

# R-Codes FAQ

## Residential Design Codes of Western Australia Frequently Asked Questions

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This publication Residential Design Codes Frequently Asked Questions (R-Codes FAQ) has been prepared to explain and respond to the major changes, issues and frequently asked questions arising from the 2013 amendment of the R-Codes and provide general information to users of the R-Codes. This document does not form part of the R-Codes and may be updated from time-to-time.

This R-Codes FAQ provides a resource regarding the operation and interpretation of the R-Codes and is supplementary to the R-Codes Explanatory Guidelines. Both documents are divided into a number of parts to align with the format of the R-Codes for ease of reference and use. Each question, where relevant refers to the applicable R-Code provision.

This R-Codes FAQ and any updated version is posted on the R-Codes page on the Planning WA website at [www.planning.wa.gov.au/rcodes](http://www.planning.wa.gov.au/rcodes).

Before using the R-Codes FAQ you should check the above webpage to ensure you are reviewing the latest version available.

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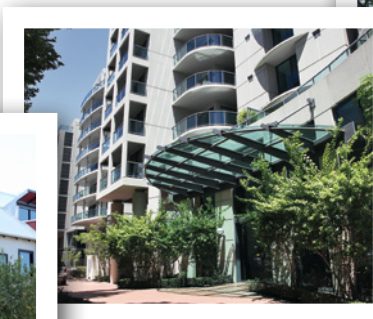
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## Introduction

The R-Codes provide the basis for controlling the siting and design of residential development throughout Western Australia. The amended R-Codes were prepared by the Western Australian Planning Commission (WAPC) and come into operation on 2 August 2013 following a comprehensive review.

To assist in the implementation of the amended R-Codes, the WAPC has developed an ongoing implementation program that includes:

- The R-Codes Share Forum to provide an electronic, cost effective, accessible and efficient means for industry groups, local government and the community to raise issues and work together to find common solutions to R-Codes implementation issues.
- More information about the R-Codes Share Forum can be found on the R-Codes webpage of the Planning WA website: [www.planning.wa.gov.au/rcodes](http://www.planning.wa.gov.au/rcodes).
- Preparation and release of the R-Codes schedule of amendments, updated Explanatory Guidelines, Planning Bulletin and this FAQ document to assist R-Codes implementation.



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## Part 1 – Preliminary

**Q1:** *When do the R-Codes come into effect?*

**A:** The R-Codes will be published in a special issue of the *Western Australian Government Gazette* at 3 pm on 2 August 2013 and takes effect from that time on.

In the meantime, all parties affected by the R-Codes (e.g. landowners, the housing industry and local government) will have an eight-week period to become familiar with the changes.

**Q2:** *How are the R-Codes given effect?*  
(Clause 1.1 Citation)

**A:** The R-Codes are a State Planning Policy prepared by the WAPC under Part 3 of the *Planning and Development Act 2005*. The amended R-Codes are automatically introduced by reference into local planning schemes, which already include reference to the R-Codes.

**Q3:** *What role do the explanatory guidelines have and how should they be used?*  
(Clause 1.5 Explanatory Guidelines)

**A:** The WAPC has prepared the explanatory guidelines on the matters addressed in the R-Codes, in consultation with decision-makers and relevant stakeholders, to provide guidance and assist interpretation and assessment of proposals against the design principles and/or deemed-to-comply provisions of the R-Codes. The explanatory guidelines should be considered in the determination of proposals although they cannot fetter discretion and should not be followed rigidly.

The deemed-to-comply requirements under the 2013 amended R-Codes replace the acceptable development requirements under the previous superseded (2008 and 2010) R-Codes and design principles replace the previous performance criteria.

**Q4:** *What role do the R-Codes FAQ have and how should they be used?*

**A:** The R-Codes FAQ are provided to assist users and decision-makers to understand and implement the R-Codes and should be read in instances where an R-Code requirement is not clearly understood, particularly in respect to context and intent.





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**Q5:** *Who is responsible for determination and implementation of the R-Codes?*

*(Clause 2.1 R-Codes approval)*

**A:** The R-Codes are essentially standards for the control of residential development that are included by reference into (“read into”) local planning schemes.

The determination of proposals under the R-Codes (and hence the implementation of the R-Codes) therefore most commonly lies with local government or professional officers delegated to act on their behalf. However in some circumstances the WAPC, the Metropolitan Redevelopment Authority or a Development Assessment Panel (DAP) may be the decision-maker.

The R-Codes also relate to subdivision policy and there is an inextricable link between lot sizes (Table 1), frontage requirements and other requirements of the R-Codes and subdivision policy. Responsibility for approval of subdivision lies solely with the WAPC although local government has a significant advisory role in the process.

**Q6:** *If there is an inconsistency between a provision in the R-Codes and a local law, which one will prevail?*

*(Clause 2.1 R-Codes approval)*

**A:** A provision in the R-Codes prevails over a local law. Under the *Local Government Act 1995* a local law is inoperative to the extent that it is inconsistent with the Act or any other *written law* which would include the R-Codes. Where a local law addresses a matter covered by an R-Codes requirement, it will be necessary to consider whether the local law and the R-Code requirement are, in fact, inconsistent. They can co-exist where the local law is regarding a matter not addressed by the R-Codes.

Note that a local law is made under the *Local Government Act 1995* and is quite different to local planning policies made under local planning schemes (to which Q52-Q54 refer).



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**Q7:** *Should an application for a building permit, planning approval or subdivision lodged prior to gazettal of the amended R-Codes on 2 August 2013 be determined under the amended R-Codes (2013) or the previous R-Codes?*

*(Clause 2.1 R-Codes approval)*

**A:** All building permit, planning and subdivision applications lodged with a decision-maker prior to the R-Codes gazettal on 2 August 2013, but not determined by that date, are required to be determined under the amended R-Codes. This is in accordance with the general principle of administrative law that a decision-maker is required to make a decision in accordance with the laws that are in effect on the day the decision is made, unless there is some specific “transition” clause in the new laws. No such “transition” clause is contained in the amended R-Codes.

It is unlikely that any application that was prepared under the previous R-Codes would be unduly prejudiced by an assessment under the amended R-Codes on the basis that many applications would comply with the deemed-to-comply (formerly ‘acceptable development’) provisions and any areas of non-compliance could effectively be dealt with by assessment under the design principles (formerly the ‘performance criteria’). While the design principles assessment would require the exercise of judgement (discretion), it was not envisaged that plans would be rejected except in the circumstances where compliance with the design principles was not achievable.

It should be noted that the WAPC’s Development Control Policy 2.2 Residential Subdivision has also been amended to align with the amended R-Codes, and will take effect from the date the amended R-Codes are gazetted: [www.planning.wa.gov.au/publications/803.asp](http://www.planning.wa.gov.au/publications/803.asp).

**Q8:** *Does the development of a single house require planning approval?*

*(Clause 2.2 Single house approvals and clause 2.3 Planning approval for single houses on small lots)*

**A:** The development of a single house that meets the deemed-to-comply provisions of the R-Codes does not require planning approval, unless:

- a local planning scheme contains provisions that expressly require an application for planning approval for a single house; or
- the single house is proposed on a lot smaller than 260m<sup>2</sup>, except where the single house complies with an endorsed local structure plan and/or local development plan.

If a proposal for a single house does not comply with a deemed-to-comply requirement/s of the R-Codes, the decision-maker may require an application for planning approval or alternatively an application for Residential Design Codes approval (single house and outbuildings).

This alternate application form was Appendix 2 of the previous R-Codes 2010, it is now included in Appendix 1 of the R-Codes Explanatory Guidelines 2013 which can be accessed by the following link: [www.planning.wa.gov.au/rcodes](http://www.planning.wa.gov.au/rcodes).



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**Q9:** *How is compliance with the R-Codes determined for the development of a single house subject to a certified application for a building permit?*

*(Clause 2.2 Single house approvals and clause 2.3 Planning approval for single houses on small lots)*

**A:** If a single house development requires planning approval or alternate R-Codes approval, as set out in Q8 above, then this must be obtained prior to submitting a certified application for a building permit.

A permit authority must not grant a building permit if a certified application for a building permit for a single house development is either inconsistent with the R-Codes or where planning approval is required, the approval is not in place.

If no planning approval is required, the local government would need to establish that the single house development meets all deemed-to-comply requirements of the R-Codes or if applicable for lots less than 260m<sup>2</sup>, that they are in accordance with an adopted local development plan and/or local structure plan.

Refer to the Building Commission website for information:

[www.buildingcommission.wa.gov.au/building-approvals](http://www.buildingcommission.wa.gov.au/building-approvals) and [www.buildingcommission.wa.gov.au/building-approvals/class-1a-housing-applications](http://www.buildingcommission.wa.gov.au/building-approvals/class-1a-housing-applications).

**Q10:** *How do decision-makers exercise judgement to determine if approval should be granted to a proposal which does not meet deemed-to-comply requirements?*

*(Clause 2.5 Exercise of judgement)*

**A:** ‘Exercise of judgement’ is linked to ‘discretion’. Judgement and discretion are exercised by the decision-maker on individual, case-by-case merit, applying relevant facts, circumstances and applicable laws and policies. These all combine to guide decision making.

Guidance as to how judgement or discretion is to be exercised is provided in the R-Codes, under the local planning scheme, in local planning policies and by principles of planning and administrative law. Each local planning scheme sets out the matters to be considered in determining an application. These matters range from the detailed to the general.

Local planning policies can also provide clarification/guidance for various R-Codes design principles by clearly outlining the parameters where discretion would be favourably exercised by the decision-maker.

Guidelines in relation to making good planning decisions were prepared to assist the Development Assessment Panel (DAP) and can be used by decision-makers who implement the R-Codes. This document, ‘Making Good Planning Decisions’ (June 2011), is applicable and recommended for all decision-makers. It is available from the DAP website via the link below: [daps.planning.wa.gov.au/data/Publications/Training%20Documents/Development%20Assessment%20Panel%20-%20Training%20Notes.pdf](http://daps.planning.wa.gov.au/data/Publications/Training%20Documents/Development%20Assessment%20Panel%20-%20Training%20Notes.pdf).

Where a decision-maker refuses an application or imposes conditions that are considered unreasonable to the applicant, a right of review may be lodged with the State Administrative Tribunal (SAT), according to the provisions of the *Planning and Development Act 2005*. Refer directly to SAT regarding review procedures: [SAT Home Page](#).



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### **Q11:** *What application form do I need to complete for R-Codes approval?*

*(Clause 3.1 Applications for planning approval)*

**A:** If the proposal requires planning approval under a scheme or clause 2.3 of the R-Codes, an application for planning approval is required to be submitted in accordance with the local planning scheme.

If the proposal does not meet deemed-to-comply provisions and applies design principles, either an application for planning approval is required or an application for R-Codes approval at the discretion of the decision-maker. R-Codes approval forms are included in Appendix 1 of the R-Codes explanatory guidelines.

### **Q12:** *What application fee needs to be paid when I lodge an application for planning approval?*

*(Clause 3.1 Applications for planning approval)*

**A:** The relevant application fees are prescribed in the Planning and Development Regulations 2009. Fees for development applications are based on a sliding scale and are updated regularly. The application fee schedule can be accessed from the Planning WA website via the following link: [www.planning.wa.gov.au/publications/3777.asp](http://www.planning.wa.gov.au/publications/3777.asp).

Where determination by a Development Assessment Panel (DAP) is required, an additional DAP application fee is required to be paid. The DAP fee schedule can be accessed from the Planning WA website via the following link: [daps.planning.wa.gov.au/5884.asp](http://daps.planning.wa.gov.au/5884.asp).

It is strongly recommended that the applicant liaise with the relevant decision maker prior to submitting the development application, to determine the correct application fee amount.

### **Q13:** *Do all the information requirements in the R-Codes 'application information matrix' need to be provided based on the application type?*

*(Clause 3.2 Information requirements)*

**A:** The matrix clarifies the information required to be provided for certain types of proposals. Only the information required for the application type denoted in the matrix is required; although additional information set out in clause 3.3 of the R-Codes may also be required if relevant.

Many local planning schemes also have information requirements.

The onus is on the applicant to ensure that information is accurate before an application is submitted. The provision of information in support of a proposal, and the accuracy of this information, are critical to ensure that the determination of the application is not delayed. Applications should not be accepted and the application fee receipted by the decision maker unless all required information is provided.

It is therefore recommended that the applicant liaise with the decision-maker prior to submitting an application to confirm what information needs to be submitted.



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**Q14:** *Does the decision-maker have to wait the full fourteen (14) days in clause 4.2.1 if all owners and occupiers of adjoining properties have provided comments in relation to a proposed development?*

*(Clause 4.2 Consultation procedure)*

**A:** No, unless otherwise required by the local planning scheme or the applicant has exercised the right, under clause 4.3.1 of the R-Codes, to submit a response to a summary of comments received.

However, the decision-maker should only adopt this position if it is confident that no additional or supplementary comments will be submitted by any owner and occupier of adjoining properties. This could occur in the circumstances where all adjoining owners and occupiers have expressed no objection to the proposed development.

It is noted that where a proposal does not meet deemed-to-comply requirements and the decision-maker considers the proposal to be unacceptable against design principles, the decision-maker may determine to refuse the proposal without undertaking neighbour consultation or, where warranted, despite neighbour support.

**Q15:** *Where the applicant undertakes notification under clause 4.2.3 of the R-Codes, how can the decision-maker verify and be satisfied that notification has been properly undertaken?*

*(Clause 4.2 Consultation procedure)*

**A:** The applicant is required to provide proof to the decision-maker that they have provided notification of the proposal to all owners and occupiers of adjoining properties in the form of a posting receipt via registered post. The decision-maker needs to verify that the landowner/occupier of property for which notification is required has been notified.





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**Q16:** *If a minimum site area variation has been obtained under deemed-to-comply clauses 5.1.1 C1.3-1.4, of the R-Codes, can a further 5% variation be obtained under design principle P1.2 of clause 5.1.1?*

(Clause 5.1.1 Site area)

**A:** Yes, but only in the circumstances where the further variation proposed can meet the criteria set out in the design principle. It should be noted that the extent to which the WAPC will exercise its discretion in approving variations to lot sizes for single houses and grouped dwellings below the minimum and average site area requirements, is limited. These limitations are set out in clause 3.2.3 of the WAPC's policy DC 2.2: Residential Subdivision.

**Q17:** *Are development concessions for single bedroom dwellings and aged and dependent persons dwellings under clause 5.1.1 C1.4i applied to subdivision?*

(Clause 5.1.1 Site area)

**A:** Yes, however the WAPC would require restrictions on the certificate of titles and deposited plan regarding the use of the land for single bedroom or aged or dependent persons' dwellings.

**Q18:** *Does clause 5.1.1 C1.4ii of the R-Codes allow the WAPC to approve any lot area, irrespective of the minimum site areas in Table 1?*

(Clause 5.1.1 Site area)

**A:** No. Clause 5.1.1 C1.4ii allows the development of lots with minimum and average site areas that vary from those set out in Table 1, that have previously been approved (including lots yet to be constructed).

Design principle clause 5.1.1 P1.3 provides discretion to the WAPC, in consultation with the local government, to approve the creation of survey strata or strata (built strata) lot of lesser area than required under the relevant R-Coding in Table 1, but only for an existing authorised development (development that has been granted all necessary approvals and has been constructed in accordance with those approvals).

**Q19:** *Are carports and garages to be included in the determination of the average setback for the purposes of clause 5.1.2 C2.1iii?*

(Clause 5.1.2 C2.1iii Street setback)

**A:** Yes, both carports and garages are to be included in the determination of average setback. Refer Figure 2a of the R-Codes. Refer also to clause 5.2.1 C1.5 of the R-Codes.



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**Q20:** *Are minor incursions, such as porches and verandahs, projecting into the building setback area included in the determination of average setback for the purposes of clause 5.1.2 C2.1iii?*

*(Clause 5.1.2 C2.4 Street setback)*

**A:** No. This is illustrated by Figure 2b of the R-Codes which shows the example of a porch intruding into the setback area which is not included in the average setback calculation under clause 5.1.2 C2.1.

**Q21:** *In Table 1, are the side and rear boundaries set out in Column 7 under "Other/rear" interchangeable?*

*(Clause 5.1.3 C3.1 Lot boundary setback)*

**A:** No. In Column 7 of Table 1, under the heading "Other/rear", "\*" / 6" means the other side setback is to be determined from Table 2, and a 6 metre setback applies to the rear boundary. These could only be interchanged by assessment under the design principle. In other instances, the figure applies to both between side and rear boundaries

**Q22:** *In relation to gables, is there a different measure of height used for determining lot boundary setbacks under clause 5.1.3 C3.1 and Tables 2a and 2b, from that used in determining building height under clause 5.1.6 C6 and Table 3, of the R-Codes?*

*(Clause 5.1.3 C3.1 Lot boundary setback)*

**A:** Yes, the gable wall above eaves height is generally not applicable for the purposes of building height control, provided the wall does not exceed 9 metres in length, while in the case of setbacks, the median height of the gable is used in all cases as illustrated in Figure 3h of the R-Codes.

Note: The issue of height in relation to gable walls on the boundary is more critical, because of the increased impact, e.g. potential for overshadowing on the adjoining property.

**Q23:** *Are boundary walls permitted anywhere behind the front setback line, irrespective of their impact on the adjoining property?*

*(Clause 5.1.3 C3.2 Lot boundary setback)*

**A:** Generally yes, subject to limits on the height and length of the wall under clause 5.1.6 of the R-Codes and also solar access limits under clause 5.4.2 of the R-Codes (particularly for north/south facing boundary walls) and on one lot boundary only. Additional walls and/or variations in the dimensional limits may still be considered under the design principles.



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**Q24:** *How do the boundary wall length and height limits in clause 5.1.3 of the R-Codes apply to buildings set back from the boundary less than the standard setback distance (i.e. between the standard setback and the boundary)?*

*(Clause 5.1.3 C3.2 Lot boundary setback)*

**A:** The limits on boundary walls are expressed in terms of buildings 'up to a lot boundary' which is defined in a note under clause 5.1.3 to include walls either on the lot boundary or closer than 600mm between the lot boundary and the wall. Any wall between a point 600mm from the boundary, and the boundary itself, is deemed to be a boundary wall and thus subject to clause 5.1.3 C3.2.

**Q25:** *What is the situation under the R-Codes when a patio is later proposed to be enclosed?*

*(Clause 5.1.4 Open space)*

**A:** If it is proposed to be fully enclosed it would become a 'habitable room' as defined in Appendix 1 of the R-Codes and would have to comply with relevant R-Codes provisions and local planning scheme requirements.

**Q26:** *Can areas beneath eaves be included in the calculation of open space?*

*(Clause 5.1.4 Open space)*

**A:** Yes. The area beneath the eaves' overhang falls within the definition of open space and can be included in the calculation of open space.

**Q27:** *Gable walls above eaves height less than 9 metres in length are exempt from height control under Table 3, Note ii of the R-Codes. Is there any overall height limit on such walls?*

*(Clause 5.1.6 Building height)*

**A:** No, the R-Codes provide for no overall limit to the upper part of the gable wall itself, although the associated roof would still be subject to the overall height limit applicable to the relevant category (A, B or C). In the case of Category B for example, the overall height of the roof would be limited to 9 metres (or up to 10.5 metres where the ridge length is reduced), thus effectively limiting the height of the top of the gable to this dimension.



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**Q28:** *Is there any maximum overall height for visually permeable fencing along the primary street frontage or along the secondary street?*

*(Clause 5.2.4 Street walls and fences)*

**A:** No. However, front fencing standards may be varied by way of local planning policy, prepared by the decision-maker, which may limit the overall height of the visually permeable section of fencing and/or may reduce the maximum 1.2 metre height standard for the non-permeable section.

**Q29:** *Are there any limits to the upgrading of an existing dwelling, under clause 5.2.6 C6 of the R-Codes, when retained as part of a grouped dwelling development?*

*(Clause 5.2.6 Appearance of retained dwelling)*

**A:** Clause 5.2.6 C6 refers to the appearance of the retained dwelling being upgraded externally to an equivalent maintenance standard of the new or rest of the development. This suggests any required works should be limited to maintenance rather than any additional development (e.g. re-cladding/re-roofing of the existing dwelling to match the new or rest of the development). However, a local planning policy may be made by the decision-maker to amend or replace the deemed-to-comply provisions under clause 5.2.6 C6 to clearly outline upgrading standards/requirements.

**Q30:** *How is clause 5.2.6 C6 applied where subdivision precedes development?*

*(Clause 5.2.6 Appearance of retained dwelling)*

**A:** Where the subdivision is of a type that would result in the classification of the existing dwelling as a 'single house' (as defined under the R-Codes), the clause would technically not apply. However, the WAPC may impose a condition of subdivision approval requiring that the retained dwelling comply with the requirements of the R-Codes.

There is no scope to apply a condition requiring upgrading of an existing grouped dwelling once the title to the property containing this dwelling has been separated from that of the development site/parent lot.

**Q31:** *Can an outdoor living area, required under clause 5.3.1 C1.1, be situated in the front setback area?*

*(Clause 5.3.1 Outdoor living areas)*

**A:** Clause 5.3.1 C1.1 requires an outdoor living area to be 'behind the street setback area', which means behind the street setback line. This line is to be drawn parallel to the street at the prescribed setback distance or the average setback of the adjacent dwellings as referred to in R-Codes Figure series 2.

However, under the design principles, an application could be made to locate the required outdoor living area within or partly within, the street setback area, particularly where it faces north.





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**Q32:** *If a grouped dwelling development containing seven dwellings has four dwellings using a common access and three dwellings each individually gaining access directly from a public road, is there any requirement for visitor parking?*

*(Clause 5.3.3 C3.2 Parking)*

**A:** No, because there is not in excess of four dwellings being served by common access.

**Q33:** *Under clause 5.3.5 C5.3 a 6 metre separation is required between the driveway and the street corner or the point at which a carriageway begins to deviate. From what point is this measured?*

*(Clause 5.3.5 Vehicular access)*

**A:** The point of reference is not defined, however the street corner is considered to be defined by the point at which the road alignment begins to deviate towards the intersecting road. Under Australian Standard (AS) 2890.1, a 6 metre separation distance is defined with reference to the corner truncation or the point at which the carriageway begins to deviate. The intent of this clause is to limit traffic conflict, and AS 2890.1 is a suitable reference.

**Q34:** *Under clause 5.3.5 various driveway widths are required. Which of these standards take precedence?*

*(Clause 5.3.5 Vehicular access)*

**A:** The driveway width requirements under clauses 5.3.5 C5.2-C5.6 relate to the width of the paved vehicle access way as per the definition of driveway in Appendix 1 of the R-Codes.

Clause 5.3.5 C5.3 requires a 0.5m setback to a side lot boundary or street pole and this is applicable to both sides of the driveway where it is located between two lot boundaries.

It should be noted that the width of access legs is also limited by the WAPC's subdivision policy: DC 2.2 Residential Subdivision.

**Q35:** *In relation to retaining walls adjacent to a side or rear boundary, how is the setback to be determined?*

*(Clause 5.3.8 Retaining walls)*

**A:** The setback is to be based on that for a wall with a major opening and having a total height comprising the height of the retaining wall plus a nominal height of 2.4 metres. This would normally mean a minimum 1.5 metre setback for any retaining wall over 0.5 metres in height. Where a retaining wall is less than 0.5 metres high and is likely to benefit both adjoining properties, consideration should be given to locating it on the common boundary or within 1 metre of the common boundary as permitted under clause 5.3.8 C8.2.



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**Q36:** *Are privacy screens subject to the setbacks applicable to buildings?*

*(Clause 5.4.1 Visual Privacy)*

**A:** Yes, if they form part of the building. However, screening which does not take the form of a building (as defined) will not generally be subject to standard setback requirements (e.g. pergolas). It is possible to utilise boundary fencing as a privacy screen, subject to the requirements of the *Dividing Fences Act 1961* and any relevant local laws relating to fencing. These often involve consultation with adjacent owners where fencing exceeds a particular height. Care needs to be taken not to impose conditions requiring screen fencing or accept a proposal for such screening, in the absence of agreement from the adjoining neighbour.

**Q37:** *Does the cone of vision and associated visual privacy requirements apply to the street setback area?*

*(Clause 5.4.1 Visual Privacy)*

**A:** No, clause 5.4.1 C1.1 of the R-Code refers only to those areas of another residential property behind its street setback line (i.e. the setback line of the property which is being overlooked).

**Q38:** *Can visual privacy standards be varied where both of the affected properties can benefit?*

*(Clause 5.4.1 Visual Privacy)*

**A:** Yes, but only by the decision-maker through the application of relevant design principles and consultation with adjoining owners/occupiers.

**Q39:** *How should translucent screening of outdoor areas be assessed for the purposes of shadow calculations under clause 5.4.2, where the screening results in partial shadowing of the adjoining property?*

*(Clause 5.4.2 Solar access for adjoining sites)*

**A:** There is no recognition of partial shadowing under clause 5.4.2 C2.1. Where such a situation arises, it should be identified in the shadow calculations, as translucent material still casts a shadow. The design principles allow for variation and the extent and impact of any partial shadowing in excess of the deemed-to-comply requirements can thus be taken into consideration.



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**Q40:** *Are there any potential conflicts between the R-Codes and Building Code of Australia (BCA) Energy Efficiency requirements?*

*(Clause 5.4.2 Solar access for adjoining sites)*

**A:** The BCA and R-Codes should be complementary. The R-Codes address solar access in respect of adjoining sites and, in particular, seek to minimise the potential for new development to overshadow north facing major openings to habitable rooms and roof mounted solar collectors. The energy efficiency of the built fabric of housing is addressed in the BCA.

**Q41:** *Is habitable floor space which is provided in the form of a separate building from the main dwelling, classified as an outbuilding and therefore subject to area and height limits provided for under clause 5.4.3, C3?*

*(Clause 5.4.3 Outbuildings)*

**A:** No. An outbuilding is specifically defined in the R-Codes to include an enclosed non-habitable structure and therefore a free standing building comprised of a habitable room is not subject to R-Code provisions applicable to outbuildings. It would however, be subject to the normal setback and height controls under the R-Codes).

**Q42:** *Under clause 5.4.4 C4.3 external fixtures other than those referred to in clause 5.4.4, C 4.1 and 4.2 will meet the requirements where they are 'located so as not to be visually obtrusive'. Does this determination involve the exercise of discretion and if so, does the local government have the power to refuse such applications?*

*(Clause 5.4.4 External fixtures)*

**A:** Yes, there is an element of discretion involved in the assessment of compliance with this clause. Where the decision-maker is of the opinion that the particular fixture is not obtrusive, it should approve the application, and where not, it may consider the proposal in terms of the design principles, with the option of undertaking neighbour consultation.



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**Q43:** *Do external water tanks classify as external fixtures, and if so, are they required to be set back in accordance with normal wall setbacks?*

*(Clause 5.4.4 External fixtures)*

**A:** Yes, rainwater storage tanks are included in the definition of external fixtures. Clause 5.4.4 C4.3 requires that they are not visible from the primary street or are designed to integrate with the building or located so as not to be visually obtrusive. However, it is important to appreciate that external fixtures constitute a structure under the definition of a building under the R-Codes and still need to meet the relevant setback and height requirements applicable to buildings.

**Q44:** *Now the family occupancy restriction for ancillary dwellings has been removed under the R-Codes, what happens to existing development/approvals which have the restriction as a condition of planning approval and/or as a notification on the certificate of title?*

*(Clause 5.5.1 Ancillary dwellings)*

**A:** Any restrictive conditions of planning approval regarding ancillary dwellings would continue to apply until superseded by a subsequent planning approval. In addition, any notifications on title, restrictive covenant or other similar restrictions regarding ancillary dwellings would continue to apply unless removed.

The WAPC would support removal of restrictions not consistent with the R-Codes; however, landowners should obtain their own advice and liaise with the decision-maker to ascertain the appropriate means of removing any restrictions.

The most widely used restriction is a notification placed on the certificate of title pursuant to section 70A of the *Transfer of Land Act 1893*. Removal of a Section 70A notification on title requires a Landgate Form N2 to be completed, signed by the registered proprietor(s), verified and approved by the local government and then lodged with Landgate. The required Form N2 can be obtained via the following link: [www.landgate.wa.gov.au/docvault.nsf/web/FOR\\_DLI\\_N2/\\$FILE/FOR\\_DLI\\_N2.pdf](http://www.landgate.wa.gov.au/docvault.nsf/web/FOR_DLI_N2/$FILE/FOR_DLI_N2.pdf).

Landowners should liaise with the decision-maker before submitting the form, as there may be other requirements (for example an amended planning approval) before the decision-maker will verify and approve Form N2.

**Q45:** *Can more than one ancillary dwelling be provided upon a lot?*

*(Clause 5.5.1 Ancillary dwellings)*

**A:** No, only one ancillary dwelling can be provided on the same lot as the single house.

**Q46:** *Must the owner reside in either the single house or the ancillary dwelling?*

*(Clause 5.5.1 Ancillary dwellings)*

**A:** No, the single house and the ancillary dwelling may be occupied by any person(s), at the owner's choice.



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**Q47:** *Under clause 5.5.2 C2.1, the maximum plot ratio area for Aged and Dependent Persons' Dwellings is 100m<sup>2</sup> (80m<sup>2</sup> for Multiple Dwellings). Can these limits be exceeded through the application of the design principles?*

*(Clause 5.5.2 Aged or dependent persons' dwellings)*

**A:** Yes, provided the occupation of the dwellings complies with the requirements for the respective classes of dwelling (e.g. aged 55 or over in the case of Aged Persons' Dwellings). Failure to comply with the occupational age requirement would result in contravention of the density standards which are not subject to discretionary variation.

**Q48:** *Are the adaptable housing requirements set out in Australian Standard AS 4299, mandatory for all aged or dependent persons' dwellings?*

*(Clause 5.5.2 Aged or dependent persons' dwellings)*

**A:** Under clause 5.5.2 C2.3 & 2.4 all dwellings are required to be constructed using the adaptable house requirements set out in AS 4299.

The design principles, on the other hand, only require that they are 'designed to meet the needs of aged or dependant persons'. In this regard:

- Ideally 100% of dwellings in any given development should incorporate the adaptable house 'class c' requirements set out in AS 4299, and be constructed in such a manner that they could be retrofitted to incorporate adaptable house 'class b' requirements set out in AS 4299.
- At a minimum, and based on the fact that 50% of the population over the age of 60 years has some form of disability, 50% of dwellings in any given development should incorporate the requirements set out in AS 4299 (for either adaptable house class a, b or c), with at least the 'class c' requirements being met and preferably 'class b or a' requirements being met.
- State government agencies involved in the construction and management of aged or dependent persons' dwellings complexes may be able to justify a lesser proportion of dwellings in any given development incorporating the requirements set out in AS 4299 (i.e. <50%) on the basis of their ability to relocate residents to more suitable housing with increased level of care which would be available within an integrated aged care facility.



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**Q49:** *Why do we need different provisions for multiple dwelling and mixed use development in areas coded R30 or greater?*

**A:** The provisions of the R-Codes in Part 5 do not generally encourage housing diversity, affordability and flexibility. The provisions in Part 6 address these issues and aim to improve the quality of multiple dwelling developments, in line with contemporary planning needs. Specifically, the provisions aim to:

- expand the permissible range of housing within individual residential codings to better meet the housing needs of the community;
- facilitate the development and redevelopment of existing housing sites;
- reduce the disincentive for smaller dwellings in favour of increased diversity of housing within a framework of form-based design guidance;
- improve the standard of design for multi-unit housing and encourage the development of housing with design principles appropriate to form; and
- build the capacity of local government to interpret and apply new methods for assessment and promotion of multi-unit housing and mixed-use development.

**Q50:** *What are the main differences between Part 5 and Part 6 of the R-Codes?*

**A:** The main differences in areas coded R30 or greater include:

- a greater emphasis on the use of design principles for multiple dwellings;
- no minimum site area per dwelling for multiple dwellings; plot ratio, setbacks and building height guide the form of development;
- a suite of residential activity centre (R-AC) codings for residential development within activity centres;
- parking requirements that acknowledge different on-site parking demands dependent on the size of the individual units and the proximity of public transport;
- provisions for bicycle storage facilities;
- a percentage of one and two bedroom units is required within developments over 12 units, to encourage diversity and affordability;
- no minimum communal open space requirement or minimum frontage requirement for multiple dwellings.

**Q51:** *What is the R-AC code?*

**A:** The R-AC code is a high residential density code under Table 4 of the R-Codes that allows for a variety of residential development within activity centres. They control the number and type of dwellings that are developed within mixed use activity centres. The R-AC code is applied under a local planning scheme or under an approved Activity Centre Structure Plan.



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**Q52:** *What parts of the R-Codes can be varied using local planning policies?*

*(Clause 7.3 Scope of local planning policies, local development plans, local structure plans and activity centre plans)*

**A:** The R-Codes provide for only certain R-Code requirements, outlined in clause 7.3.1, to be varied through local planning policies (in addition to local development plans, local structure plans and activity centre plans) adopted under a local planning scheme, to accommodate specific needs related to that particular locality or region.

Local planning policies may also be prepared to vary any other R-Code requirements but only with WAPC approval, where regional circumstances justify a special exemption from a particular R-Code requirement, under clause 7.3.2 of the R-Codes. Despite this, for significant issues a local planning scheme amendment is preferable to a local planning policy, to provide increased statutory weight.

**Q53:** *What is the status and effect of a local planning policy under the R-Codes?*

**A:** Local planning policies are given due regard by the decision-maker primarily in providing the parameters for the exercise of discretion under the relevant design principles, however they are not to be applied rigidly to solely determine the appropriateness of a proposal.

Applicants should seek the advice of the decision-maker relevant to a development proposal for guidance regarding the content and interpretation of local planning policies.

**Q54:** *Is it necessary for a local government to readopt all existing local planning policies that it intends to retain following the introduction of the R-Codes on 2 August 2013?*

**A:** Local government should review their local planning policies in light of the R-Codes to ensure that they are consistent with the R-Codes (particularly where they reference specific clause numbers) and, more particularly, that they accord with the provisions set out in Part 7 of the R-Codes. If an existing local planning policy requires WAPC endorsement under clause 7.3.2 of the R-Codes, and has not been endorsed by the WAPC, the local planning policy must be forwarded to the WAPC.

To the extent that an existing properly adopted local planning policy is inconsistent with the R-Codes, the R-Codes automatically prevail. This is implicit in clause 7.1 and 7.2 of the R-Codes which states that local planning policies must be consistent with the R-Codes. For future local planning policies, the R-Codes will also prevail to the extent of any inconsistency, unless the local planning policy is a variation for the purposes of clauses 7.3.1 and 7.3.2 of the R-Codes.



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**Q55:** *Can the R-Codes be varied by local planning schemes?*

**A:** Yes. Where a decision-maker considers that a specific variation/s is required to address significant local issues, amendment to its local planning scheme could be initiated. Such amendments will need to be undertaken in accordance with the process set out in the *Town Planning Regulations 1967*. As for local planning policies (refer Q54 above), the decision-maker would need to demonstrate that a R-Code variation/s the subject of a proposed amendment is warranted due to a specific need related to the particular locality or region and is consistent with the objectives and design principles of the R-Codes.

Applicants should seek the advice of the decision-maker relevant to a development proposal for guidance regarding the content and interpretation of local planning scheme provisions.

**Q56:** *What is a Local Development Plan (LDP)?*

**A:** Some Local Planning Schemes and the WAPC's Liveable Neighbourhoods policy refer to Detailed Area Plans. The acronym for Detailed Area Plans (DAPs) however conflicts with that of the recently formed Development Assessment Panels. The term Detailed Area Plans has therefore been amended to Local Development Plans in the R-Codes to remove any conflict and a definition provided.

**Q57:** *Can the R-Codes be varied under a Local Structure Plan (LSP) or Local Development Plan (LDP)?*

*(Clause 7.3 Scope of local planning policies, local development plans, local structure plans and activity centre plans)*

**A:** Yes, LSPs and LDPs can include provisions which vary the R Codes provided LSP or LDP is prepared and approved in accordance with a local planning scheme (and in the case of LDPs, where the LSP and/or scheme contains provisions relating to their operation).

The variations must be provided within the statutory section of the LSP and clearly outline what R-Code requirements are being varied, to what extent and justification must be provided for any variations, and those that require WAPC approval (e.g. variations to open space) need to be identified.

Unless exceptional circumstances exist and justification provided, complete removal of certain R-Codes requirements within a LSP or LDP is not considered appropriate (e.g. removal of solar access for adjoining sites).





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# R-Codes FAQ

Residential Design Codes of Western Australia Frequently Asked Questions

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**Q58:** *Is a free standing garage an outbuilding?*

**A:** No, a free standing garage is excluded from the definition of an outbuilding.

**Q59:** *What is the difference between a patio, verandah and a pergola?*

**A:** These terms are defined in Appendix 1 of the R-Codes. The main difference between them is a verandah is a roofed open platform which is attached to a dwelling; however a patio or pergola may or may not be attached. Also, while both a patio and pergola are unenclosed, a patio is covered in a water impermeable material whereas a pergola is an unroofed open-framed structure or covered in a water permeable material.

**Q60:** *In the definition of 'plot ratio area' are stairs that are not common to two or more dwellings (e.g. internal stairs or external stairs serving a single dwelling) included or excluded from the calculation of the plot ratio?*

**A:** They are included in the calculation of the plot ratio as they comprise the gross total area of the building (i.e. dwelling). The exclusion relates to stairs and landings common to more than one dwelling (i.e. lift shafts, shared stairs and stair landings).

