



Office of  
Local Government

# **DEALING WITH VEHICLE TRESPASS AND DRIVEWAY OBSTRUCTION**

## **IDEAS FOR LANDOWNERS AND STRATA / COMMUNITY SCHEMES**



**DECEMBER 2016**

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# 1. INTRODUCTION

## 1.1 What is the purpose of this document?

The main purpose of this publication is to ensure that owners and occupiers of premises are better equipped to deal with the problems of uninvited vehicles being parked on their land. Information on dealing with the problem of vehicles obstructing driveways is also provided.

## 1.2 History and legislative context

The unauthorised parking of vehicles on private land is an ongoing problem, particularly for owners and occupants of premises situated in close proximity to major entertainment and sporting fixtures, who can also encounter problems with vehicles obstructing their driveways.

While in many instances vehicle trespass and driveway obstruction problems might only result in a minor and temporary nuisance, in other cases the impact may be particularly severe. For example, if a driveway of commercial premises is obstructed this may result in a loss in business. In the case of an individual, that person's capacity to seek urgent medical attention, or to go to work, or conduct their normal social activities, could be severely affected.

In response to these types of problems, some landowners sought to take the law into their own hands by having trespassing or obstructing vehicles wheel clamped and/or towed away and impounded by persons or companies purporting to act in a private law enforcement capacity. Often, very substantial sums of money were then demanded from vehicle owners, and had to be paid in cash, in order for the vehicle to be released to the owner.

Following the inquiry into wheel clamping in 1997, which was highly critical of some of the practices, the *Local Government Act 1993* (the Act) was amended to make it an offence to:

- wheel clamp a vehicle belonging to another person;
- detain a vehicle belonging to another person if that person has requested its release; or
- demand payment for the release of a vehicle belonging to another person if that person has requested its release.

## 1.3 Free parking area and strata/community parking area agreements

The Act allows private landowners to apply to their local council to enter into free parking area agreement in respect of their land. Under these agreements the area is put under council control with the council enforcing parking restrictions on the land in the same way that parking restrictions may be enforceable in all councils' public free parking areas.

In November 2016, the *Strata Schemes Management Act 2015 – Strata and Community Parking Areas* commenced (incorporated into the Local Government Act as section 650A) permitting councils to enter into agreements with strata and community schemes to enforce parking restrictions on the common property of schemes. These are commercial agreements which allow the council to enter into agreements with strata and community schemes to enforce parking restrictions on the common property of schemes.

This document discusses both types of parking areas. However, for ease of understanding, this document refers to such areas collective as “parking areas” (instead of individually as “free parking areas” or “strata/community parking areas”), except where specific provisions apply.

Further information regarding section 650 (free parking) agreements is also available in the *Free parking area agreements – Fact Sheet*.

Further information regarding section 650A (strata/community parking) agreements is also available in the *Strata/community parking area agreements – Fact Sheet*.

The abovementioned documents can be downloaded from the Office of Local Government website: [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au).

## **2. MINIMISING VEHICLE TRESPASS PROBLEMS**

### **2.1 Key responsibility lies with landowners, managers and occupiers**

Landowners, owners corporations, community associations, and land occupiers are primarily responsible for protecting their property from uninvited parking and to take reasonable precautions to deter uninvited vehicles from entering their land.

### **2.2 Landowners should ensure that fences and gates are adequate**

In most localities, council planning regulations permit the installation of boundary fences and gates. A front fence and gate may be all that is required to prevent uninvited vehicles from entering premises.

In cases where fences and gates are already in use, there will be few, if any, problems relating to uninvited vehicles trespassing on private land provided that the gates are secured and fences are maintained in an adequate condition.

It is important to note that fencing and gates need not be very high or obtrusive in order to prevent vehicle trespass, and could be designed so as to virtually have no impact on pedestrian movement.

If you are uncertain about whether building and development requirements or restrictions affect the erection of fencing and gates in your area, you should contact the local council for information.

### **2.3 Multiple occupancy residential flat buildings and commercial premises – effective management may be part of the solution**

The types of problems most closely associated with multiple occupancy premises, whether residential, commercial or a mixture of these two elements, include vehicles:

- obstructing driveways;
- parked in designated/reserved parking spaces;
- parked in spaces solely intended for visitors or in vehicle washing or pick up and unloading bays, etc; and
- parked on common property, and vehicles overstaying designated time restrictions.

Whether these types of problems exist appears to largely be a management issue as some multiple use/occupancy premises appear to be particularly prone to unauthorised parking problems whereas others are not.

### **2.4 Same solutions applicable to multiple use and/or occupancy premises**

In premises that have a relatively high volume of vehicular movements, the installation of some form of automated controlled access gate operable only by persons issued with an appropriate authority (which could be in the forms of either of a key, computer access card, or like devices) should be feasible and desirable.

Anecdotal information indicates that some owners/managers of multiple occupancy/use premises have chosen not to install any effective form of barrier devices despite having ongoing parking related problems.

In cases where amenity considerations are given a low priority by a landowner and that person chooses not to install any gates or other barrier devices, there is no role for a public authority to undertake.

## **2.5 Owners corporations may consider application of sanctions**

If problems persist in multiple use and/or occupancy premises after appropriate barrier devices have been installed, ancillary measures and/or the introduction of appropriate sanctions against offenders may offer a solution.

For example, in the case of misuse of designated owner/occupier parking spaces inside premises, the solution may be to install lockable metal barriers in each of the designated parking spaces to render those spaces unusable when those authorised to use the spaces are away.

Where tenants or their visitors or clients are the source of parking problems, a company or owners corporation in charge of premises could also consider introducing and enforcing rules that applied appropriate sanctions against tenants who were responsible for parking problems.

The temporary withdrawal of all parking entitlements could serve as a deterrent against persons who consistently failed to observe parking rules. However, there are limitations on an owners corporation's ability to withdraw parking entitlements. For example, an owners corporation cannot withdraw a lot owner's right to park in their lot, which they own, or a tenant from parking in a space they hold a valid lease for. It is therefore recommended that an owners corporation seek independent legal advice before considering such an approach.

A more effective solution may be to seek to enter a parking area agreement with a local council (as described in section 4 of this document). Through such an agreement, parking requirements can be set out in signage, such as to park within the designated area, can be enforced by council officers.

Council officers can also enforce parking in visitors and emergency parking spaces by use of the scheme, penalising people who overstay a designated time period, or who park their vehicle in an emergency spot, when clearly they are not an emergency vehicle.

## **2.6 Control of parking through strata by-laws**

Owners corporations in strata schemes can pass specific by-laws to control parking. For example, an owners corporation may impose, through a local by-law, wheel-clamping or tow away provisions to prevent vehicles parking in allocated parking spots. However, as such measures are otherwise illegal in NSW, it is recommended that an owners corporation seek independent legal advice before considering any by-law of this nature.

It should also be noted that the by-laws can only apply to the owners or occupiers of the strata scheme, including tenants (as they are, in law, party to the by-law agreement), and are not applicable to visitors to the scheme.

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

Owners corporations should also be mindful to ensure that any vehicle that is towed under such a by-law is not set-down in a restricted or timed parking area, which may result in the owner of the vehicle incurring further penalties.

## **2.7 What can be done if planning restrictions or other factors prevent the installation of perimeter fences and gates?**

In some localities, development restrictions or other factors such as the physical characteristics of the land may mean that installing fencing and gates is neither permissible nor practicable on aesthetic and other grounds.

As most motorists are law abiding citizens that will respect the rights of private property owners if given adequate notice, the installation of signs and notices advising that the land is private property and that parking restrictions or prohibitions are applicable may be practicable. If so, this may serve to minimise the potential for vehicle trespass problems to arise.

Where the problem confronting the landowner or occupier relates to uninvited vehicles parked in reserved parking spaces within the perimeter of the premises an effective solution may be the installation of lockable metal barriers preventing unauthorised vehicles from accessing those spaces. This should be a relatively low cost measure.

A landowner, owners corporation or community association may also consider employing private security guards to monitor parking. This practice is commonly applied, particularly in rail corridor and beachside areas, when breaches are high. However, the cost of such an approach would also need to be considered.

## **2.8 Police or council involvement**

The issue of whether a landowner/manager will provide a satisfactory level of protection to occupiers and users of the premises against the disturbance that may be caused by uninvited vehicles is generally a private land management issue, for resolution between the owners, occupiers and users of the premises.

However, under the Act, a landowner or strata/community scheme can enter into a free parking area or strata/community parking area agreement with the local council. Both types of agreement operate in essentially the same manner – the part of the property subject to the agreement is set aside for use as a free parking area and the local council exercises enforcement functions for the area.

For further information see the following documents which can be downloaded from the Office of Local Government website - [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au):

- *Free parking area agreements – Fact Sheet*, and
- *Strata/community parking area agreements – Fact Sheet*.

### **3. DEALING WITH VEHICLES THAT OBSTRUCT DRIVEWAYS**

#### **3.1 Obstructed driveways are essentially a roads and traffic issue**

Vehicles that are obstructing driveways are usually actually parked within that part of the road that leads to the entrance of premises, not within the premises. Accordingly, the issue of vehicle trespass on private land does not arise.

The offence of obstructing a driveway is, therefore, predominantly a roads and traffic issue that may be dealt with via the roads and traffic legislation.

#### **3.2 Causes of the problem**

The problem of vehicles obstructing driveways is most common near major places of entertainment, shopping and commercial centres, and sporting venues. This largely reflects the imbalance between available parking spaces and demand for parking. The solution to the problem lies in addressing these and related issues.

#### **3.3 What can be done to minimise or prevent this problem?**

There is already a wide range of both administrative and law enforcement measures that landowners, councils, police and others can apply to either alleviate the demand for parking or dissuade or deter motorists from blocking driveways.

For example, some of the things that councils may do include:

- provide additional off street casual parking spaces in the locality;
- provide residents with permits which will exempt them from compliance with the meter or timed parking restrictions applicable to roads in their localities;
- place time restrictions on parking that make parking during major events and/or peak problem periods etc. less attractive to motorists;
- make providing of adequate off road parking a mandatory requirement in respect of future development approvals and major event approvals; and
- examine specific problems, and seek ways to resolve those problems.

Where problems relate to visitor attendances at major sporting and entertainment venues, there is also scope for operators to:

- provide alternative means of transport for patrons to attend venues, thereby reducing car use; and
- to inform patrons of the need to minimise disruption to surrounding residents.

Public education and awareness campaigns could be undertaken, signs and notices could be erected cautioning motorists against parking in driveways of premises, and Police and council parking officers can ensure a greater law enforcement presence when major events are occurring.

### 3.4 Police and council powers to seize and remove offending vehicles

The following table summarises the limited powers available to police and councils to seize and remove vehicles. The powers are generally not applicable on private property (with the exception of some powers under the *Impounding Act 1993*, as noted below).

Legislation	Authorised officer	Description
Clause 39 Road Transport (General) Regulation 2013	NSW Police	Power to seize and tow away a vehicle:  (a) that is a danger or unreasonable obstruction to traffic; or  (b) that has been abandoned on a road; or  (c) that has been caused or permitted to be used contrary to law on any part of a road in which is conspicuously displayed a sign exhibiting or including the words "tow away area" or "vehicles impounded" or other words indicating that the vehicle is subject to seizure.
Clause 43 Road Transport (General) Regulation 2013,	City of Sydney Council officers	Similar seizure and tow away powers to Police (as per clause 39) but only with regard to vehicles in the Kings Cross area.
Section 143(1) <i>Road Transport Act 2013</i>	NSW Police	May cause an unattended motor vehicle or trailer unlawfully standing on a prescribed place to be removed in accordance with this section if, in the opinion of the officer, the vehicle is causing, or unless removed is likely to cause, danger to the public or undue traffic congestion.  This section also requires that "A motor vehicle or trailer is removed in accordance with this section if it is removed to a nearby place at which, in the opinion of the appropriate officer concerned, the vehicle may lawfully stand without being likely to cause danger to the public or undue traffic congestion, or an obstruction to the passage of a light rail vehicle".
Section 16 <i>Impounding Act 1993</i>	Councils or NSW Police	If a Police officer or a council impounding officer believes a vehicle has been abandoned or left unattended and the vehicle obstructs the flow of traffic or is a danger to pedestrians, the officer may order the immediate

Legislation	Authorised officer	Description
		<p>impounding of the vehicle.</p> <p>The Impounding Act provisions are applicable to any land coming within the definition of "area of operations" contained in the Act. The definition is very broad and includes both privately owned residential and business premises.</p> <p>Police or council impounding officers must make inquiries before impounding a vehicle.</p>

### 3.5 What can landowners do?

If the problem of vehicles obstructing driveways is causing serious concern to a landowner, the person should initially raise that matter with their local council so that a review may be carried out by the council of ways for resolving that problem.

It is noted that clause 34 of the Strata Schemes Management Regulation 2016 gives an owners corporation the power to remove motor vehicles that may be causing an obstruction on the common property (e.g. blocking the entrance to the parking area). However, owners corporations should also be mindful to ensure that any vehicle that is towed is not set-down in a restricted or timed parking area, which may result in the owner of the vehicle incurring further penalties.