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REMOVING ILLEGALLY PARKED VEHICLES

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REMOVING ILLEGALLY PARKED VEHICLES

Are owners corporations powerless to remove illegally parked vehicles from visitor parking spaces? A recent [article](#) in SMH Domain suggests this is the case. But what is the true position?

The New Strata Laws

On 30 November 2016, the *Strata Schemes Management Act 2015* (**Strata Act**) commenced. The Strata Act allows regulations to be made that confer power on an owners corporation to dispose of goods (including motor vehicles) left on common property.

Clause 34 of the *Strata Schemes Management Regulation 2016* (**Strata Regulation**) allows an owners corporation to move or remove a motor vehicle left on common property that is placed so that it blocks an exit or entrance or otherwise obstructs the use of common property provided that a procedure is followed before the vehicle is moved or removed.

What is a Motor Vehicle?

Clause 34 of the Strata Regulation applies to any “motor vehicle”. A “motor vehicle” has the same meaning as in the *Impounding Act 1993*. The dictionary to the *Impounding Act 1993* defines a “motor vehicle” to mean, relevantly, a motor vehicle within the meaning of the *Road Transport Act 2013* and includes a caravan, boat or other trailer (whether or not attached to such a vehicle). The *Road Transport Act 2013* defines a motor vehicle to mean a vehicle that is built to be propelled by a motor that forms part of the vehicle. That Act defines a “vehicle” as, relevantly, any description of vehicle on wheels. Therefore, clause 34 in the Strata Regulation applies to both registered and unregistered motor vehicles.

Removal of Motor Vehicles

Clause 34 of the Strata Regulation allows an owners corporation to cause a motor vehicle left on common property that is placed so that it blocks an exit or entrance or otherwise obstructs the use of common property to be moved to another place on common property or to the nearest place to which it may be lawfully moved (such as a lawful parking area on the nearest street kerb), or moved so that it no longer blocks an exit or entrance or otherwise obstructs the use of common property, and for that purpose the owners corporation is taken to be the owner of the motor vehicle.

Procedure for Removal of Motor Vehicles

However, the owners corporation is only able to move a motor vehicle if it has first placed a removal notice on or near the motor vehicle and the requirements of the notice are not complied with within the period specified in the removal notice. The removal notice must:

- (a) not be less than the size of an A4 piece of paper; and
- (b) be placed in a position or be in a material so that the contents of the notice are not likely to be detrimentally affected by weather; and
- (c) describe the motor vehicle and state the date and time the notice was issued; and
- (d) state that the motor vehicle will be removed if it is not moved from the common property or so that it no longer obstructs common property before the date and time specified in the notice (being not earlier than five days after the notice was placed on or near the motor vehicle); and
- (e) specify contact details for a member of the strata committee the strata managing agent or a delegate of the owners corporation in relation to the notice.

How to Remove an Illegally Parked Vehicle

Therefore, in order to move a vehicle that has been left on common property, without the consent of an owners corporation, the owners corporation should do the following:

- (a) place a removal notice on or near the motor vehicle;
- (b) ensure that the removal notice meets each of the requirements specified above;
- (c) wait until the period specified in the removal notice expires; and
- (d) once that period expires, arrange for the motor vehicle to be moved to:
 - (i) another place on common property; or
 - (ii) the nearest place to which it may be lawfully moved (such as a lawful parking area on the nearest street kerb – however an unregistered vehicle cannot by law be placed on the street); or

(iii) an area so that it no longer blocks an exit or entrance or otherwise obstructs the use of common property; and

(e) take care to ensure that the vehicle is not damaged during or as a result of the move.

Anything Else?

At the time a removal notice is placed on or near the motor vehicle, the owners corporation should write to the vehicle owner if his or her details are known to advise him or her about the removal notice and to make clear that if the notice is not complied with, the owners corporation will arrange for the vehicle to be removed after the expiry of the period specified in the notice in accordance with the power given to it by clause 34 of the Strata Regulation.

An owners corporation will need to ensure that the procedure for removing vehicles from common property set out in the Strata Regulation is carefully followed to ensure that the owners corporation will have lawfully authority to remove any such vehicle. If that procedure is not followed correctly or at all, the owners corporation may not have authority to move a vehicle from common property and could become liable to the vehicle owner if it does so.

An Alternative – Create a Strata Parking Area

An owners corporation may grant a licence to any person to use common property in a particular manner or for particular purposes pursuant to a special resolution passed at a general meeting. This gives an owners corporation power to grant a licence under an agreement with the Local Council for a strata parking area under section 650A of the *Local Government Act 1993*.

Section 650A allows an owners corporation to enter into an agreement with the Council to designate an area of common property as a strata parking area which must be approved by a special resolution passed at a general meeting.

An agreement to designate an area of common property as a strata parking area will give the Council the right to erect parking signage in the area and then patrol the area to ensure the parking signage is complied with. If the driver of a vehicle parked in a strata parking area parks the vehicle otherwise than in accordance with a parking sign erected by the Council, the driver is guilty of an offence and liable to be penalised up to \$550.



The Council is able to erect parking notices or signage in a strata parking area that 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 maybe 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.

If the parking spaces in a strata parking area are marked by the Council or the owners corporation, for example, by means of painted lines or by studs, pads or plates, a person cannot park a vehicle in the parking area otherwise than in such a parking space or in a parking space in which another vehicle is parked or so that any part of the vehicle is 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.

Often, the Council will not be interested in agreeing to set aside part of the common property as a strata parking area unless there is sufficient scope for the Council to generate revenue by fines imposed on persons who park vehicles unlawfully in that area.

Therefore, if an owners corporation believes that it is desirable for its common property, or part of it, to be set aside as a strata parking area that will be patrolled by Council officers who will have the authority to issue fines to people who park their vehicles illegally in that area, the owners corporation should write to the Council to enquire as to whether or not the Council would be agreeable to creating a strata parking area on the common property.

If any part of the common property becomes a strata parking area that is under the control of the Council, the owners corporation will lose some control of that area for the purpose of managing and controlling vehicular parking because the Council will take on those responsibilities.

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About JS Mueller & Co

JS Mueller & Co has been servicing the strata industry across metropolitan and regional NSW for over 30 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

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