



Planning Bulletin 114/2024

Residential Design Codes

Volume 1 and 2:

Deferred Gazettal, Special Transition Period and Relationship with Pre-Existing Local Planning Frameworks

114/2024



8 March 2024



1. Purpose

To assist stakeholder understanding of when to apply *Residential Design Codes Volume 1 (R-Codes Vol.1)* and *Volume 2 (R-Codes Vol.2)* as gazetted in 2024, and the relationship with the existing local planning framework.

2. Definitions

Throughout this planning bulletin –

Deemed provisions – means schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015.

Local planning instrument – means a local planning scheme, precinct structure plan, activity centre plan, standard structure plan, local development plan or local planning policy.

R-Codes Vol.1 2021 – means the version of the R-Codes Volume 1 gazetted on 2 July 2021.

R-Codes Vol.1 2024 – means the version of the R-Codes Volume 1 publicly released in 2023 which will be gazetted (with amendments) on 10 April 2024.

R-Codes Vol.2 2019 – means the version of the R-Codes Volume 2 gazetted on 24 May 2019.

R-Codes Vol.2 2023 – means the version of the R-Codes Volume 2 publicly released in 2023 which will be gazetted on 10 April 2024.

WAPC – means Western Australian Planning Commission

3. Background

A revision of *Residential Design Codes Volume 1* and consequential amendments to *Residential Design Codes Volume 2* were released by the Minister for Planning in February 2023. A 'deferred gazettal period' was put in place with the new policy provisions

scheduled to come into effect on 1 September 2023. This date was further deferred pending further amendments to address concerns raised by the Minister for Planning. A revised gazettal date of early 2024 was subsequently advanced.

The amended revision of *Residential Design Codes Volume 1* and consequential amendments to *Residential Design Codes Volume 2* were released by the Minister on 8 March 2024 with the new policy provisions to come into effect on 10 April 2024.

The 'deferred gazettal' period is followed by a 'special transition period' that will apply to some Volume 1 development applications in certain scenarios, generally greenfield and brownfield developments. The 'special transition period' is 24 months from the date of gazettal as outlined in the R-Codes Vol.1 2024, ending 10 April 2026.

Parts of local planning frameworks will similarly be subject to a 'special transition period' of 24 months following gazettal. During this period, it is expected that the framework will be updated to align with the R-Codes Vol.1 2024 and be implemented by 10 April 2026 at the conclusion of the 'special transition period'.

The 'deferred gazettal period' and 'special transition period' were developed following extensive targeted consultation with local government, planning consultants, land developers and the housing construction industry, and was subjected to an independent peer review.

In greenfield development areas and some brownfield developments, building designs and lot sizes are almost always inextricably linked. Often, these designs have been contracted many months or even years before building commences.

In such cases, lots that have been created to accommodate a building design compliant with the *R-Codes*

Vol.1 2021 (and site specific local development plans) may not necessarily provide for development compliant with the updated *R-Codes Vol.1 2024*.

The 'deferred gazettal period' and 'special transition period' provide time for contracted designs to obtain a development approval or a development approval-exempt building permit (where applicable) under existing planning frameworks.

3.1 Local Planning Frameworks and Residential Design Codes Volume 1

Part A, Section 3 of *R-Codes Vol.1 2024* outlines the deemed-to-comply provisions that may be amended or replaced by local government either with or without WAPC approval

These provisions ensure that the design and development of dwellings can respond to specific local requirements and context, while maintaining consistency with the relevant element objectives and design principles.

This can be achieved through the following local planning instruments:

- local planning policies;
- local development plans;
- precinct structure plans (including what were previously called activity centre plans); and
- local planning schemes

It is also noted that many pre-2015 structure plans also amend or replace deemed-to-comply provisions.

Many local governments have adopted local planning policies or local development plans for development in structure plan areas that incorporate provisions based on *Planning Bulletin 112/2024* (previously *Planning Bulletin 112/2016*).

4. Applications submitted prior to gazettal

Part A, Section 4 of the *R-Codes Vol. 1 2024* outlines transitional arrangements for local planning instruments and certain development applications.

The following further articulates the WAPCs position in regard to particular circumstances:

4.1 Development for which development approval is not required

4.1.1 Single houses and other works on the same lot as a single house or grouped dwelling (all codings)

For the purposes of clause 61(1) (a) of the deemed provisions contained in Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015, during the 'deferred gazettal period' the *R-Codes Vol.1 2021* (including as modified by local planning instruments) is the version of the *R-Codes* applicable for items 6 and 7 in the table (where column 2 specifies that the works need to comply with the deemed-to-comply provisions).

For the avoidance of doubt, during the 'deferred gazettal period', the ungazetted *R-Codes Vol.1* should not be used to assess a development for which development approval is not required.

4.2 Development applications submitted prior to public release but not yet determined

4.2.1 Single houses, grouped dwellings (all codings), multiple dwellings in areas coded less than R40

The *R-Codes Vol.1 2021* is the version of the *R-Codes* applicable during the 'deferred gazettal period'.

In accordance with clause 2.5.4 of the *R-Codes Vol.1 2021*, any development application that meets the deemed-to-comply provisions of the *R-Codes Vol.1 2021* (including as modified by

local planning instruments) and the relevant provisions of the applicable local planning scheme shall not be refused.

Where deemed-to-comply provisions are not met, an assessment of the application primarily against the relevant design principles (of the *R-Codes Vol.1 2021*) should be undertaken and, in accordance with clause 67(2) of the deemed provisions, due regard be had for the relevant provisions of the *R-Codes Vol.1 2024*.

4.2.2 Multiple dwellings in areas coded R40 to R60

The *R-Codes Vol.2 2019* is the version of the *R-Codes* applicable during the 'deferred gazettal period'.

The *R-Codes Vol.2 2019* is a performance-based code, requiring development to meet all element objectives. In accordance with clause 67(2) of the deemed provisions, due regard should be had for the relevant provisions of the *R-Codes Vol.1 2024*.

4.2.3 Multiple dwellings in areas coded R80 and higher

As the consequential amendments to the *R-Codes Volume 2* are confined to the removal of R40-R60 related provisions, there is no need to consider the *R-Codes Vol.2 2024* until it is gazetted.

4.3 Development applications submitted after public release but prior to the gazettal date

As outlined in planning case law¹, it is well established that a development application is to be determined on the basis of the law as it stands at the time of the determination. In this regard, a development application lodged prior to the gazettal of the *R-Codes 2024* but not yet determined following the gazettal will be required to be determined on the basis of the *R-Codes 2024*. Officers assessing applications should give careful consideration to the likely timing of a decision based on the timeframes in clause 75 of the deemed provisions.

5. Arrangements during the special transition period

5.1 Special transitional deemed-to-comply provisions for certain circumstances

Part A, Section 4.1 of *R-Codes Vol.1 2024* outlines the provisions that are either not required to be met or are substituted during the 'special transitional period'. The special transitional deemed-to-comply provisions will cease to have effect on 10 April 2026.

Dwellings designed under existing local planning frameworks may not necessarily comply with *R-Codes Vol.1 2024*. Recognising this, Part C, section 4 of the *R-Codes Vol.1 2024* provides a set of transitional deemed-to-comply provisions for single houses within areas coded R50 and above subject to an approved structure plan and/or local development plan (as specified in Part A, section 4.1.1) that will apply for the duration of the 'special transition period'.

In addition, Part A section 4.1.2 provides a further special transitional provision that relates to single house and grouped dwelling development subject to Part C, Element 3.1 – Site cover, whereby Site Cover requirements are replaced with Open Space requirements in accordance with Part C, Section 5 for the duration of the 'special transition period'.

Except with respect to those deemed-to-comply provisions that are not required to be met, where the local planning instrument provides a deemed-to-comply provision, the local planning instrument's provision prevails. For example, if a local planning instrument specifies the size of an outdoor living area, that outdoor living area requirement will prevail over the special transitional provision for private open space.

Where a provision of Part C is not required to be met via a special transitional deemed-to-comply provision, there is no further requirement to demonstrate compliance with the relevant design principle(s).

The special transitional deemed-to-comply provisions will cease to have effect on 10 April 2026.

¹ *Miller v City of Stirling [2007] 247*, paragraph 35

6. Local planning instruments

6.1 Existing local planning policies

As outlined in Part A, Section 4 of the *R-Codes Vol.1 2024*, at the conclusion of the 'special transition period', the *R-Codes Vol.1 2024* will prevail over local planning policies that modify deemed-to-comply provisions of the *R-Codes Vol.1 2021*, excluding Part B development (single houses in R40 and below, grouped dwellings and multiple dwellings in R25 and below). This is regardless of whether they were previously subject to a WAPC approval or not. In order to have the effect of modifying deemed-to-comply provisions after the conclusion of the 'special transition period', existing local planning policies will need to be reviewed by local government, amended as necessary and approved.

Such reviews should seek alignment with the *R-Codes Vol.1 2024*.

Where WAPC approval is required for provisions, the review of these local planning policies should be prioritised by the local government and the Department of Planning, Lands and Heritage.

6.2 Local planning policies incorporating R-MD Code provisions

Local governments are strongly encouraged to undertake a review of any local planning policies incorporating R-MD Code provisions to remove amendments to the R60 density code standards in a timely manner, and to publish these in accordance with clause 6 of the deemed provisions at the conclusion of the special transition period – no earlier or later.

Where an endorsed structure plan or a scheme provision designates an area or lot with a density code of R60 as being subject to R-MD Code provisions, the Commission has determined that, following the revocation of these policies, the deemed-to-comply provisions contained within the *R-Codes Vol.1 2024* Part C will apply (subject to any modifications elsewhere in the local planning framework).

6.3 Existing approved local development plans

As outlined in Part A, Section 4 of the *R-Codes Vol.1 2024*, all approved local development plans that modify deemed-to-comply provisions of the *R-Codes Vol.1 2024* will remain valid until their expiry date.

When considering an amendment to an approved local development plan, the validity period should not be extended.

Notwithstanding, the local government may agree to an extension to the validity period if the instrument is modified to align with the *R-Codes Vol.1 2024*.

Local governments are encouraged to review local development plans that have an expiry after 19 October 2025 with a view to alignment with the *R-Codes Vol.1 2024* within five years of the gazettal of the *R-Codes Vol.1 2024*.

Where possible, this review should align with the report of review for a local planning scheme prepared under r.66 of the Planning and Development (Local Planning Scheme) Regulations 2015.

6.4 Local development plans in active preparation but not yet approved

During the 'deferred gazettal period', local government was expected to continue to approve local development plans consistent with *R-Codes Vol.1 2021* as would have otherwise occurred had the R-Codes not been updated with the option of a restricted validity period where appropriate.

Where a local development plan was not lodged with sufficient time for consideration and approval prior to the gazettal date, approval should be based on consistency with the *R-Codes Vol.1 2024* including demonstrated need. The WAPC may have regard to its previous decision making under the *R-Codes Vol.1 2021*, the rationale provided by the proponent and any other matter it considers relevant. However, the WAPC is not bound by its previous decision making, given the new policy provision.

6.5 Existing approved standard structure plans and precinct (activity centre) structure plans

As outlined in Part A, Section 4 of the *R-Codes Vol.1 2024*, all WAPC approved standard and precinct

structure plans that modify deemed-to-comply provisions of the *R-Codes Vol.1 2024* will remain valid until their expiry.

When considering an amendment to an approved structure plan, the validity period should not be extended.

Notwithstanding, the WAPC may agree to an extension to the validity period if the instrument is modified to align with the *R-Codes Vol.1 2024*.

Local governments are encouraged to review the structure plans within their area that have an expiry after 19 October 2025 with a view to alignment with the *R-Codes Vol.1 2024* within five years of gazettal. Where possible, this review should align with the report of review for a local planning scheme prepared under r.66 of the *Planning and Development (Local Planning Scheme) Regulations 2015*.

The WAPC will consider amendments to structure plans upon request following such a review.

6.6 Standard structure plans in active preparation but not yet approved

As standard structure plans do not vary the R-Codes, the WAPC does not make decisions on built form controls when determining a standard structure plan.

Proponents are advised to consider whether their structure plan design will support future development consistent with the *R-Codes Vol.1 2024* and modify as necessary.

6.7 Precinct structure plans in active preparation but not yet approved

During the 'deferred gazettal period', the WAPC continued to approve precinct structure plans consistent with *R-Codes Vol.1 2021* as it otherwise would have had the R-Codes not been updated with the option of a restricted validity period where appropriate. Precinct structure plan should be submitted to the WAPC for approval prior to the gazettal date.

Where a precinct structure plan is not submitted prior to the gazettal date, it is recommended that the precinct structure plan is modified to align with the *R-Codes Vol.1 2024* prior to submission to the WAPC.

6.8 Local planning schemes

Local governments are encouraged to review scheme provisions that modify the R-Codes with a view to alignment with the *R-Codes Vol.1 2024*. This should be done as part of any omnibus or other relevant amendments the local government is preparing, but otherwise at the next scheme review.

6.9 Plot ratio for multiple dwellings and mixed use development

The R-Codes Volume 2 previously applied to multiple dwelling development (and mixed use development) in R40-R60 areas, using a plot ratio requirement to control built form and dwelling yield. The plot ratio requirement also includes any non-residential component in a mixed-use development. Many local planning instruments modified the plot ratio acceptable outcome requirement.

The *R-Codes Vol.1 2024* now uses an average site area per dwelling to control dwelling yield. The average site area per dwelling requirement in the *R-Codes Vol.1 2024* will apply from the date of gazettal and, as outlined in the *R-Codes Vol.1 2024*, development applications are not able to seek variations to the deemed-to-comply site area requirement (variations may only be sought through a subdivision application).

The absence of a plot ratio requirement in the *R-Codes Vol.1 2024* should not be construed as voiding any plot ratio requirements in local planning instruments. Proponents and decisionmakers should still have due regard to the plot ratio requirement in line with the due regard status of the existing local planning instrument.

6.10 Conversion of design elements

Appendix 1 contains a list of design elements of the previous *R-Codes Vol.1 2021* compared with the design elements of the *R-Codes Vol.1 2024*. This can be used to assist in interpreting local planning instruments that refer to previous *R-Codes Vol.1 2021* provisions to understand which design element is applicable.

6.11 Manner and form – WAPC assessment of local planning instruments

The WAPC has provided manner and form assessment templates to assist in preparation of local planning policies and local development plans and the seeking of WAPC approval of modifications to the R-Codes.

Local governments and proponents are requested to use the prepared templates as soon as these are available.

7. Further information

Enquiries concerning this statement should be directed to:

Director Design and Built Environment
Department of Planning, Lands
and Heritage
Locked Bag 2506
PERTH WA 6001

Please quote reference **DP/17/00098**

Information relevant to this Position Statement is published at:
www.dplh.wa.gov.au

Appendix 1 – Provision conversions

R-Codes Vol. 1 2021	R-Codes Vol.1 2024 – Part C
5.1.1 Site area	Refer Part D Land, 1.0 Site Area
5.1.2 Street setback	3.3 Street setbacks – Setback of buildings
5.1.3 Lot boundary setback	3.4 Lot boundary setbacks
5.1.4 Open space	There is no equivalent provision, however due regard should be had to the provisions in 3.1 Site cover when considering a variation to a deemed-to-comply requirement contained within a local planning instrument.
5.1.5 Communal open space	1.3 Communal open space
5.1.6 Building height	3.2 Building height
5.2.1 Setback of garages and carports	3.3 Street setbacks – Setback of garages and carports
5.2.2 Garage width	3.6 Streetscape – Addressing the street (C3.6.5 and C3.6.6 only)
5.2.3 Street surveillance	3.6 Streetscape – Addressing the street (C3.6.1 – C3.6.4)
5.2.4 Street walls and fences	3.6 Streetscape – Street walls and fences
5.2.5 Sight lines	3.7 Access – Sightlines
5.2.6 Appearance of retained dwelling	3.8 Retaining existing dwellings
5.3.1 Outdoor living areas	1.1 Private open space
5.3.2 Landscaping	1.2 Trees and landscaping
5.3.3 Parking	2.3 Parking
5.3.4 Design of car parking spaces – C4.1-C4.2 – C4.3	2.3 Parking 1.2 Trees and landscaping C1.2.4
5.3.5 Vehicular access	3.7 Access – Vehicle access, Driveways, Communal street
5.3.6 Pedestrian access	3.7 Access – Pedestrian access
5.3.7 Site works	3.5 Site works and retaining walls
5.3.9 Stormwater management	1.4 Water management and conservation
5.4.1 Visual privacy	3.10 Visual privacy
5.4.2 Solar access for adjoining sites	3.9 Solar access for adjoining sites
5.4.3 Outbuildings	2.6 Outbuildings
5.4.4 External fixtures, utilities and facilities – C4.1-C4.4 – C4.5 – C4.6	2.5 Utilities 2.1 Size and layout of dwellings – Storage 2.4 Waste management
5.5.1 Ancillary dwellings	2.8 Ancillary dwellings
5.5.2 Aged or dependent persons' dwellings	2.7 Universal design – Adaptable housing C2.7.2
5.5.3 Single Bedroom dwellings	2.9 Small dwellings

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Published by the
Western Australian Planning Commission
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Published 8 March 2024

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