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Rock Anchors, Regulations & Insurance - Design and Building Practitioners Amendment (Miscellaneous) Regulation 2022

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SUMMARY

On 2 March 2022, the *Design and Building Practitioners Amendment (Miscellaneous) Regulation 2022* was introduced with effect from 2 March 2022.

The amendments are part of the wider construction reforms which have been implemented in NSW.

Kreisson have discussed some of the wider changes in some of our earlier articles which can be accessed here: [Important Changes for the Design and Building Practitioners Act 2020: Effective 1 July 2021](#) by Anthony Herron

KEY AMENDMENTS

We set out below the key amendments commencing 2 March 2022:

1. New requirements for installation of rock anchors on neighbouring land

A building practitioner who intends to install ground anchors on neighbouring land is required to provide evidence to the Secretary (of the Department of Customer Service) of the legal authority (i.e., a “ground anchor installation right document”) to install an encroaching ground anchor before building work commences.

Evidence will be required in certain circumstances of the work and process involved in destressing (of temporary and removable ground anchors) and removal of reinforcement tendons from removable ground anchors.

2. Recognising professional bodies of engineers

Certain professional bodies of engineers are now prescribed as relevant agencies to exchange information with the Department and a scheme recognising professional bodies of engineers and for renewal of their recognition.

The Department may refuse recognition on various public interest grounds, for example, where the applicant is not suitable to be recognised or the applicant has been convicted of a relevant offence within the last 10 years.

3. Relevant qualifications, knowledge and skills required for registration

The Regulations set out the relevant qualifications, knowledge and skills required for registration as:

- a design practitioner – architectural class with a condition for medium-rise work; and
- building practitioners qualified to carry on work for low rise work and with a condition for medium-rise work.

4. Registered Building Practitioners to obtain insurance

Registered building practitioners are exempt from certain insurance requirements until 30 June 2023: *Schedule 1 – clause 24*. This particular clause does not take effect until 1 July 2022.

NEW ANCHOR REQUIREMENTS

Building practitioners who intend to install ground anchors *on neighbouring land must* provide evidence to the Secretary of a ground anchor installation right document to install an encroaching ground anchor before building work commences.

The reason why ground anchors are installed is to provide stability to the subsoil structure to the land being developed until a permanent structure on that land is constructed.

What are Rock Anchors?

Commonly, the builder and developer will proceed with advice from geotechnical and structural engineers about the most appropriate process of stabilising the land. Rock anchors are a recognised means of achieving this goal. Excavation can only proceed once the rock anchors are installed and tested, making excavation safe.

Buildings generally require underground car parks. Where land is limited and existing buildings or roads surround a new development, highly technical shoring methods are required to allow construction, protect the neighbouring structures and ensure safety during construction.

Rock anchors are designed to support structures, retaining and shoring systems, excavations and embankments and are generally used in geotechnical and construction settings. The developer and builder are concerned with ensuring the excavation works and any stabilisation using rock anchors on/below the neighbouring property proceed as quickly as possible to avoid delays that typically occur in discussions between the builder and the owner(s) of the neighbouring property(ies).

Adjoining Property Issues

Accessing a neighbour's property using ground anchors that encroach onto /below the neighbour's property may be less expensive and provide greater stability compared to stabilising the land using an alternative engineering process where the land is stabilised using a cross-bracing process constructed entirely within the developer's land.

An alert owner of the adjoining property is concerned with damage to its property that may occur in the process of the works on the developer's property, possible affectation to the stability and future use of the subterranean space being excavated for the basement levels, and how these works may impact the neighbour's property and building.

To protect its rights the owner commonly seeks agreement for access to its property with the builder and developer through a licence agreement setting out the terms and conditions (including a licence fee) on which access to the owner's property will be provided.

Disputes often occur between developers and/or builders and the owners of neighbouring land, particularly relating to new developments for which no relevant authority or approval have been sought or obtained by the builder prior to commencing construction where a ground anchor is installed to provide stability on the new development at/below ground that encroaches onto neighbouring land.

These disputes delay the commencement of the excavation work and installation of the ground anchors and overall completion of the development.

What do these requirements mean?

The amended Regulations mean that before commencing work to installing a rock anchor onto a neighbour's land a building practitioner must obtain a formal ground anchor installation right document confirming it has formal approval. This provides certainty to all parties.

If the neighbouring land involves a public road, the builder must provide a consent from the appropriate roads authority that permits the installation of a ground anchor on neighbouring land.

Where temporary ground anchors are envisaged, the building practitioner must provide evidence that the ground anchor has been de stressed:

- before the development is completed, where the development does not require an occupation certificate [clause 28C]; or
- otherwise, before applying for the occupation certificate. [clause 28C]

RECOGNISING PROFESSIONAL BODIES OF ENGINEERS

Regulation 52A provides that professional bodies of engineers may apply to renew their recognition as a recognised engineering body: [clause 52A].

There are certain stipulated grounds for recognition by the Department of the relevant engineering body i.e. its directors and officers must exercise its functions in the public interest: [clause 52D].

There may be conditions which the relevant body, director or officer must follow to ensure it is recognised: [clause 52E], and they are to act with independence, fairness, honesty and integrity: [clause 52G].

The Department may refuse recognition on various public interest grounds, for example, where the applicant is not suitable to be recognised or the applicant has been convicted of a relevant offence within the last 10 years: [clause 52B].

It may also vary the conditions of recognition of the body: [clause 52J].

RELEVANT QUALIFICATIONS, KNOWLEDGE AND SKILLS REQUIRED FOR REGISTRATION

The amended Regulations introduce certain minimum requirements setting out an expanded system of registration for design and building practitioners and requisite qualifications, experience, knowledge and skills for low and medium rise work (*as defined in the Dictionary in the 2021 Regulations***)

- design practitioners with a class of registration with a condition for medium rise work, are authorised to prepare or vary a regulated design and make a design compliance declaration, and
- building practitioners (both individuals) and individuals with a condition for low rise and medium rise work may make a building compliance declaration and prepare and provide relevant documents required to be prepared under the Act.
- There are also conditions set out for relevant qualifications, experience and knowledge for a building practitioner - body corporate nominee i.e. individuals employed by the corporate entity with a condition for medium rise work.

REGISTERED BUILDING PRACTITIONERS TO OBTAIN INSURANCE

The amendments provide an exemption for building practitioners from undertaking certain insurance requirements - these do not commence until 1 July 2022.

The amendment to the Regulations concerning the minimum practical experience, qualifications, knowledge and skills required for registration in the Design Practitioner - Architectural class for relevant low rise and medium rise work are also welcome.

They should cause greater care to be taken by relevant design and building practitioners making relevant declarations for their work.

** footnotes

"**low rise building**" means a class 2 building or a building containing a class 2 part that has a maximum gross floor area of no more than 2,000m², but does not include a building that is Type A or Type B construction.

"**medium rise building**" means the following classes of building, but does not include a building that is Type A construction for the purposes of a class 4, 5, 6, 7b and 8 building--

(a) a class 2 building or a building containing a part of a class 2 building that has a rise in storeys of no more than 3,

(b) for a building in relation to which the ground level or first storey of the building is classified as a class 7a building--a class 2 building or a building containing a part of a class 2 building that has a rise in storeys of no more than 4.

For more information on the Design Building Practitioners Act and Regulation, please see the following Kreisson links:

1. [Construction Law Reform](#) by Anish Wilson
2. [Recent Building and Construction Reform](#) by Anthony Herron
3. [Podcast in relation to the DPB Act 26 June 2020](#) by Anthony Herron
4. [Certifiers and Building Professionals NSW](#) by Anthony Herron
5. ["Game Changer" for Developers: The Residential Apartment Buildings \(Compliance and Enforcement Powers Act 2020\)](#) by Matthew Singh
6. [E-Book: Major Changes to the NSW Building Industry—August 2020](#) by Anthony Herron

CONTACT US

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