

The de-stressing provision: What does the recent changes in Regulated Designs Order 2022 mean to ground anchors under neighbouring property?

In a previous article [Rock Anchor Easement or Deed?](#) we wrote about the introduction of the Design and Building Practitioners - Particulars for Regulated Designs Order 2021, which came into effect on 1 July 2020 (**2021 Order**).

Among other things, the 2021 Order requires the builder or developer to provide evidence of a registered easement over the neighbouring property granting the right to use their land for temporary ground anchors, or a registered design practitioner will not be able to provide a design compliance declaration as required by the Design and Building Practitioner Act 2020.

What has changed since the 2021 Order?

It is clear that the position under the 2021 Order did not last long before the Design and Building Practitioners — Particulars for Regulated Designs Order 2022 took effect on 2 March 2022, along with Design and Building Practitioners Amendment (Miscellaneous) Regulation 2022 (NSW), which introduced Part 3, Division 3A into the Design and Building Practitioners Regulation 2021 (**New Provisions**).

The New Provisions have practically “released the tension” with the expanded type of documents that can be relied on for the installation of an encroaching rock anchor in residential development to include a licence agreement, deed or other document (other than to a registered easement) that permits the installation of a ground anchor on the neighbouring land.

Regulated design that involves shoring, underpinning or anchoring

(a) Before commencement of building works

A registered design practitioner needs to provide regulated designs for any work that involves shoring, underpinning or anchoring. This includes after work starts and there are design variations which may impact shoring, underpinning or anchoring.

If an encroaching ground anchor is being proposed, the building practitioner must provide a 'ground installation right document' detailing:

- the process for de-stressing the temporary encroaching ground anchor; and
- the time the de-stressing will occur.

If the ground anchor is a removable encroaching ground anchor, the building practitioner must also detail:

- the process for the removal of a removable reinforcement tendon; and
- the time the removal will occur.

(b) Before the development is complete/ before applying for an occupation certificate

- For building work involving a temporary encroaching ground anchor the building practitioner must provide evidence the ground anchor has been de-stressed:
 - I. for development that does not require an occupation certificate – before the development is complete, or
 - II. otherwise, before applying for the final occupation certificate for the development.
- For building work involving a removable encroaching ground anchor the building practitioner must provide evidence that the removable reinforcement tendon has been removed:
 - I. for development that does not require an occupation certificate – before the development is complete, or
 - II. otherwise, before applying for the final occupation certificate for the development.

So what has not changed since the 2021 Order?

Where the neighbouring land is a public road, the requirement for consent under section 139 of the Roads Act 1993 (NSW) is maintained.

Further, Design Practitioners are still required to provide particulars for regulated designs, such as specifications for ground anchors that are inclusive of the requirements set out by AS 4678, and

provide plans that include information regarding the site boundaries, the location of all ground anchors, and any associated shoring or retaining wall system. The full list of particulars for ground anchors is outlined in schedule 2 of the 2022 Order.

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9 November 2022**