

NSW Construction Industry Shut Down – Further Clarifications | 6 August 2021

On Wednesday 28 July 2021, the NSW Premier took steps to re-open certain construction sites in parts of Greater Sydney following the earlier construction industry shut down orders which came into effect on 17 July 2021.

Amendments have been made by the *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Amendment (No 17) Order 2021* effective from 31 July 2021 (**the Amended Orders**).

In brief:

- certain works can recommence on construction sites which are deemed both un-occupied and occupied sites outside of 'affected areas'.*
- While the restrictions on un-occupied construction sites have been relaxed somewhat, there are still heavy restrictions at occupied places of residence.
- Works performed at occupied places of residence must be 'necessary' and 'prescribed work' as defined by clause 22B(4) and (5) of the Amended Orders.

Work on construction sites:

- In areas not deemed as 'affected areas', general construction works on 'construction sites' can recommence provided that workers comply with the requisite conditions on performance of those works and comply with all Covid-19 safety protocols as stated under the Amended Orders.
- All works performed on an un-occupied construction site, not in an 'affected area', must be performed in accordance with a **Registered Covid-19 Safety Plan**.
- A plan must be written by both Principal/Owners and Contractors.
- Prudent Contractors should, moving forward, use the Safety Plan as part of a contractor's daily tool box talk and further, should form part of the daily Job Safety Analysis plan.
- This would assist employers and Head Contractors ensuring that staff on site are aware of the Safety Plan and any updates each day before commencing works.



- While not mandatory, we would also suggest that persons performing works on occupied construction sites should also Register a Covid-19 Safety Plan in order to ensure the safety of themselves and those persons around them.
- For those seeking assistance the following link provides all necessary information for Principals and Contractors relating to submission of a Covid-19 Safety Plan: <https://www.nsw.gov.au/covid-19/covid-safe/construction-and-tradespeople>
- Omitted from the Amended Orders are any conditions relating to non-residential occupied construction sites.
- It is presumed for the health and safety of all persons that these types of works should be performed under a hybrid categorisation of un-occupied and occupied construction works. Accordingly, where the Orders make no comment on these types of works, we suggest the working conditions should be relative to the same restrictions on occupied residential premises being a maximum of 2 people per room and a maximum of 5 people in total in larger individual areas with any occupants not being in the same space as persons performing works.

* Please note there are no formal guidelines provided in this regard.

Work at places of residence

Clause 22B of the Amended Orders provides that a person cannot enter a place of residence to carry out *prescribed works* unless those works are:

- *necessary*; or
- in a non-affected area*; and
- no more than 2 workers are visiting the place of residence to carry out any work (what so ever); and
- no person other than another worker is present in the same room as the works are being undertaken, unless the works are taking place in an 'outdoor' setting where a maximum of 5 workers may attend.

What this means is that if you are not in an *affected area*, you are allowed to carry out *prescribed work* (including renovations) at your home as long as you adhere to the capacity limits noted above and if you are at home, you must stay in a separate indoor area to where the work is being carried out. [Refer: <https://www.nsw.gov.au/covid-19/rules/authorised-workers/renovations-repairs-maintenance-and-cleaning>].



Prescribed works

Prescribed works include:

- cleaning;
- repairs and maintenance;
- alterations and additions to building;
- work carried out as part of a trade, including electrical work or plumbing.

Necessary works

If you are in an *affected area*, *prescribed works* are *necessary only if*:

- the work is urgently required to be carried out;
- to ensure the health, safety or security of the place of residence or persons residing at the place of residence, or
- because of an emergency, or

the work is:

- for the installation, maintenance or repair of an essential utility, including a water, gas, electricity, internet, television or telecommunications service, or
- for fire protection and safety, or

for prescribed work that is cleaning or repairs and maintenance the work is carried out:

- at a place or residence that is unoccupied when the work is being carried out, and
- because it is necessary for the sale or lease of the place of residence.

Workers from/to an affected area

- Workers performing works on construction sites or places of residences as set out above, must not be from an 'affected area' or travel into an 'affected area' unless they are deemed an *authorised worker*.
- For those workers wondering if they are able to attend their construction sites outside of their LGA, please see the following link which identifies authorised persons who are eligible to leave their LGA. <https://www.nsw.gov.au/covid-19/rules/authorised-workers>

Works in an affected area

- The works which are permitted on a construction site within an 'affected area' are as follows:
 - to ensure the safety or security of the construction site;
 - to deal with environmental risks;



- to maintain and ensure the integrity of critical plant, equipment or assets, including partially completed works, that would otherwise deteriorate;
- to receive deliveries of supplies that would otherwise deteriorate;
- to maintain public utilities;
- to ensure the safe operation of existing transport infrastructure;
- by or on behalf of NSW Health in response to the COVID-19 pandemic;
- because of an emergency.

At this time only persons located within an affected area may perform works in that specific area. Accordingly, where the above works may need to be performed, you will need to consider whether your usual contractors have capacity to perform those works.

The above listed works are very similar to those works which were permitted under the previous clause 24AB(1) of the Orders which affected all of Greater Sydney. Accordingly, we refer to our article dated 21 July 2021 which breaks down what works can be performed in this context.

<https://www.swaab.com.au/publication/dealing-with-the-nsw-construction-industry-shut-down-managing-existing-works>

Performance of Works in relation to Strata Schemes

- For those persons either residing in or managing Strata Schemes, it appears that the same rules apply for both single dwelling and multi dwelling occupied residential premises.
- There is a requirement for persons in 'common property' areas in strata schemes to wear masks at all times.
- If you are a contractor contracted to perform *necessary* and/or *prescribed works* in an individual lot in a Strata Scheme, it appears that renovation works may be performed but you will be restricted to a maximum of two persons performing those works within any lot and a maximum of 5 persons within common property areas, provided those works are not deemed *necessary* works.
- What is unclear at this time are the guidelines relating to construction workers moving through common property areas to access lots in which they may be working under the above restrictions in a strata scheme in *non-affected area*. Clarification is being sought from the Government on this point and we will provide an update and clarification on this shortly.



- If your contractor lives within an 'affected area' then they are not permitted to perform works unless they are a deemed, authorised worker.
- If you live in a strata scheme and wish to re-commence works, you should consult the relevant by-laws and liaise with your strata manager to determine whether your scheme is allowing works to re-commence.

Disclaimer: The above is not to be considered legal advice and that you should seek your own independent legal advice should you have any queries regarding the above or the newly amended Government Orders.

*Article updated 6 August 2021

*For further information regarding sites located in the '*affected areas*' refer to our earlier article:

<https://www.swaab.com.au/news/construction-shut-down-update-recommissioning-or-commencement-works-allowed-on-certain-construction-sites-as-of-29-july-2021>