



# Streamlining strata registration

*This industry bulletin is intended to alert stakeholders to pending changes to Western Australia's building legislation which will come into effect when the Strata Titles Act 1985 (STA) is amended.*

*Consequential amendments will simultaneously be made to the Building Act 2011 (the Building Act) and Building Regulations 2012 (the Building Regulations) - including changes to a number of approved Building Act forms.*

*All the changes will come into effect on 1 May 2020, when the Strata Titles Amendment Act 2018 will be proclaimed to commence operation.*

## Changes to the Building Act

The amendments to the STA will streamline the Building Act's requirements for dealing with strata proposals as follows:

- amending section 3 to introduce a new definition of **strata lease**<sup>1</sup> as defined in the STA;
- amending the definition of **owner** in section 5 by replacing the reference to "freehold", with a reference to "freehold or held in leasehold under a strata lease"; and
- deleting section 50.

## Current strata process

Currently sections 5B and 8A of the STA and section 50 of the Building Act require a person wishing to lodge a strata plan for registration or to re-subdivide a lot in a strata scheme under the STA to obtain either:

- an occupancy permit (OP strata) BA12; or
- a building approval certificate (BAC strata) BA16.

This creates duplication and extra costs for a strata proponent because the Building Act also requires each owner of a Class 2 - 9 (commercial) building to obtain a separate general occupancy permit to occupy the building. However both types of occupancy permit essentially provide that the building is safe to occupy and use.

## New strata process

The current strata requirements in the STA will be replaced with new requirements for registering or amending a scheme plan (strata plan or survey-strata plan). These include a requirement for an application to register or amend a scheme plan to be accompanied by a general occupancy permit (BA10) or a general

building approval certificate (BA14) under the Building Act for each strata scheme building. Whether an occupancy permit or building approval certificate is needed will depend on the building's classification and circumstances as determined by the Building Act.

Significantly a strata proponent will no longer need to obtain an additional OP strata (BA12) or a BAC strata (BA16) in order to lodge such an application.

## Changes to Building Regulations

Consequential amendments to the Building Regulations made by the *Commerce Regulations Amendment (Strata Titles) Regulations 2019*, which were published in *Special Government Gazette* No: 188 on 31 December 2019, will come into operation on the day when the amendments to the STA come into effect. These amendments will:

- Create new definitions of **managed reserve**, **management body**, **road** and **strata leasehold estate**.
- Amend provisions about owners in regulations 10(1), 10(2A) and 44 by replacing the references to "land held in freehold" with "land held in freehold or held in leasehold under a strata lease". These changes mirror the change of terminology about owners used in the Building Act and acknowledge that an owner may hold land in leasehold under a strata lease.
- Amend the applicable building standards in regulation 31F by removing references to an OP strata and a BAC strata made under sections 50(1) (a) and (b) and 50(2) (a) and (b) of the Building Act. These changes acknowledge that these provisions of the Building Act will be deleted.
- Delete regulation 39. This regulation, which pertains to an OP strata and a BAC strata, will no longer be relevant due to the deletion of section 50(1) and (2) of the Building Act.

<sup>1</sup>The STA defines **strata lease** for a lot in a leasehold scheme to mean the lease registered, or proposed to be registered, for the lot as a scheme document.

<sup>2</sup>Section 8(3) of the STA sets out the characteristics of a leasehold scheme.

- Delete item 5 of Schedule 2 to the Building Regulations. Item 5, which prescribes the fee for an application for an occupancy permit or building approval certificate for registration of a strata plan or plan of re-subdivision under the STA, will no longer be needed once sections 50(1) (a) and (b) and 50(2) (a) and (b) of the Building Act are deleted.

There is no need for transitional regulations to allow this to happen because the provisions about general savings on repeal of legislation in section 37 of the Interpretation Act 1984 mean that the above intent is achieved without the need for any specific transitional provisions in regulations.

### Transitional applications

Despite the deletion of section 50 of the Building Act, a permit authority should grant an occupancy permit or building approval certificate under section 50(1) or (2) if:

- at the time the amendments to the STA come into effect, an application has been made under section 50(1) or (2) of the Building Act but a decision has not been made to grant an occupancy permit or building approval certificate; and
- the permit authority is otherwise satisfied that the application meets the requirements of the Building Act.

### Current and proposed new process

The following table compares the current Building Act built strata process with the new process under the STA:

Commercial building		
Purpose	Current Process	New Process
Occupy	<p><b>Applicant lodges</b></p> <ul style="list-style-type: none"> <li>• <b>BA17</b> CCC</li> <li>• <b>BA9</b> application for occupancy permit</li> </ul> <p><b>Permit authority grants:</b></p> <ul style="list-style-type: none"> <li>• <b>BA10</b> occupancy permit</li> </ul>	<p><b>Applicant lodges:</b></p> <ul style="list-style-type: none"> <li>• <b>BA17</b> CCC (new buildings) or <b>BA18</b> CBC (existing buildings)</li> <li>• <b>BA9</b> application for occupancy permit</li> </ul> <p><b>Permit authority grants:</b></p> <ul style="list-style-type: none"> <li>• <b>BA10</b> occupancy permit</li> </ul>
Strata	<p><b>Applicant lodges:</b></p> <ul style="list-style-type: none"> <li>• <b>BA17</b> CCC (new buildings)</li> <li>• <b>BA9</b> application for occupancy permit</li> <li>• <b>BA18</b> CBC (existing buildings)</li> <li>• <b>BA11</b> application for occupancy permit strata</li> </ul> <p><b>Permit authority grants:</b></p> <ul style="list-style-type: none"> <li>• <b>BA10</b> occupancy permit</li> <li>• <b>BA12</b> occupancy permit strata</li> </ul>	
Residential building		
Purpose	Current Process	New Process
Strata	<p><b>Applicant lodges:</b></p> <ul style="list-style-type: none"> <li>• <b>BA18</b> CBC</li> <li>• <b>BA15</b> application for building approval certificate strata</li> </ul> <p><b>Permit authority grants:</b></p> <ul style="list-style-type: none"> <li>• <b>BA16</b> building approval certificate strata</li> </ul>	<p><b>Applicant lodges:</b></p> <ul style="list-style-type: none"> <li>• <b>BA18</b> CBC</li> <li>• <b>BA13</b> application for building approval certificate</li> </ul> <p><b>Permit authority grants:</b></p> <ul style="list-style-type: none"> <li>• <b>BA14</b> building approval certificate</li> </ul>

## Changes to Building Act forms

The following changes to Building Act forms will be made at the same time section 50 of the Building Act is removed and changes are made to the Building Regulations. A number of forms will be discontinued and other forms will be amended. The amended forms will be released for use on 1 May 2020 to coincide with the legislative changes.

### Forms to be discontinued

- BA11 Application for occupancy permit strata
- BA15 Application for building approval certificate strata
- BA12 Occupancy permit strata
- BA16 Building approval certificate strata

### Forms to be amended

The following forms are being amended to allow the **applicant** to include details of strata plan number for the purposes of lodging an application to register or amend a strata scheme plan under the *Strata Titles Act 1985*:

- BA9 Application for occupancy permit
- BA13 Application for building approval certificate

The following forms are being amended to allow the **permit authority** to include details of strata plan number

for the purposes of lodging an application to register or amend a strata scheme plan under the *Strata Titles Act 1985*:

- BA10 Occupancy permit
- BA14 Building approval certificate

**Strata plan number** means the strata plan number which is registered with Landgate. The strata plan number can be found on the relevant local government or Landgate website by doing a land title search. These details will assist local governments and Landgate to process applications to register or amend a scheme plan (strata plan or survey-strata plan) under the STA.

The BA18 Certificate of building compliance will also be amended to remove reference to section 50 of the Building Act.

### Use of old forms

Under section 74 of the *Interpretation Act 1984*, previous versions of these forms that are submitted after 1 May 2020 should be accepted by approving permit authorities provided there are no deviations from the prescribed forms which materially affect the substance of the form. A permit authority should not refuse to grant an occupancy permit or building approval certificate simply on the grounds that the applicant may not have provided a strata plan number.

A reminder about the release of the forms on 1 May 2020 will be given in a separate e-letter shortly.

**Disclaimer** – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

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