

**ARE VEHICLES TRESPASSING
ON YOUR LAND OR BLOCKING
YOUR DRIVEWAY ?**

**WAYS TO RESOLVE VEHICLE TRESPASS AND
DRIVEWAY OBSTRUCTION PROBLEMS**

IDEAS AND SUGGESTIONS FOR LANDOWNERS

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Authorised by:
GARRY PAYNE
DIRECTOR GENERAL
DEPARTMENT OF LOCAL GOVERNMENT

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For further information concerning these Guidelines, please contact the Policy and Research Branch of the Department of Local Government – tel. (02) 9793-0812 or fax (02) 9793-0799.

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FOREWARD

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.

The information is provided in several sections, as follows

- Recent reforms introduced by the Government and the background to these.
- Things that landowners and occupants can do to minimise or prevent vehicle trespass and related problems
- How to deal with problems involving vehicles obstructing driveways
- Information about free parking area agreements between private landowners and councils
- Where to next?

RECENT REFORMS AND WHY THEY WERE NECESSARY

Over recent years, the unauthorised parking of vehicles on private land has become a growing problem in a number of localities.

Some owners and occupants of premises that are situated in close proximity to major entertainment and sporting fixtures have also encountered 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 have 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.

The tactics synonymous with the wheel clamping industry have been seen as both oppressive and of doubtful legality by a large section of the public. A number of violent confrontations between wheel clamping operators, motorists and landowners have required Police intervention.

In order to resolve the legitimate concerns of both landowners and motorists, in 1997 the State Government commissioned an Inquiry into Wheel Clamping.

The Inquiry's findings were highly critical of some of the practices used by wheel clamping operators. It also confirmed that the aged, ill, infirm and more vulnerable members of the community were often being placed in positions of personal danger due to those practices.

The Inquiry also heard many complaints that appeared to give credence to allegations that the wheel clamping industry was more focussed towards windfall profit taking than providing a fair, open and accountable parking regulatory function on behalf of private landowners.

Following on from the findings of the Commission of Inquiry, the Government acted decisively to restore public confidence by initiating a range of non-partisan reforms that would benefit both private landowners and motorists.

The most important changes that have occurred are as follows.

- It is now an offence to wheel clamp a vehicle belonging to another person – this offence may be punishable by a fine of \$300 issued by way of an infringement notice, or by a fine of up to a maximum of \$2200 if dealt with by a court;
- It is now an offence to detain a vehicle belonging to another person if that person has requested its release– this offence may be punishable by a fine of \$300 issued by way of an infringement notice, or by a fine of up to a maximum of \$2200 if dealt with by a court;
- It is now an offence to demand payment for the release of a vehicle belonging to another person if that person has requested its release– this offence may be punishable by a fine of \$300 issued by way of an infringement notice, or by a fine of up to a maximum of \$2200 if dealt with by a court;
- The law now clarifies that a private landowner may apply to his or her local council to enter into free parking area agreement in respect of his or her land with the objective of putting the land under council control with the council enforcing parking restrictions on the land in the same way that parking restrictions may be enforceable in all council’s free parking areas.

Ideas and suggestions aimed at assisting landowners to resolve vehicle trespass and driveway obstruction problems follow.

To provide a simple and quick reference point for readers, an easy to follow flow chart that lists the main types of vehicle related problems that a landowner may encounter, and some of the measures that he or she may be able to use to resolve these types of problems, appears on the next page.

PROCESSES FOR DEALING WITH PROBLEM PARKED VEHICLES



THINGS THAT LANDOWNERS AND OCCUPIERS CAN DO TO MINIMISE OR PREVENT VEHICLE TRESPASS AND RELATED PROBLEMS ON PRIVATE LAND

Responsibility

Landowners and occupiers are primarily responsible for protecting their property from uninvited parking. They need to acknowledge this fact and take reasonable precautions to deter uninvited vehicles from entering their land.

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.

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,
- vehicles parked in designated/reserved parking spaces
- vehicles parked in spaces solely intended for visitors or in vehicle washing or pick up and unloading bays etc
- vehicles 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.

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.

However, anecdotal information indicates that some owners and/or managers of these multiple occupancy and/or 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.

Body corporates may also consider application of more effective 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 body corporate 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 strong deterrent against persons who consistently failed to observe parking rules.

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.

Parameters on Police or council involvement

The issue of whether a landowner or 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 basically a private land management issue.

It is an issue for resolution between the owners, occupiers and users of the premises. It is not an issue in which authorities such as the Police or the local council normally should or would intervene.

HOW TO DEAL WITH PROBLEMS INVOLVING VEHICLES OBSTRUCTING DRIVEWAYS

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.

Causes of the problem

The problem of vehicles obstructing driveways appears to most acute near major places of entertainment, shopping and commercial centres, and sporting venues.

It is largely symptomatic of a chronic imbalance between available parking spaces and demand for parking. The solution of the problem lies in addressing these and related issues.

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 might 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 the provision of adequate off road parking a mandatory requirement in respect of future development approvals and major event approvals
- examine specific problems, and seek ways to resolve those problems.

Where problems relate to visitor attendances at major sporting and entertainment venues, there would also appear to be scope for fixture operators to –

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

Furthermore, 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 might ensure a greater law enforcement presence when major events are occurring.

Law enforcement options

From the law enforcement perspective, it is already an offence under clause 85 of the Motor Traffic Regulations 1935 made under the Traffic Act 1909 for a driver of a motor vehicle to cause or permit any motor vehicle upon a road to stand in such a position as to obstruct traffic or unreasonably cause inconvenience to any person.

Police powers to seize and remove offending vehicles

In recognition that illegal parking may be a major problem in certain localities, the Police have been provided with specific powers, via the Motor Traffic (Seizure of Motor Vehicles) Regulation 58 under the Traffic Act 1909.

These powers allow the Police to seize and take charge of and remove or tow away or cause to be removed or towed away any motor vehicle which –

- is a danger or unreasonable obstruction to traffic
- or has been abandoned in a road
- or has been caused or permitted to stand, wait, stop or to be parked contrary to law in any part of a designated road in which is conspicuously displayed a sign exhibiting or including the words “tow away area” or “vehicles impounded” or other words indicating that such a vehicle is subject to seizure”.

May councils exercise or acquire comparable powers?

The South Sydney City Council has been provided with generally similar powers via clause 58A of the Motor Traffic Regulations 1935. Currently, the provisions of clause 58A are only applicable to designated roads in the Kings Cross locality.

However, there would appear to be scope for councils generally to seek an amendment of the Regulation to have comparable provisions applied in localities adjoining major sporting or entertainment venues etc within their own areas if illegal parking is causing major problems at those locations and other solutions are unavailable.

An application by a council seeking an amendment to the Motor Traffic Regulation would have to be made to the Minister for Roads.

Powers under the Impounding Act 1993

Both the Police and councils are authorised to impound motor vehicles under the Impounding Act 1993.

In section 16 of the Act, 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 impounding of the vehicle.

Authorised impounding officers would, of course, need to exercise caution by making at least some inquiries before impounding a vehicle from private land.

What landowners can do?

If the prevalence of the problem of vehicles obstructing driveways is of a such a magnitude that 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.

FREE PARKING AREA AGREEMENTS BETWEEN LANDOWNERS AND COUNCILS

Responsibilities of landowners

The importance of landowners accepting that they have the primary responsibility for protecting their own property from uninvited vehicles was emphasised earlier in this publication.

Discretion for councils to provide limited assistance to landowners in exceptional cases – the free parking area option

The Government has not overlooked the possibility that in some cases it may be exceptionally difficult for a landowner to implement all the self-help measures to deter vehicle trespass on private land that were outlined earlier.

For example, the owner of premises that have a heritage listing may not have the flexibility to install a modern automated boom gate at the premises.

Also, in customer parking areas attached to larger commercial premises near railway stations etc, a continuous flow of traffic based on rapid customer turnover may be prevented by train commuters parking all day.

In these types of cases, the public interest might be served by allowing the premises to come under the umbrella of council parking enforcement. Accordingly, the legislation recently enacted by the Government clarifies that an owner of private land may enter into an agreement with his or her council under which all or part of the land is to be set aside to be used as a council controlled "free parking area".

Are councils obligated to enter into a free parking area agreement with a private landowner, and what appeal rights, if any, exist against a council's decision?

A council is not obliged to enter into a free parking area agreement. It may approve an application or it may decline an application.

It is anticipated that councils will not approve applications in cases where –

1. a landowner or occupier has failed to take all reasonable steps to minimise or prevent uninvited vehicles from entering that person's land;
2. the responsible person or body for multiple occupancy and/or use premises has failed to take reasonable steps to prevent uninvited or unauthorised vehicles from abusing parking conditions;
3. the council is of opinion that the scale of the vehicle trespass problem does not justify a free parking area agreement;
4. the council considers that it would be uneconomical for either the landowner or itself to enter into the proposed free parking area agreement; or,
5. there are more important public interest considerations that prevent the council entering into the proposed free parking area agreement.

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.

Effects of free parking area agreement

If a landowner concludes a free parking area agreement with his or her 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) passes to the council.
- The council would make the land available for parking by the public.
- Parking would be free of charge.
- The council would specify conditions in respect of parking and these conditions would need to be notified by way of signs and notices erected on the land.

The parking conditions that may be applied are stipulated within section 650 of the Local Government Act, and include things such as –

- the hours of operation of the free parking area (if it is not to be open 24 hours a day seven days a week);
- time limitations on parking (if any);
- how or where vehicles must be parked (e.g. front towards kerb within marked parking spaces only); and,
- whether particular parking spaces are for the exclusive use of disabled motorists.

Converting private land into a free parking area allows either the Police or a council to issue and recover parking fines against owners of vehicles that are parked on the land contrary to any prescribed signs or notices regulating parking which have been erected on the land.

In the free parking area, either the Police or the council may perform parking enforcement functions, including the issue of parking infringement notices under the Self Enforcing Infringement Notice System (SEINS) against offending vehicles.

The owner of the land would need to comply with the conditions for parking in the free parking area on the same basis as any other motorist.

If the landowner contravened the conditions for parking he or she would be liable to incur a parking fine in the same manner as any other person who has committed a comparable parking offence. There is no discrimination in favour of the landowner.

What may a council require to be specified within a free 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 dates of commencement and conclusion;
- the implications for the landowner of turning the land into a free 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 landowner 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 cost;
- who is to be liable for any damages which may arise from persons parking in the free parking area;
- that the council will not be liable for any costs, damages or liabilities incurred by the landowner etc as a consequence of the early termination of an agreement by either party;
- that the landowner is aware that all revenue from parking fines etc shall belong to the council under the Local Government Act; and
- that the council will retain complete discretion as to the performance of regulatory/law enforcement activities.

Transparency and accountability

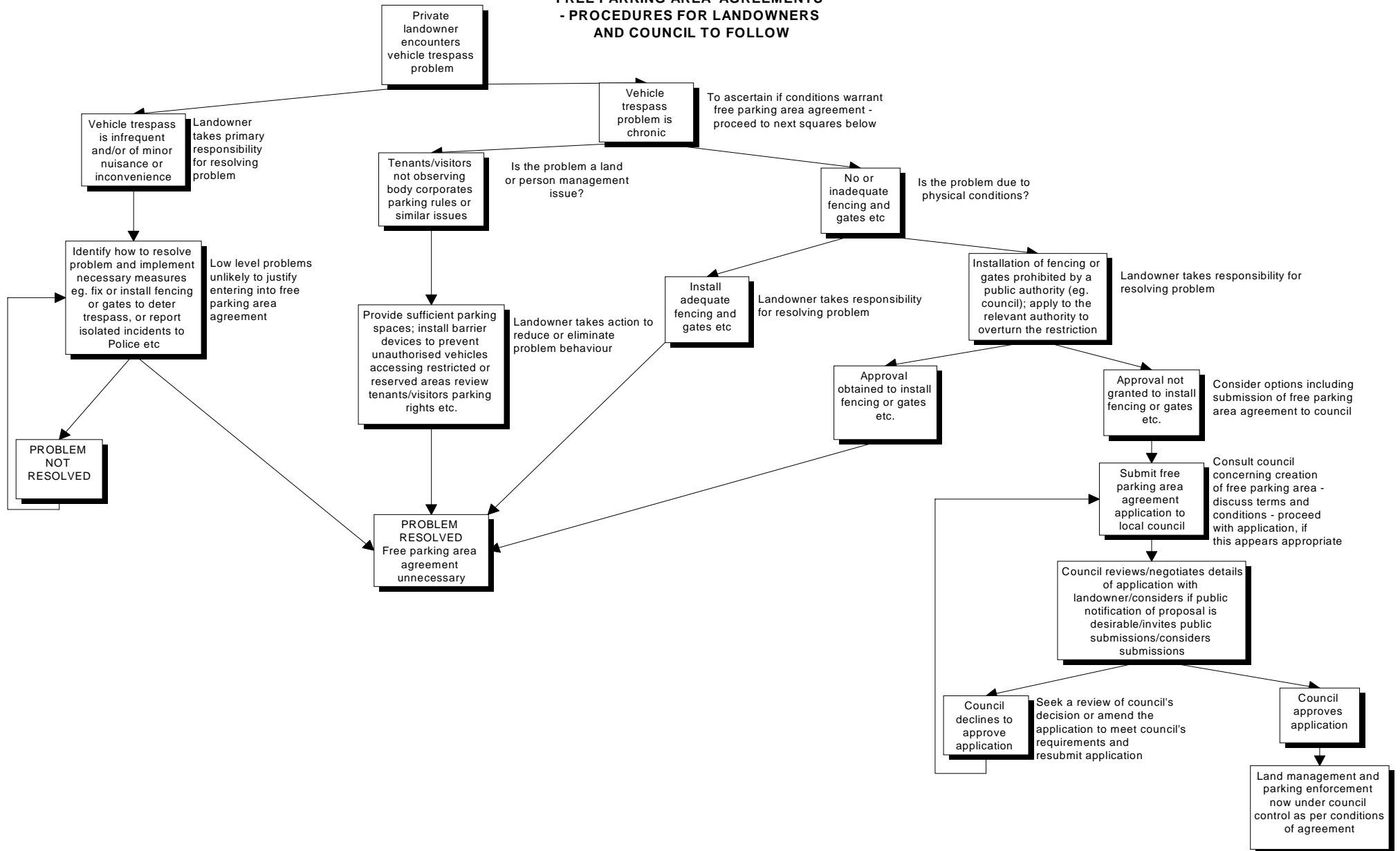
As a general rule, free parking area agreements will become a matter of public record accessible in the same way as any other council documents. Section 53 of the Local Government Act requires the land to be included in the council's land register.

Councils will be unlikely to allow secrecy or 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.

Free parking area agreements - Procedures for landowners and councils to follow

A flow chart outlining the procedures which should be adhered to appears on the following page.

**FREE PARKING AREA AGREEMENTS
- PROCEDURES FOR LANDOWNERS
AND COUNCIL TO FOLLOW**



WHERE TO NEXT?

This publication has outlined a range of measures that may be applied to effectively deal with problems relating to uninvited vehicles trespassing on land and vehicles obstructing driveways.

It has also been emphasised that the protection of private property from uninvited vehicles entering onto the land or authorised vehicles being parked contrary to rules imposed by a body corporate or other entity charged with the responsibility for controlling the land are essentially private issues for resolution by the owners and users of the land, as the case may be.

The option of seeking to enter into a free parking area agreement with the local council exists. However, this option is not intended to be a substitute for landowners taking all reasonable measures to minimise or eliminate vehicle trespass and parking problems that might occur within private property.

If you are continuing to experience vehicle trespass or driveway obstruction problems, it is hoped that this publication has served to provide you with some helpful ideas and suggestions.