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## **Submission responding to draft Medium Density Code**

The Property Council WA (Property Council) welcomes the opportunity to provide comments on the draft Medium Density Code ("MD Code").

### **Background**

Over the past two years the Property Council has been a firm advocate for the development of well designed, greater density in existing suburbs. To support its advocacy, the Property Council has produced two reports which explore attitudes to medium density in WA. The It takes a village report, delivered in 2019, identified strategies to garner community support for urban density.

The follow-up report Close to Home, released in 2020, quantified the qualitative findings of 'It takes a village' and served as a statistical snapshot of Perth's attitudes to urban density. The headline finding in the 'Close to Home' report was that 74 per cent of West Australians were not opposed to medium density living in their suburbs.

The Property Council is committed to working with the State Government to ensure the MD Code delivers workable outcomes for the property industry, meets community expectations, and can be easily managed by the WA planning system.

### **Executive Summary**

The Property Council in general terms supports many of the objectives of the draft MD Code. However, it is concerned that some of the proposed requirements are too onerous, impacting the ability for industry participants to meet market demand, in terms of innovation, cost and amenity. Whilst individual design elements encourage best practice, the aggregate impact of meeting all elements needs to be considered further.

The Property Council believes aspects relating to implementation, program and design still require further development. Significantly, in the current form the MD Code would have major impacts on greenfield development which need to be addressed in advance of the Code being launched, to ensure design outcomes and housing affordability are balanced.

Appropriate transitional arrangements are vital to ensuring the implementation of the MD Code does not halt development and/or significantly impact affordability. Western Australia is experiencing simultaneous housing shortages in the sales and rental markets. Sales listings for property in Perth hit a 10-year low in February. Considering the significant pressures on the housing market, the Property Council is concerned that the significant changes required to ensure projects meet the requirements of the MD Code will slow the delivery of new development.



The Property Council recommends that prior to being approved by WAPC pilot projects are undertaken at all development levels and markets captured by the policy to understand the cost and time implications of compliance. This is necessary to ensure that the MD Code can operate outside an infill context.

### **The Property Council of Australia**

The Property Council of Australia is the peak industry body representing the whole of the property industry. Property is Australia's largest industry, employing more than 1.4 million people, generating 13 per cent of GDP and shaping the future of our communities and cities.

We support smarter planning, better infrastructure, sustainability, and globally competitive investment and tax settings which underpin the contributions our members make to the economic prosperity and social wellbeing of Australians.

The Property Council WA membership consists of more than 250 member companies, including architects, urban designers, town planners, builders, investors and developers. Our members conceive of, invest in, design, build and manage the places that matter to Australians – our homes, retirement living communities, shopping centres, office buildings, education, research and health precincts, tourism and hospitality venues.

This submission is informed by representatives from the Property Council's expert committees.

### **Benefits of the proposed draft MD Code**

The Property Council understands that the Western Australian Planning Commission (WAPC), alongside others in the planning and development industry, are concerned about poor built form outcomes in some residential areas. We note that these are perceived to include a loss of urban tree canopy, lack of housing diversity and high rates of site coverage. The Property Council agrees that planning reform – including the MD Code – has a role to play in addressing these concerns, and we consider that the MD Code contains some worthy initiatives in this regard. In particular:

- The incentives for the amalgamation of development sites to address a key obstacle to incremental infill – its piecemeal nature which results in inefficient land use and minimal diversity of lot and house product.
- The Property Council supports, in principle, the MD Code's facilitation of tree retention and the urban tree canopy.



- The revised requirements for building heights and ground-floor setbacks are simpler than the existing Residential Design Codes (R-Codes) requirements and provide flexibility for house designers.
- More generous provisions for boundary walls, including on rear boundaries and for two-storey walls, provide flexibility. In particular, these obviate the need for Local Development Plans (LDPs) for the common and popular 6-metre wide attached townhouse product found in R60 areas.
- The additional provision for solid fencing within front setback areas is helpful. However, we do have concerns about the streetscape impact from the potential proliferation of front fencing arising from an increased incidence of front-setback Primary Garden Areas.
- The specific requirement for storage space for single dwellings (freehold lots) brings this product into line with existing requirements for grouped and multiple dwellings.
- The incorporation of consistent provisions for development such as ancillary, small, aged and dependent persons' dwellings and housing on lots less than 100 sqm makes the MD Code a useful 'one stop shop' for various residential typologies.

The Property Council also notes and supports the provision of a deemed-to-comply pathway in the MD Code. A purely performance-based approach, as taken (justifiably) by the Apartment Code, would not provide the certainty house designers require. In addition, we support the consistency of the MD Code's tone and structure, which aligns with the DesignWA suite of policies, and which fosters user accessibility.

### **Opportunities to improve the draft MD Code**

The Property Council believe there are several opportunities to improve the functional operation of the MD Code, while still maintaining the policy intentions that underwrite the proposed changes. Below are a series of recommendations and a supplementary table of practical considerations (Attachment 1) that the Property Council recommends be included in the final iteration of the Code.

#### ***Implementation Timeline and Transition Framework***

The draft MD Code represents a significant policy shift in the delivery of medium density dwellings.

For projects to be delivered in a timely way, a transition approach is vital. Western Australia is experiencing simultaneous housing shortages in the sales and rental markets. Sales listings for property in Perth hit a 10-year low in February. Considering the significant pressures on the housing market, the Property Council is concerned that the significant changes required to



ensure projects meet the requirements of the MD Code will slow the delivery of new development. Preliminary advice from members suggests that 75-80 per cent of their first homebuyer product will be non-compliant.

The Property Council is also concerned that the MD Code is likely to be implemented inconsistently. We note that the MD Code brings with it an expectation for local governments with Local Planning Policies (LPPs), specifically that those implementing the medium-density single house development standards (R-MD Codes) and other R-Codes variations audit them and report to the WAPC on whether they should continue. Our members expect that LPPs that provide a head of power for the R-MD Codes (or similar variations) will not be permitted to continue. However, R-Codes variations that are implemented via structure plans or LDPs will continue until those documents expire.

This creates an uneven playing field for competing estates and puts those operating under the MD Code at a disadvantage, as there will be fewer compliant house designs available. To counter this, it would be appropriate for all structure-planned areas to be permitted to develop since the R-Codes variations applicable at the time of approval. At the least, all titled stock and approved lots should be treated in that way.

*The Property Council proposes transition arrangements should include:*

- All structure-planned areas should be permitted to develop on the basis of the R-Codes' variations applicable at the time of approval, or, at least, for all titled stock and approved lots to be treated in that way.
- A clear timeline for when the MD Code can be applied including a clear outline for transitional arrangements. The Property Council understand that some councils are already applying the MD Code to assessments.

In addition, the existing R-Codes apply to all development below R40, and the R-Codes - Apartments apply to all multi-unit development above R40. Consequential amendments are required to these documents to avoid overlap with the new MD Code. Tidy ups to other local planning documents may also be required in relation to this.

### ***Design Requirements***

Ensure the delivery of diverse housing to meet the needs of all Western Australians has been an ongoing priority of the McGowan Government. However, the Property Council is concerned that some of the requirements outlined in the MD Code will have the unintended consequence of limiting design diversity.



Ensuring due regard for local amenity and consumer preference is necessary to the delivery of attractive developments that add to WA's housing diversity and meet the needs of current and future populations. The MD Code needs to maintain a level of flexibility or potential for some requirements to be relaxed depending on the local context. For example, lots that directly adjoin public open space may be permitted to relax primary garden area requirements. Attached (Attachment 1) to this submission is a table of proposed recommendations that will support the delivery of high-quality medium density dwellings throughout WA.

#### ***Impact on Greenfield Development***

It is the intent that this policy has statewide applications. The Property Council acknowledges the difficulty of preparing a planning framework to meet the diverse housing needs across Western Australia.

Currently, the R-MD Codes allow for greater flexibility in a greenfield setting and responds to the fundamental regulatory differences between greenfield development, incremental infill and master-planned infill. It appears the provisions that accommodated greater flexibility in the greenfields and brownfields, and in more rural settings, do not exist in the MD Code. It is also understood that feasibility testing has only considered R40 sites and above. It does not appear that the feasibility of this MD Code has been considered in the context of R30 sites or the greenfields where housing affordability is more challenging.

Greenfield communities play a critical role in the supply of affordable housing, delivering over half of new housing in Perth and catering predominantly for first home buyers and young families. Preliminary analysis by our members suggests that, outside of the innermost suburbs, the MD Code puts in place design rules that cannot be implemented due to commercial constraints.

Additionally, our members suggest the MD Code would render around half of existing mainstream house and land product types no longer compliant or commercially viable. Importantly, these product types are the most affordable options in new communities, meaning reduced product diversity and customers being priced out of the market.

It is essential that feasibility testing be undertaken for these scenarios.

*The Property Council recommend that pilot projects are undertaken at all levels captured by the policy to understand the cost and time implications of compliance and ensure that the MD Code can operate outside an infill setting.*



### **Next Steps**

If you require further information or clarification, please contact Emily Young, Deputy Executive Director, on 0475 161 328 or [eyoung@propertycouncil.com.au](mailto:eyoung@propertycouncil.com.au).

Yours sincerely



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Property Council of Australia



## ATTACHMENT 1 | Recommendations to support better design outcomes

MD Code element	What is being proposed?	Consequence or Implication	Recommendation
Primary Garden Area	40m2 requirement on lots greater than 150sqm. PGA must be north facing and have a min. dimension of 4.0m.	<ul style="list-style-type: none"> <li>- 40m2 is double current requirement and considered excessive.</li> <li>- Often unachievable where access to sites is required from the north.</li> <li>- Min. dimension of 4.0m is often unachievable where lot shape is irregular.</li> <li>- Combined with 50 per cent garage width criteria, front loaded lots less than 12m wide will be less viable.</li> </ul>	<ul style="list-style-type: none"> <li>- Drop min. dimension to 1.5m to allow greater flexibility in PGA arrangement.</li> <li>- Provide alternative compliance options for lots where access is required from the north.</li> <li>- Incorporate greater scalability – the notion that a 150sqm lot should have a PGA that is the same size as a 350sqm lot is unreasonable and not responsive to market expectations.</li> </ul>
Deep Soil Area	Impervious surfaces cannot exceed 30 per cent deep soil area.	<ul style="list-style-type: none"> <li>- 30 per cent is too restrictive.</li> <li>- If a lot is 250sqm, deep soil area must be 50sqm, meaning only 15m2 can be impervious for structures like a patio or deck.</li> <li>- This does not allow for the extent of outdoor furniture requested by the market.</li> </ul>	<ul style="list-style-type: none"> <li>- Increase impervious surfaces to 40 per cent.</li> </ul>
Primary Living Space	Primary living spaces on upper floor must have access to a balcony.	<ul style="list-style-type: none"> <li>- Construction cost constraint.</li> <li>- Balconies are often hard to achieve given significant visual privacy setback required.</li> </ul>	<ul style="list-style-type: none"> <li>- Delete requirement.</li> </ul>
Primary Garden Area / Primary Living Space	The deemed-to-comply pathway for PGAs (section C2.1.1) requires PGAs to be “located in the northern	<ul style="list-style-type: none"> <li>- For lots that face between north and east, the PGA will need to be in the front setback area, which</li> </ul>	<ul style="list-style-type: none"> <li>- The deemed-to-comply pathway relevant to the PGA, and by extension the PLS, should be</li> </ul>



(combined implications)	<i>half of the site"</i> . Associated with this are the requirements for the PLS, which include that it must <i>"have direct physical and visual access to the Primary Garden Area"</i> (section C3.1.2(i)) and that it must <i>"have a major opening orientated between north and east"</i> (section C3.2.3).	<p>has implications for visual privacy, brings the need for shade structures, and brings the potential for a proliferation of front fencing.</p> <ul style="list-style-type: none"> <li>- Market appetite is likely to be extremely limited for this product.</li> <li>- The above outcomes need to be balanced against the likelihood that solar access to south- or west-facing PGAs would be compromised if the provisions were less prescriptive.</li> </ul>	<p>simplified via deletion of section C2.1.2.</p> <ul style="list-style-type: none"> <li>- Review the prescriptive nature of this requirement.</li> </ul>
Parking	Maximum 1 bay for 2 bedroom dwellings in Location A	<ul style="list-style-type: none"> <li>- This is contrary to market demand where two car bays are required.</li> <li>- Limiting car bays to one vehicle will increase on street parking demand.</li> <li>- A limit of one bay also restricts the buyer market to singles, couples or young families.</li> </ul> <p>Discouraging multi-generational housing and share housing in a medium density setting.</p> <ul style="list-style-type: none"> <li>- It may also reduce investment in rental market accommodation.</li> </ul>	<ul style="list-style-type: none"> <li>- Increase maximum to 2 car bays.</li> </ul>
Site cover	The MD Code proposes to retain the site coverage maximum from the existing R-Codes. This may appear to be a modest measure, but it is a radical departure from	<ul style="list-style-type: none"> <li>- The re-introduction of a site coverage maximum, combined with the requirements for PGAs, Deep Soil Areas (DSAs) and setbacks, will lead to smaller</li> </ul>	<ul style="list-style-type: none"> <li>- Site cover should be determined by <u>either</u> a site cover maximum, or requirements for PGAs, Deep Soil Areas (DSAs) and setbacks - not both.</li> </ul>



	<p>the R-MD Codes, which don't contain a site coverage maximum. The widely-adopted R-MD Codes rely solely on specifications for outdoor living areas and setbacks to manage dwelling size. This represents a focus on functional outdoor space and reflects the natural increase in site coverage that comes with smaller lots, consistent with buyers' expectations.</p>	<p>building footprints and effectively force two-storey construction. Without this, house sizes will be compromised. The alternative solution is to create larger lots so that single-storey house products can comply with site coverage requirements, which puts upward pressure on lot prices.</p> <ul style="list-style-type: none"> <li>- Brick and alternative methods of construction both bring a price implication for two-storey construction. Some homebuyers can absorb the additional cost, but many, especially in price-sensitive areas, cannot.</li> <li>- Any increase in construction value is relevant to the issue of finance availability, as banks are unlikely to lend money to prospective purchasers if the construction cost results in the property being over-capitalised. This is a risk where the underlying land value is low, which it can be in many middle-ring and outer suburbs, and greenfield areas.</li> </ul>	<ul style="list-style-type: none"> <li>- The Property Council recommends the focus should be place on design control principles with a retained focus on functional outdoor space for recreation, a tree/s and solar access / visual relief not arbitrary site coverage restrictions.</li> <li>- Further consideration should be given to removing onerous site coverage restrictions for single dwellings, and instead focusing on the application of controls to support good design principles at least in greenfield or brownfield (structure-planned) areas.</li> </ul>
Garages	<p>Table 4.5a of the MD Code states that for single-storey houses, only 50 per cent of the building width may be occupied by a garage. A</p>	<ul style="list-style-type: none"> <li>- The R-Codes and R-MD Codes facilitate garage widths of more than 50 per cent of the lot width (as opposed to the building width)</li> </ul>	<ul style="list-style-type: none"> <li>- The problem with double garages on 10.5m and 12.5m wide lots has not been explained. For 10.5m wide lots, the visual impact can be</li> </ul>



standard double garage is 6 metres wide, meaning that a 12-metre wide lot will be needed to support a double garage for a single-storey house (assuming two boundary walls).	<p>where the garage is set back behind the house. In practice, this has enabled provision of single-storey houses on standard-width lots of 10.5m and 12.5m, with no boundary walls required for either. Double garages are highly valued by the market. Assuming that single-storey houses continue to predominate, the proposed MD Code provision will have two primary impacts:</p> <ul style="list-style-type: none"> <li>o The 10.5m product will become less common, reflecting low demand for single garages. This would deprive the market (especially the first-homebuyer market) of entry-level choice.</li> <li>o The 12.5m product is likely to either shrink to 12m expand to 13m where outdoor access from front to back is desired. When it shrinks to 12, houses built with two boundary walls 'suburban' areas (for example, areas coded R30), could be overly intense. When it expands to 13m, this has a cost implication relative to the</li> </ul>	<p>managed with a longer setback for the garage than the house, as is done currently. For 12.5m wide lots, the garage occupies less than 50 per cent of the lot width and therefore generally does not dominate the frontage.</p> <ul style="list-style-type: none"> <li>- Provision of adequate garage space discourages parking on verges and footpaths and therefore contributes to pedestrian safety and opportunities for street trees. The alternative (insufficient garage space and extensive informal parking) is an inferior outcome.</li> <li>- The Property Council requests that provision be made for double garages to be provided with single-storey houses on 10.5m wide lots, preserving an important housing option. This can be done through the inclusion of the following words in C4.5.5 of the MD Code (in italics):   <i>"Where a garage faces the primary street and is in front or within 1m of the building, a garage door and its supporting structures..."</i></li> </ul>
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		<p>12.5m equivalent for no practical benefit.</p> <p>The net effect of this would be less lot diversity, which is detrimental for homebuyers, and less small lot product, which is detrimental to the development industry's efforts to meet the State Government's density targets. Both factors are detrimental to housing affordability, as they put upward pressure on lot sizes and therefore lot prices.</p> <p>Additionally, many infill block (particularly in Perth's older suburbs) are 800sqm with a 20 metre frontage. Side by side subdivision of these sites needs to be achievable.</p>	<p>- Alternatively, if 10.5m wide lots are considered too narrow to support a double garage, we believe it important that the requirements for at least the 12.5m wide lot product be preserved, which could be achieved through replacement of the words "building width" with "lot width" in the single storey column of Table 4.5a, consistent with the R-Codes.</p>
<p><b>Building Height</b></p>	<p>Three storey maximum wall height is 9.0m.</p>	<p>- Floor-to-floor height is generally 3.1m where a 2.7m minimum internal ceiling height is required to accommodate air conditioning systems.</p> <p>- The Code mandates a 2.7m min ceiling height, therefore the overall building height needs to be increased.</p>	<p>- Increase maximum wall height.</p>



Visual Privacy	<p>Increase in cone of vision radius requirement.</p> <p>Lack of requirements for 'first movers' (C.4.12.1) creates a potentially very onerous design environment for later builders, which is inequitable.</p>	<ul style="list-style-type: none"> <li>- The need for the increase has not been adequately demonstrated.</li> <li>- The need and purpose of provision C 4.12.1 has not been adequately demonstrated, the Property Council and its members are not aware of a market demand for this requirement.</li> <li>- The inclusion of this provision without reasonable market demand is unduly onerous.</li> </ul>	<ul style="list-style-type: none"> <li>- Maintain existing cone of vision requirements.</li> <li>- Maintain requirements for all house builders to comply with visual privacy requirements, consistent with current practice.</li> </ul>
Solar Access for adjoining sites	<p>At (C 4.11 (figure 4.11C) limits development on sites according to their street frontage due to over shadowing restrictions on adjacent sites.</p>	<ul style="list-style-type: none"> <li>- This restricts development capacity on sites according to lot frontage, despite overshadowing being a natural consequence of built form.</li> <li>- This requirement may limit development on valuable north-facing lots, to protect solar access on adjacent sites which may or may not be developed.</li> </ul>	<ul style="list-style-type: none"> <li>- Remove limits on overshadowing as they relate to street frontage.</li> </ul>