



Office of
Local Government

Free parking area agreements

Fact sheet

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What is a free parking area agreement?

Section 650 of the *Local Government Act 1993* (“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.

Importantly, under a free parking area agreement, the area in question becomes available for use by the general public to park free of charge.

What are the effects of entering into a free parking area agreement?

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 parking **by the public** and parking would be free of charge; 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.

Section 650(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.

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

What are the costs of entering into a free parking area agreement?

Landowners should be aware that entering into a free parking area agreement will have cost implications. Parking agreements are commercial arrangements.

In considering whether to enter into an agreement with a landowner, a council must ensure that it is not unduly diverting its limited enforcement resources away from public parking areas. It is therefore appropriate for a council to require a fee for service type arrangement for the servicing of a free parking 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 that landowners are aware that the council may charge an appropriate fee for the installation and maintenance of relevant signs under a parking area agreement, which must be erected to give the powers effect.

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 landowner.

Who do free parking area agreements apply to?

It is important to understand that under such an agreement, the parking area in question becomes available for use by the general public to park free of charge.

Agreements apply to all users of the parking area subject to the agreement. There is no discrimination in favour of 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 in a free parking area agreement?

The parking conditions that may be applied are stipulated within section 650 of the Act and 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.

Can a landowner impose separate conditions under an agreement?

Generally not, as councils have limited powers to enforce matters not specifically covered in the legislation. However, in considering an application from a landowner, the council should adopt a reasonable degree of flexibility and carefully evaluate any proposal put forward by a landowner and the reasons which underpin it.

What is the process for applying for an agreement?

A landowner should make enquiries with their local council about the application process. 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.

What criteria will a council use to assess an application?

A council will generally apply the following criteria:

1. Has the landowner already implemented all reasonable measures to deter vehicle related problems including the erection 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 landowner in deterring vehicle related problems via the conclusion of the proposed parking area agreement submitted by the landowner?
3. Does the landowner 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 free parking area agreement, a council may dispense with the first two criteria if the primary purpose of the parking area agreement application is a desire 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 motoring public free of charge.

Are councils obliged to enter into a parking area agreement?

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 a landowner against a council's decision.

Can a council initiate a proposal?

While most free parking area agreements will be initiated by landowners, there is nothing preventing councils from inviting applications. An invitation may proceed on the basis of the council submitting a draft agreement to landowner.

However, there is no authority for a council to force a landowner to submit an application to enter into a free parking area agreement. Nor is there any power for a council to impose an agreement against a landowner'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 information about ways to address parking problems on private land and in strata/community schemes.

A separate *Strata/community parking area agreements - Fact Sheet* is also available.

These documents can be downloaded at www.olg.nsw.gov.au.