
Above 650 sqm	35%

Where an application proposes two or more dwellings on a lot, the minimum garden area does not need to be equally distributed to each dwelling. For example, an upper floor apartment does not need to provide any minimum garden area as the garden area requirement relates to the original lot.

Where an application proposes two or more dwellings on a lot and subdivision of the land, the application will be assessed against the minimum garden area requirement for the construction of the dwellings and not the minimum garden area requirement for subdivision.

Where a planning permit has been issued for two or more dwellings, any subsequent subdivision of the land ahead of building construction will not need to be assessed against the minimum garden area requirement.

Exclusions from the garden area requirement

The minimum garden area requirement does not apply to an application to construct or extend a dwelling or a residential building:

- If the lot is less than 400 square metres in area (unless encumbered by the 25 percent garden area requirement)
- If the lot is 400 square metres or greater and is designated as a medium density housing site in a precinct structure plan or an equivalent strategic plan.
- If the lot is 400 square metres or greater and is designated as a medium density housing site in an incorporated plan or approved development plan.
- If there is an existing building and it did not comply with the minimum garden area requirement on the approval date of Amendment VC110.
- If the lot is identified in a schedule to the General Residential Zone that has switched off the minimum garden area requirement.



Why are there exclusions from the garden area requirement?

The garden area exemptions recognise both existing and future residential development patterns that are incompatible with the application of the garden area requirement.

There is no requirement to set aside garden area when creating a vacant lot 400 square metres or greater in area because the minimum garden area requirement must be met before the vacant lot can be developed for a dwelling or residential building.

Conversely, the minimum garden area requirement does not apply to an application to subdivide land where there is an approved residential development as the minimum garden area requirement has been satisfied as part of the residential development permit.

Lots less than 400 square metres in area that existed before the introduction of the minimum garden area requirement are exempt as they are typically found in older inner-city areas where housing tends to be more urban in style with small front setbacks and compact rear yards or courtyards and in existing suburbs where land has been developed for villa units and town houses.

Applying the minimum garden area requirement to these lots would unfairly limit the capacity to redevelop or renew existing dwellings.

Vacant lots less than 400 square metres in area created in larger brownfield sites and greenfield locations that are normally master planned from the outset to create a more dense and compact urban character are also exempt. Master planned communities typically provide for much better integration between small lots and medium density housing sites with the public domain including accessible green open space areas.

Smaller strategic redevelopment sites or areas with good access to services and facilities may also be identified for conversion and redevelopment to more intensive housing.

The preferred future character of these areas and sites may be different to the existing suburban character that the new garden area requirement has been introduced to protect and the minimum garden area requirement may not be appropriate for these locations.

Minimum garden area and precinct structure plans

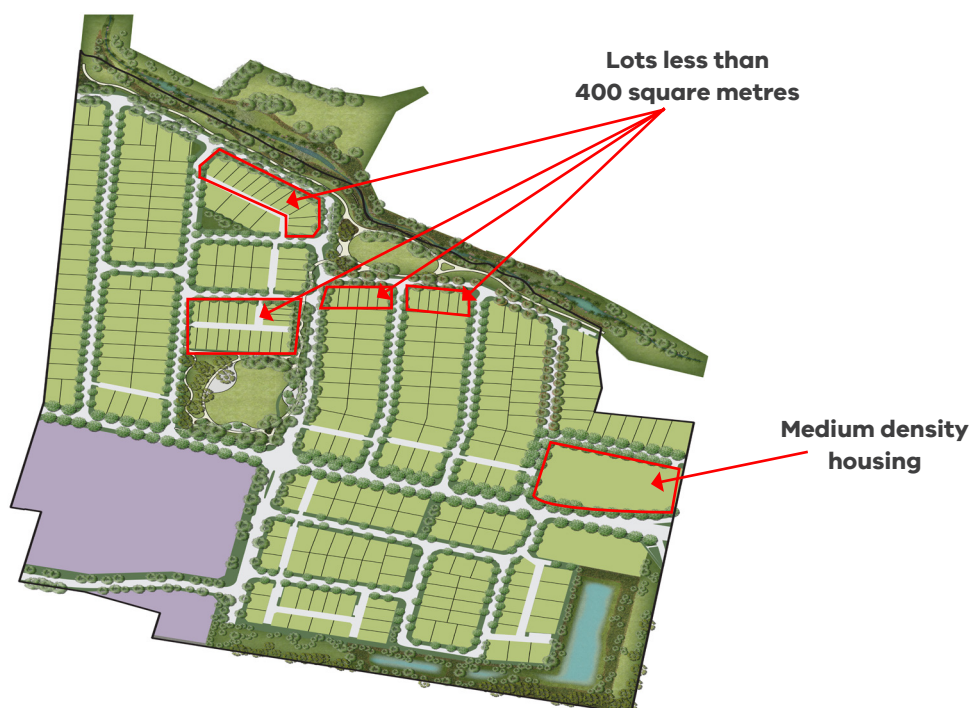
Precinct structure planning is fundamental to the development of greenfield sites, and along with urban consolidation in urban areas, is an important part of the State Government's strategy to address strong population growth and the housing and employment demands that flow from this growth.

While the precinct structure plan has become the predominant strategic planning document guiding urban development in greenfield locations, there are many older strategic documents that perform the same function and are therefore recognised as an equivalent strategic plan to a precinct structure plan. This may include an Outline Development Plan, a Strategic Framework Plan, a Concept Plan, a Master Plan, a Cell Plan or the like.

Where a Neighbourhood Residential Zone or a General Residential Zone applies to a precinct structure plan or equivalent strategic plan, vacant lots less than 400 square metres in area and designated medium density housing sites do not need to meet the minimum garden area requirement.



Typical precinct structure plan



Greenfield site

Minimum garden area and incorporated plans and approved development plans

Outside designated growth areas there are many areas identified for housing change in established urban areas across Victoria including:

- Large urban renewal sites
- Areas around major activity centres
- Areas along public transport corridors and around train stations
- Areas with good access to services and facilities
- Small strategic redevelopment sites.

Where these areas are in a Neighbourhood Residential Zone or a General Residential Zone, and an incorporated plan or approved development plan applies to achieve more intensive housing outcomes, vacant lots less than 400 square metres in area and designated medium density housing sites do not need to meet the minimum garden area requirement.

Minimum garden area and the schedule to the General Residential Zone

The schedule to the General Residential Zone also allows the minimum garden area to be switched off for any land identified through the schedule.

Councils will need to determine on a 'case by case' basis whether relying on the general exemptions for small lots and designated medium density housing sites in areas covered by a precinct structure plan, other incorporated plan or approved development plan is sufficient, or whether all land in an identified area should be exempted from the minimum garden area requirement to achieve other housing objectives.



Minimum garden area and Rescode

While there may be some overlap between the minimum garden area requirement and some of the existing Clause 54 and Clause 55 residential standards such as site coverage and permeability, the minimum garden area requirement is a different requirement to these standards.

The minimum garden area requirement differs from the existing siting and amenity standards regulated under Clause 54 and Clause 55 of the *Victoria Planning Provisions* in two fundamental ways:

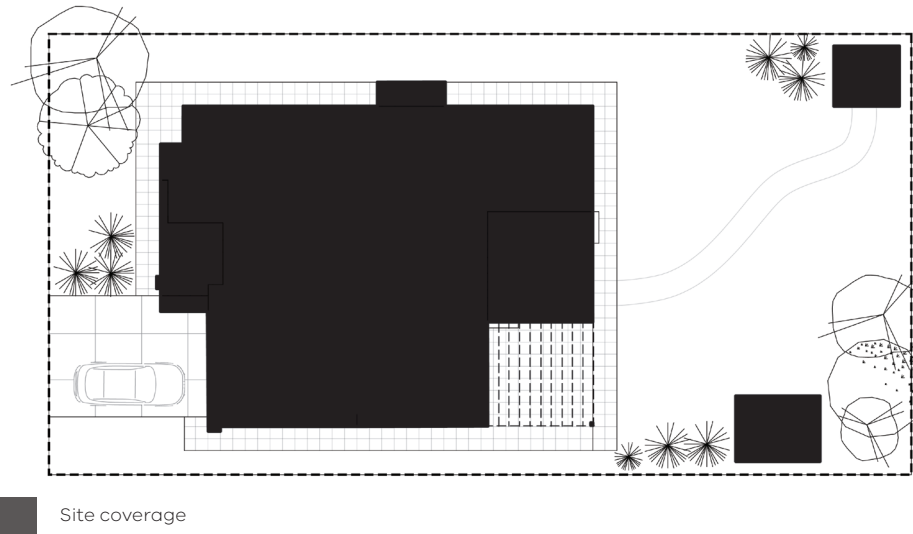
- The minimum garden area requirement is a **mandatory** requirement that must be met and cannot be reduced.
- The minimum garden area requirement is a **separate** requirement that must be met as well as the requirements under Clause 54 and Clause 55.

ResCode Clauses 54 and 55	Minimum garden area Clauses 32.08-4 and 32.09-4
<ul style="list-style-type: none">• Must meet all of the objectives that apply to the application.• Should meet all of the standards that apply to the application.	<ul style="list-style-type: none">• No objective is required to be met.• Must meet the minimum percentage specified to be set aside as garden area that applies to the application.
<ul style="list-style-type: none">• If a zone or a schedule to a zone specifies a requirement of a standard different from a requirement set out in Clauses 54 and 55, the requirement in the zone or a schedule to the zone applies.*• If the land is included in a Neighbourhood Character Overlay and a schedule to the overlay specifies a requirement of a standard different from a requirement set out in Clauses 54 and 55 or a requirement in the zone or a schedule to the zone, the requirement in the schedule to the overlay applies.*• If the land is included in an overlay, other than a Neighbourhood Character Overlay, and a schedule to the overlay specifies a requirement different from a requirement of a standard set out in Clauses 54 and 55 or a requirement of a standard set out in the zone or a schedule to the zone, the requirement in the overlay applies.*	<ul style="list-style-type: none">• No scope to specify a different percentage for minimum garden area.• The minimum garden area requirement can be switched off through the schedule to the General Residential Zone.

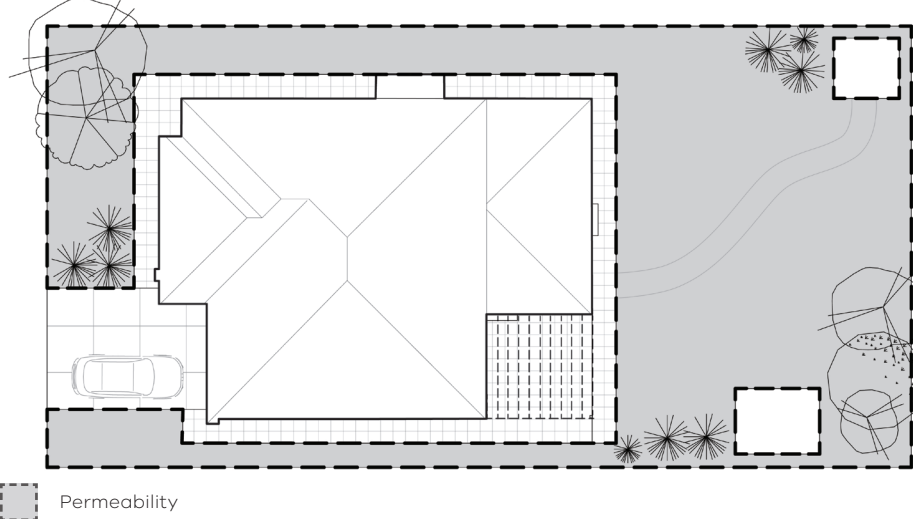
* This does not apply to building height. Maximum building height is a mandatory requirement in the Neighbourhood Residential Zone and the General Residential Zone and does not operate as a discretionary Rescode standard under Clauses 54 and 55.



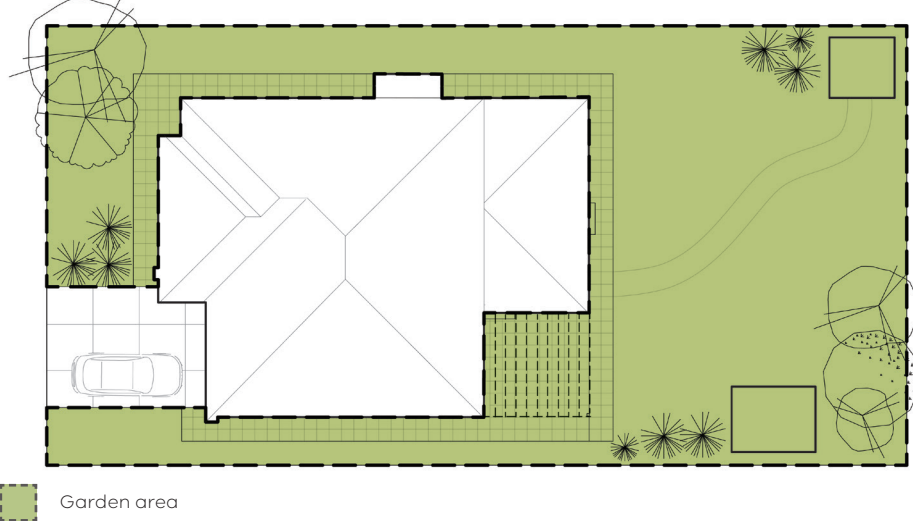
Site coverage



Permeability



Garden area





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