



Office of
Local Government

Strata/community parking area agreements

Fact sheet

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Introduction

Perhaps no other issue has the ability to cause friction in the daily life of a strata or community scheme area than parking. Problems can include people using your parking spot, blocking your vehicle in, using visitor or emergency parking spaces as a permanent parking space for their vehicle, parking on other areas of the common property, or blocking the access to parking areas.

A range of options exist for schemes to manage parking, as outlined in the separate Fact Sheet - *Parking in your strata scheme*.

This Fact Sheet relates specifically to the option of strata/community parking area agreements.

In November 2016, the *Strata Schemes Management Act 2015 – Strata and Community Parking Areas* commenced (incorporated into the *Local Government Act 1993* (“the Act”) as section 650A) allowing councils to enter into agreements with strata and community schemes to enforce parking restrictions on the common property of schemes.

This means that strata schemes can now approach their local council and, if it agrees, pay a fee for the council to patrol and issue fines for unauthorised parking in the strata or community scheme’s area.

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What is a strata/community parking area agreement?

It is a commercial agreement with a council, allowing council rangers to oversee parking on the common property in a strata or community scheme. Rangers would issue parking infringement notices just like they do in relation to parking on public streets. Rangers would oversee visitors and emergency vehicle parking spaces, and vehicles standing in the common property of the strata or community scheme.

The process for applying for an agreement is as follows:

1. Owners corporations and community associations firstly need to contact their local council to find out if it wishes to enter into an agreement. The contact details of NSW councils can be found in the Local Government Directory on the Office of Local Government website: www.olg.nsw.gov.au.
2. Following confirmation, the Strata or Committee or community association will need to submit an application to the council (in the manner specified by the council).

Note: At this point, evidence of the majority of vote of the strata or community organisation committee to make an application to council for a parking area agreement should be provided to the council.

3. Council will consider the application and advise whether or not it is approved.
4. If approved, the council will provide any additional information needed by the owners corporation or community association.
5. A by-law will need to be passed by the owners corporation or community association (with not less than 25 per cent voting against the motion). This is required under sections 650A(9) and 650A(10) of the Act.
6. If the motion is passed, the Strata Committee or community association will authorise a parking agreement and return it to the council with the required payment for signage. Note that only council can provide the required signage to the owners corporation or community association.
7. The owners corporation or community association will need to provide access for the council to install the required parking signage, and address any maintenance and work, health and safety issues.

What are the effects of entering into a strata/community parking area agreement?

If a strata or community scheme enters into a parking area agreement with a local council, the following outcomes will result:

- the council specifying conditions in respect of parking and these conditions would need to be notified by way of signs and notices erected on the land; and
- the regulation and enforcement of signed parking restrictions passing to the council. The owners corporation can still control parking, for example, by giving a lot owner exclusive use of part of the common property for their use for parking.

Section 650A(2) of the Act states that the terms of any such notice or sign may relate to any one or more of the:

- (a) time during which the public may use the parking area;
- (b) maximum period for which a vehicle may be parked in the parking area (or in any part of the parking area); and
- (c) designation of a parking space within the parking area as a space for the sole use of persons with disabilities.¹

Therefore, a council that has entered into an agreement with a scheme must erect signage to give the powers effect.

What are the costs of entering into a strata/community parking area agreement?

Schemes should be aware that entering into a strata/community parking area agreement will have cost implications. Parking agreements are commercial arrangements.

In considering whether to enter into an agreement with a scheme, a council must ensure that it is not unduly diverting its limited enforcement resources away from public parking areas. This is a particularly important consideration in the case of strata/community parking agreements where no additional free public parking will result.

It is therefore appropriate for a council to require a fee for service type arrangement for the servicing of a strata/community agreement. However, any such fees levied by councils should be done so in a fair and transparent way. The Act requires councils to set fees and charges through its annual budgeting process, which includes a mandatory public notification period.

Additionally, it is important to be aware that the council may charge an appropriate fee for the installation and maintenance of signs under a parking area agreement, which must be erected to give the powers effect.

¹ A forthcoming legislative amendment will give effect to council powers to issue penalty infringement notices with respect to offences relating to disability parking spaces in strata and community parking areas.

Who keeps the revenue from fines issued under such an agreement?

Entering into the agreement allows the council to issue and recover parking fines from owners of vehicles that are parked contrary to any prescribed signs or notices regulating parking which have been erected on the land.

All revenue from enforcement (i.e. through the payment of penalty notices) is returned to the council, not the owners corporation or community association.

Who do strata/community parking area agreements apply to?

Agreements apply to all lot owners and occupiers, including tenants of a strata or community scheme, and visitors to the scheme. There is no discrimination in favour of lot owners or occupiers who breach parking signage.

They must comply with the conditions for parking in the area covered by the agreement, on the same basis as any other motorist. If they contravene the conditions for parking they would be liable to incur a parking fine in the same manner as any other person who has committed a comparable parking offence on a public street.

What conditions can be applied on owners, residents and invitees under a strata/community parking area agreement?

The parking conditions that may be applied, set out in section 650A of the Act include:

- the hours of operation of the visitor parking area (if it is not to be 24 hours a day seven days a week);
- time limitations on parking (if any); and
- whether particular parking spaces are for the exclusive use of disabled motorists. However, for strata/community parking area agreements, the council can only enforce this if there was a requirement in the relevant development consent for the provision of parking for disabled motorists.

In addition to the conditions above, a council may include the following conditions:

- Maintaining emergency access parking spaces - any dedicated parking spaces set aside on the common property for the exclusive use of emergency services vehicles (e.g. ambulances or police vehicles), usually through the development approval process, must not be impacted by any agreement.
- Access to secured properties - it will be necessary for councils to negotiate with the owners corporation or community association, a method of access to any parking area that it is located within a secured area (e.g. behind a security gate) to allow entry for enforcement purposes.
- Notification of any changes in use to common property - while the owners corporation still retains the right to deal with the common property as provided under the *Strata Schemes Management Act 2015*, it must undertake to advise the council within 24 hours of any approved change of use of common property that may affect the provision of parking restrictions set out in the agreement.

Can a scheme impose separate conditions under an agreement?

Generally not, as councils have limited powers to enforce matters not specifically covered in the legislation. However, owners corporations in strata schemes can still pass specific by-laws to control parking.

The owners corporation is also responsible for the enforcement of such by-laws, even where a parking agreement is in place with a council. In such a case, the owners corporation would also take responsibility for the outcome of the enforcement action (e.g. damage incurred to a vehicle).

If considering entering into an agreement, owners corporations should take the opportunity to review their existing by-laws in relation to parking to ensure that there is no conflict that may prevent or impede a council's enforcement of the agreement.

What criteria will a council use to assess an application?

A council will generally apply the following criteria:

1. Has the owners corporation or community association already implemented all reasonable measures to deter vehicle related problems including the erect on of signs, fencing, gates and other barrier devices?
2. Is the council satisfied that there is a genuine need from a public policy perspective to assist the owners corporation or community association in deterring vehicle related problems via the conclusion of the proposed parking area agreement submitted by the owners corporation or community association?
3. Does the owners corporation or community association understand that parking enforcement will be applied equally and without discrimination on common property against any person found to have breached the signage requirements applicable?

Are councils obliged to enter into a parking area agreement with an owners corporation or community association?

No. A council may approve or decline an application.

Do appeal rights exist against a council's decision?

In cases where an applicant is in disagreement with a decision made by a council in respect of an application the council should, if requested, review that decision.

However, there are no appeal rights, either to the Land and Environment Court or any other body available to an owners corporation or community association against a council's decision.

Can a council initiate a proposal?

While most parking area agreements will be initiated by owners corporations or community associations, there is nothing preventing councils from inviting applications. An invitation may proceed on the basis of the council submitting a draft agreement to an owners corporation or community association for consideration.

However, there is no authority for a council to force an owners corporation or community association to submit an application to enter into a parking area agreement. Nor is there any power for a council to impose an agreement against an owners corporation's or community association's will.

What are the dispute resolution and termination arrangements for parking area agreements?

Parties are to meet within 14 days to attempt resolution of the dispute. Either party can terminate the agreement at any time without reason provided 28 days of notice is given in writing.

Termination of the agreement does not remove responsibility or expenses already agreed to or expenses relating to damages a party is responsible for.

Where can I go for further information?

The Office of Local Government has produced *Dealing with vehicle trespass and driveway obstruction*, which contains further information about ways to address parking problems on private land and in strata and community schemes. It can be downloaded at www.olg.nsw.gov.au.

NSW Fair Trading is also able to provide further information about strata management issues and can be contacted via the Strata Hotline 1800 214 023 or by visiting http://www.fairtrading.nsw.gov.au/ftw/Tenants_and_home_owners/Strata_schemes.page.