



Office of
Local Government

FREE PARKING AND STRATA / COMMUNITY PARKING AREA AGREEMENTS

GUIDELINES FOR COUNCILS



DECEMBER 2016

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1. INTRODUCTION

1.1 What is the purpose of these Guidelines?

The primary purpose of these Guidelines is to assist councils in the assessment of free parking area and strata/community parking area agreement applications submitted by landowners, owners corporations and community associations.

Sections 650(7) and 650A(8) of the *Local Government Act 1993* (the Act) require the Chief Executive of the Office of Local Government to establish Guidelines to be followed by councils with regard to parking area agreements. These Guidelines apply for that purpose.

A separate document prepared for the information of landowners, owners corporations and community associations, *Dealing with vehicle trespass and driveway obstruction*, clearly distinguishes the different roles and responsibilities of landowners and councils in regard to vehicle trespass, driveway obstruction and related vehicle and land use problems.

It is important that councils read both documents to obtain a clear and comprehensive understanding of the extent of their duties and responsibilities.

Some councils operate commercial parking stations as well as free parking areas. In order to ensure that there is no misunderstanding concerning the impact of the regulations on commercial parking stations, a section of these Guidelines is targeted at such stations.

1.2 Legislative context

Section 650(6) of the Act also allows 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* commenced permitting councils to enter into agreements with strata and community schemes to enforce parking restrictions on private land. This legislation was incorporated into the Local Government Act as section 650A.

The owners corporation of a strata scheme under the *Strata Schemes Management Act 2015* or the association of a community, precinct or neighbourhood scheme under the *Community Land Management Act 1989* may enter into an agreement with the council so long as the agreement is approved by special resolution of the owners corporation or community association.

Under strata/community parking area agreements, part of the common property of the scheme is set aside for use as a parking area and the council exercises its enforcement functions in that area.

1.3 Reading these guidelines

The Guidelines apply to **both** free parking area agreements and strata/community parking area agreements, unless specifically stated.

Where the provisions apply to **both** types of areas, for ease of understanding, these guidelines refer to such areas collectively as “parking areas” (instead of individually as “free parking areas” or “strata/community parking areas”).

An agreement may be between a landowner and a council (in the case of free parking areas), or between an owners corporation or community association and a council (in the case of strata/community parking areas). However, for ease of understanding, the non-council party is generally referred to in these guidelines as the “owner”, unless specifically stated.

2. OVERVIEW OF THE PARKING AREA PROVISIONS

2.1 What is a parking area agreement?

There are two types of parking area agreement available under the Act:

- A. Section 650 (free parking area) agreements – A landowner may enter into an agreement with the local council (see Appendix 1 for an overview of the section 650 agreement application process).

- B. Section 650A (strata and community parking) agreements – The owners corporation of a strata scheme or the association of a community, precinct or neighbourhood scheme may enter into an agreement with the council so long as the agreement is approved by special resolution of the owners corporation or community association (see Appendix 2 for an overview of the section 650A agreement application process).

2.2 Effects of entering into a parking area agreement

A. Section 650 (free parking area) agreements

If a landowner enters into a free parking area agreement with a local council, the following outcomes will result:

- control of the land (but only that part of the land which is the subject of the agreement) passing to the council;
- the council making the land available for free parking by the public; and
- the council specifying conditions in respect of parking and that these conditions need to be notified by way of signs and notices erected on the land.

B. Section 650A (strata and community parking area) agreements

If an owners corporation or community association enters into a parking area agreement with a local council, the following outcomes will result:

- the council specifying conditions in respect of parking. It would be required that these conditions 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.

2.3 How flexible can parking area conditions be?

Parking area conditions are set out in signage erected in the area by the council. The matters which may be covered by the signs are listed within sections 650(2) and 650A(2) of the Act are 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.

Section 651 of the Act also provides for the liability of vehicle owners for offences relating to compliance with any such signs.

When a parking area application is received a council will need to carefully assess what terms and conditions are proposed by the owner to be included in the signs to be erected in the proposed parking area.

The terms and conditions must generally comply with the requirements of sections 650(2) or 650A(2), as any outside this scope generally would not be enforceable. However, alternative approaches can be considered in some limited circumstances (see section 2.7 below).

While applications are likely to reflect the owners' preferences concerning the proposed hours of operation of the parking area and the time limitations that will apply to vehicles using the parking area etc, the council is accountable to the public and therefore will need to make a determination that incorporates a broad assessment of both private and public interest considerations.

It would be inappropriate for a council to allow a gross mismatch between the public and private needs. For example, in a free parking area, an application that proposed a 15 minute time limit on parking may be inappropriate in a location where motorists usually conduct transactions at nearby businesses which generally take at least an hour to complete.

2.4 What should a council do if the owner seeks to apply additional conditions?

If an applicant submits a parking area agreement application that seeks to impose conditions outside the scope of sections 650(2) or 650A(2) of the Act, the council could disallow the application. However, the council should adopt a reasonable degree of flexibility and carefully evaluate the proposal and the reasons which underpin it.

It may be the case that the request is a valid one. For example, the applicant may wish to place a limitation on the gross weight of vehicles accessing the parking area in order to minimise noise or avoid damaging the land.

If necessary, council could use the provisions of section 632 "Acting contrary to notices erected by councils" to facilitate the implementation of special arrangements.

Section 632 signs would need to be erected in conjunction with section 650/650A signs (see section 2.3 of the Guidelines for further information).

It is important to note that enforcement action under section 632 will involve the council identifying and giving a penalty notice to the driver of the vehicle at the time of the offence (who may or may not be the owner of the vehicle).

In determining special requests, a council should have regard to balancing public and private interest considerations and its capacity to carry out enforcement in terms of section 632.

Note: In the case of section 650A (Strata and Community parking area) agreements, see also section 3.5.1 below regarding conditions imposed through Strata Scheme By-laws.

2.5 What are the signage requirements for parking areas?

The parking area provisions of the Act are enabled under sections 650(1) and 650A(1), which state that “the driver of a vehicle parked in a [parking area] otherwise than as permitted by a notice or sign erected by the council is guilty of an offence”.

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

- (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 an owner must erect signage to give the powers effect. As with all council notices and signs, the content of the signage should be developed with regard to the requirements of section 670 of the Act:

Note: Before entering into an agreement, it is important that the owner is made aware that the council may charge an appropriate fee for the installation and maintenance of such signs.

2.6 Can a council recover enforcement costs in parking agreements?

Yes, and it should. Parking agreements are commercial arrangements and applicants should be made aware that they are not cost-neutral.

In considering whether to enter into an agreement, 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.

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

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

3. PARKING AREA AGREEMENT APPLICATIONS

3.1 What criteria should be used by councils in assessing applications?

Where an owner cites vehicle trespass or related problems as the main reason for seeking to enter into a parking area agreement a council should apply the following criteria:

1. Has the owner 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 owner in deterring vehicle related problems via the proposed parking area agreement?

3A. In the case of a section 650 (free parking area) agreement

Does the landowner understand that the council will take control of the land and make it available for parking by the public free of charge, and is the landowner agreeable to this? **OR**

3B. In the case of a section 650A (strata and community parking area) agreement

Does the owners corporation or community association understand that parking enforcement will be applied equally and without discrimination against any person found to have breached the signage requirements applicable?

Note: In the case of a section 650 (free parking area) agreement only, the first two criteria may be dispensed with if the primary purpose of the application is the landowner's aim to either provide new or additional disabled parking spaces or to add to the overall stock of parking spaces under council control which will be generally accessible to the public free of charge.

3.2 Are there any additional criteria for strata/community agreements?

Yes. Prior to finalising an strata/community parking agreement a council will need to see evidence of the formal approval of the relevant owners corporation or community scheme association to enter into the agreement (as required under sections 650A(9) and 650A(10) of the Act).

It is not necessary for a council to require evidence of such an approval at the application stage. At this point, evidence of the majority of vote of the strata committee (or community organisation committee) to make an application to council for a parking area agreement should be obtained by the council.

However, if council approves the application and proceeds to enter into the agreement with the owners corporation/community association, then the formal approval must be obtained before any agreement can be finalised.

3.3 What matters should the council ensure are included within a parking area agreement?

The following items may be considered to provide a basic framework for an agreement. However, agreements are not limited to these terms.

The agreement should clearly stipulate:

- who are the principal parties to the agreement the land to which the agreement applies;
- the period of the agreement including the agreement commencement and conclusion dates;
- the implications for the owner of turning the land into a parking area;
- the right of the council to automatically vary an agreement to reflect changes in law;
- whether the council proposes to publicly notify the proposal and invite submissions, and who will pay the advertising costs, if any;
- the circumstances under which either of the principal parties may terminate the agreement and the procedure that is to be adhered to give effect to the termination;
- any renewal options and how these shall be exercised;
- the fees, charges and other costs that the owner will be liable to pay to the council;
- the signs, fencing, gates and any other structures, physical improvements to the land that might be carried out and who will be liable for the costs;
- the obligation to maintain any signs, fences, gates etc to the standard required by the council, and who will be liable for the costs;
- who is to be liable for any damages which may arise from persons parking in the parking area;
- that the council will not be liable for any costs, damages or liabilities incurred by the owner etc as a consequence of the early termination of an agreement by either party;
- that the owner is aware that all revenue from parking fines etc shall belong to the council under the Act; and
- that the council will retain complete discretion as to the performance of regulatory/law enforcement activities.

3.4 What additional issues may be included in a section 650A (strata/community scheme parking) agreement?

In addition to those conditions set out in section 2.8 above, councils may include the following provisions in any agreement established under section 650A.

A. Maintaining emergency access parking spaces

Councils must ensure that any dedicated parking space set aside in the area for the exclusive use of emergency services vehicles (e.g. ambulances or police vehicles), usually through the development approval process, are not impacted by any agreement.

B. 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 is located within a secured area (e.g. behind a sliding security gate) to allow entry for enforcement purposes.

C. 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 control restrictions as set out in the agreement.

3.5 What matters are inappropriate for inclusion in an agreement?

Upon entering into a parking area agreement with a council, an owner effectively turns over the land (or a specified part of the common property) to council control. Ensuring compliance with parking restrictions then becomes a council law enforcement function.

Law enforcement functions are generally not matters that are open to landowner negotiation, and it is in the public interest that councils retain complete discretion as to how they will undertake their law enforcement activities.

Accordingly, it is neither necessary nor desirable for a council either to infer or to give specific undertakings in relation to law enforcement operations. In particular, a council should refrain from giving explicit undertakings regarding the frequency of its monitoring of compliance with parking conditions in any area subject to a parking area agreement.

If an owner seeks to impose conditions on a council in regard to its law enforcement functions the council should explain that this is beyond the owner's power. If the owner does not withdraw any such demand the council should decline the application.

3.5.1 Special by-law powers of owners corporations

Councils should note that owners corporations in strata schemes can pass specific by-laws to control parking. For example, an owners corporation may impose, through a by-law, wheel-clamping or tow away provisions to prevent vehicles parking in allocated parking spots.

Any extra conditions imposed through by-laws must be in-line with the *Strata Schemes Management Act 2015*. Under that legislation, an owners corporation must pass a resolution at a general meeting to impose the by-law.

Any by-laws applicable to parking in a strata scheme must be enforced by the relevant owners corporation. Councils have no powers to enforce such by-laws and they therefore must not be included in any parking agreement.

3.6 Are councils obligated to enter into a parking area agreement with a landowner, owners corporation or community association?

No. A council may approve or decline an application.

3.7 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 owner against a council's decision.

3.8 Can a council initiate a proposal?

Yes. While sections 650(6) and 650A of the Act clarify that an owner can apply to their local council to enter into parking area agreements, the sections do not prevent a council from inviting applications from an owner. An invitation may proceed on the basis of the council submitting a draft agreement to an owner for consideration.

There may be a variety of circumstances in which a council may feel the need to take the initiative (e.g. in the case of a free parking area agreement, the provision of an adequate number of disabled parking spaces in an established shopping complex).

However, there is no authority for a council to force an owner 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 owner's will.

If initiating a proposal, councils should ensure that owners fully understand the implications of entering into a parking area agreement (e.g. owners must pay for the signage and other associated costs).

In the case of strata/community parking area agreements, the council should ensure that the owners corporation or community association is also aware that the parking provisions and associated penalties will apply not only to visitors who disobey the signage but also to lot owners, residents and tenants.

3.9 Transparency and accountability

Agreements should generally be a matter of public record accessible in the same way as any other council documents.

Councils should not allow confidentiality clauses to be included in agreements unless there are extraordinary reasons to do so as these types of clauses may serve to create the impression that the council is seeking to suppress important information, or that it has shown bias in favour of a landowner.

3.10 Classification of land as Operational Land and inclusion in council's Asset Register

In the case of a section 650 (Free Parking Area agreement) only, if private land passes to council control under a parking area agreement the council will need to ensure that the requirements of the Act relating to the classification of the land (as operational land), and the inclusion of the land in the council's asset register are met.

These administrative requirements should be explained to the owner prior to an agreement being concluded.

3.11 Dispute resolution and termination of 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.

3.12 Model Parking Area Agreement

Councils may devise their own pro-forma parking area agreements. A suggested basic framework which councils may wish to use to develop their own standard agreements is attached for information (see Attachment 1).

4. COMMERCIAL PARKING STATIONS

4.1 Commercial (pay-for-use) parking stations

The following information is intended for councils that operate commercial parking stations, and does not apply to parking areas operated by councils.

The information is equally applicable to private sector owned and operated commercial parking stations.

4.2 Policy objectives of the legislation

As indicated in the Introduction the principle policy objectives of the legislation are to resolve the very significant community concerns about the summary wheel clamping, tow away and impounding of vehicles by persons purporting to play a parking enforcement role for landowners and to assist landowners to implement more effective deterrents.

It has never been an objective of the legislation to re-define the fundamental contractual arrangements, agreements, terms or conditions which have traditionally been used within the commercial car parking industry.

4.3 Purpose Of Section 651C (2)(d)

Section 651C(2)(d) of the Act preserves the commercial arrangements that are an inherent feature of the commercial parking station industry.

4.4 Impact of legislation on commercial parking stations

The Act does not alter the conduct of business between car parking station proprietors and their customers whether they are casual or permanent customers, except to the extent that if any proprietors currently engage in wheel clamping they will need to introduce alternative vehicle immobilisation and/or detention methods.

4.5 Power to ban vehicle immobilisation devices via regulation

Commercial parking station operators should note that while section 651B of the Act makes provision for the Minister to prescribe other vehicle immobilisation devices by way of regulations in order to ban their use, there are currently no proposals to make regulations.

Accordingly, the only immobilisation devices currently banned are wheel clamps.

4.6 Conduct of commercial parking stations

As is already the case a commercial parking station proprietor will continue to be able to stipulate a range of terms and conditions for parking such as, for example:

- what the fees for parking are;
- that the fees will be payable before the vehicle is removed from the parking station when the parking station closes;

- that a vehicle parked contrary to a notice or causing an obstruction or danger to persons or property may be removed at the proprietor's discretion; and
- the restrictions or fees or charges for wanting a vehicle removed after the parking station has closed, etc.

4.7 Vehicles may be detained if prior notification of conditions given

In the situation where motorists have been informed by signs or notices etc by the car park proprietor that parking fees must be paid before a vehicle may be removed from the parking station, a proprietor acting within the terms and conditions who detains a vehicle until outstanding fees are paid would be within their rights to do so.

Monthly account holders who fail to pay are subject to the terms and conditions of their agreement with the proprietor and outstanding fees can be recovered as a civil debt by means of the usual court action. Alternatively, proprietors may prefer to detain the offending owner's vehicle if they have the opportunity to do so, as the Act does not remove this possible remedy.

4.8 Detention of a vehicle must not involve immobilisation by way of wheel clamping

The alternative vehicle detention measures that may be used by a parking station proprietor are essentially operational issues ultimately for their determination.

Proprietors who wish to continue the practice of detaining vehicles to recover outstanding fees and charges will need to consider a broad range of factors including:

- the design and construction of the car park;
- the terms of the agreement or arrangement that exists between the proprietor and the customer what may entail reasonable force in any particular circumstances; and
- commercial considerations including likely customer reaction etc to any policy which is adopted.

4.9 Acquisition of power to relocate vehicles within the parking station

It is understood that some proprietors wish to reserve the right to relocate vehicles for operational or commercial reasons (e.g. a vehicle is obstructing the entrance or driveways of the parking station or an unauthorised vehicle is parked in a reserved parking space).

The Act does not affect any current or future vehicle relocation arrangements. However, it would seem to be the case that a vehicle relocation power might only be derived by way of the agreement or arrangement that exists between the proprietor and a customer.

It might therefore be prudent that proprietors ensure that vehicle relocation clauses are clearly stated in signs notices, agreements or contracts etc so that the proprietor has the requisite authority to remove and relocate vehicles to another pre-determined and/or agreed location. It may be feasible to set up that location as a detention facility for vehicles that have fees and charges in arrears.

4.10 Transparency and business ethics

The key point is that commercial parking station proprietors should make the proposed means of detention of vehicles in arrears clearly known to all customers and ensure the inclusion of these details in written signs, notices, agreements or contracts etc.

The crucial factor that a parking station proprietor will need to focus on is what terms and conditions for parking are notified by signs etc to motorists which confer the lawful right to possess, control or detain the vehicle. This is the present situation and it is reiterated that the Act essentially retains the status quo except for the ban on wheel clamping.

4.11 Other options for dealing with vehicles obstructing driveways

The *Impounding Act 1993* may be applied if a vehicle which is abandoned or left unattended is causing an obstruction and, after necessary inquiries, the vehicle may be impounded by the council of the area.

In more serious situations, where an abandoned vehicle is in such a position as to obstruct the proper flow of traffic or to constitute a danger to the pedestrians either the council or the Police may order the immediate impounding of the vehicle under the Impounding Act or the Road Rules, as the case may be. Authorised impounding officers need to exercise caution by making inquiries before impounding a vehicle.

Provision also exists under legislation governing the State Emergency Service and Fire and Rescue NSW to remove vehicles and obstructions in particular circumstances.

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.

ATTACHMENT 1- MODEL PARKING AREA AGREEMENT

PARKING AREA AGREEMENT

PARTIES

The Parties to this agreement are the _____ Council and
(insert name of Council)

(insert name of Owner/ Owners Corporation / Community Association)

DEFINITIONS

“Council” means the (insert name).....Council

“Owner” means the (insert name Owner/ Owners Corporation / Community Association)

“Property/land” means the property or land agreed to in the **Schedule 1** hereunder.

PURPOSE

The purpose of this agreement is to place the land under Council control so that it is managed and operated as free parking area, and to make provision for certain consequential arrangements under section 650 / 650A of the *Local Government Act 1993* between the Owner and the Council to give effect to the agreement.

AGREEMENT

The Council and the Owner agree to enter this agreement on the basis of the following terms and conditions.

TERM

The agreement commences on and extends for a period ending 30 June 20.... or unless earlier determined by mutual agreement or in accordance with the termination and arbitration clause.

APPLICATION TO LAND

The Agreement applies to the land described in **Schedule 1**.

COUNCIL'S RESPONSIBILITIES AND EXCLUSIONS

The Council agrees to:

- manage and operate the land as a free parking area;
- specify the physical barriers, signs and notices required on the land;
- Install or arrange the installation of signs at the Owner's cost to meet Council's assessment of needs in respect of any included property;
- **(SECTION 650 – FREE PARKING AREA AGREEMENTS ONLY)** Specify the times which the free parking area will be accessible for use by the public.

The costs associated with council's involvement (to be paid by the Owner) will be:

- the cost of signs and their installation and any maintenance;
- the cost of any fencing, gates etc and their installation and maintenance; and
- administrative fees and charges (specify if any and what these will be).

OWNER'S RESPONSIBILITIES

The Owner agrees to:

- the Council having full discretion to contract out any of its relevant functions if it wishes to do so, except its law enforcement function;
- pay the Council any agreed fees, charges and or expenses incurred in respect of this agreement;
- allow the Council complete discretion as to the extent of surveillance which the Council is to cause to be exercised over the property; and
- meet the costs detailed by the Council.

ADDRESSES FOR SERVICE

The addresses of the respective parties for service of any documents are:

Council

Owner or Owner's agent

Officer Name _____

Name _____

Postal Address

DISPUTE RESOLUTION

Should any dispute arise under this agreement, the Owner and the Council, the Owner (or their representative) and the General Manager of the Council (or the nominee of that General Manager) are to meet within 14 days of notice of dispute with a view to resolving the dispute and in the event of their failing to resolve the dispute, the agreement will be terminated forthwith subject only to the owner being liable to meet any outstanding payments to the Council pro rata to the period during which the agreement has been in force.

LAW

The law relating to this agreement is the law relating to the State of New South Wales.

Signed for
and on behalf of the

_____ **Council**

this _____ day of 20 _____

Signed for
and on behalf of the Owner

this _____ day of 20 _____

Postal Address

NOTE: Council must attach a schedule ("Schedule 1") to this agreement, describing the land to which the agreement applies.

ATTACHMENT 2: OVERVIEW OF RELEVANT LEGISLATION

Section 650 – Free parking areas

(1) The driver of a vehicle parked in a free parking area otherwise than as permitted by a notice or sign erected by the council is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) The terms of any such notice or sign may relate to any one or more of the following:

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

(3) For the purposes of this section, a vehicle parked otherwise than as permitted by such a notice or sign includes a vehicle parked in a parking space designated as a space for the sole use of persons with disabilities, unless:

- (a) a parking authority for a person with disabilities is displayed on the vehicle in the manner specified in the authority; and
- (b) the conditions specified in the authority are being observed; and
- (c) the authority is in force.

(4) If spaces in which a vehicle may be parked in a free parking area are marked by the council (for example, by means of painted lines or by studs, pads or plates), a person must not cause a vehicle to be parked in a free parking area:

- (a) otherwise than in such a parking space; or
- (b) in a parking space in which another vehicle is parked; or
- (c) so that any part of the vehicle is on or across (or partly on or across) any line, stud, pad, plate or other mark defining the space or so that the vehicle is not wholly within the space.

Maximum penalty: 5 penalty units.

(5) The driver of a vehicle in a free parking area must at all times observe and comply with any reasonable direction of any authorised person regarding the parking or movement of the vehicle within the area.

Maximum penalty: 5 penalty units.

(6) The owner of any private land may enter into an agreement with the council under which the land, or any part of the land, is set aside for use as a free parking area.

(7) It is the duty of the Departmental Chief Executive to establish guidelines to be followed by councils in relation to agreements of the kind referred to in subsection (6), including guidelines as to:

- (a) the circumstances in which a council may enter into such an agreement; and
- (b) the matters for which such an agreement must or must not make provision; and
- (c) the exercise by a council of any functions conferred on it by such an agreement.

650A Strata parking areas and community scheme parking areas

(1) The driver of a vehicle parked in a strata parking area or a community scheme parking area established under this section otherwise than as permitted by a notice or sign erected by the council is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) The terms of the notice or sign may relate to any one or more of the following:

- (a) the time during which residents or visitors may use the parking area;
- (b) the maximum period for which a vehicle may be parked in the parking area (or in any part of the parking area);
- (c) the designation of a parking space within the free parking area as a space for the sole use of persons with disabilities.²

(3) For the purposes of this section, a vehicle parked otherwise than as permitted by any such notice or sign includes a vehicle parked in a parking space designated as a space for the sole use of persons with disabilities, unless:

- (a) a parking authority for a person with disabilities is displayed on the vehicle in the manner specified in the authority; and
- (b) the conditions specified in the authority are being observed; and
- (c) the authority is in force.

(4) If spaces in which a vehicle may be parked in a strata parking area or community scheme parking area are marked by the council or the owners corporation or association (for example, by means of painted lines or by studs, pads or plates), a person must not cause a vehicle to be parked in the parking area:

- (a) otherwise than in such a parking space; or
- (b) in a parking space in which another vehicle is parked; or
- (c) so that any part of the vehicle is on or across (or partly on or across) any line, stud, pad, plate or other mark defining the space or so that the vehicle is not wholly within the space.

Maximum penalty: 5 penalty units.

(5) The driver of a vehicle in a strata parking area or community scheme parking area must at all times observe and comply with any reasonable direction of any authorised person regarding the parking or movement of the vehicle within the parking area.

Maximum penalty: 5 penalty units.

(6) The owners corporation of a strata scheme under the *Strata Schemes Management Act 2015* may enter into an agreement with the council under which part of the common property of the scheme is set aside for use as a strata parking area and the council exercises functions under this section, including the erection of notices and signs.

(7) The association of a community, precinct or neighbourhood scheme under the *Community Land Management Act 1989* may enter into an agreement with the council under which part of the land within the scheme is set aside for use as a community scheme parking area and the council exercises functions under this section, including the erection of notices and signs.

² A forthcoming legislative amendment will give effect to council powers to issue PINs with respect to offences relating to disability parking spaces in strata and community parking areas.

(8) It is the duty of the Director-General to establish guidelines to be followed by councils in relation to agreements of the kind referred to in subsection (6) or (7), including guidelines as to:

- (a) the circumstances in which a council may enter into an agreement; and
- (b) the matters for which an agreement must or must not make provision; and
- (c) the exercise by a council of any functions conferred on it by an agreement.

(9) An agreement for a strata parking area, and any other agreement conferring functions on a council in relation to a strata parking area, must be approved by special resolution of the owners corporation and must comply with any requirements for such schemes prescribed by regulations under the *Strata Schemes Management Act 2015*.

(10) An agreement for a community scheme parking area, and any other agreement conferring functions on a council in relation to a community scheme parking area, must be approved by special resolution of the association and must comply with any requirements for such schemes prescribed by regulations under the *Community Land Management Act 1989*.