Our reference 33592

26 April 2024

Body Corporate for DoubleOne3 CTS 46044
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By email mlongford@sskb.com.au

DoubleOne3 CTS 46044 - disabled visitor car park usage rights

1. We are instructed that there are common property disabled visitor parking spaces (**Disabled Visitor Parks**) within DoubleOne3 CTS 46044 (**Scheme**) which are dedicated to disabled visitors of owners and occupiers of the Scheme.

2. Our instructions are to advise the body corporate for DoubleOne3 CTS 46044 (**Body Corporate**) in relation to the use rights of the Disabled Visitor Parks.

Development approval

3. Visitor parking requirements typically exist in bodies corporate as a result of the development approval conditions imposed by local councils.

4. The development approval conditions (**Development Conditions**) for the Scheme relevantly provide (our emphasis):

   Construct and delineate or sign (as required) the following requirements as indicated on the approved plan(s) of layout:

   iii. Parking on the site for 147 cars and two (2) Vans and for the loading and unloading of vehicles within the site. 122 of these spaces are to be designated for residents only and 25 spaces shared between residential visitors and commercial visitors (2 of these spaces can be dedicated exclusively to two commercial tenancies).

   iv. Provide 24 hour unrestricted access to the 25 shared residential / commercial visitor car spaces. After hours access/egress is facilitated by the aid of an intercom/exit button to bona fide visitors of the establishment.

   v. 2 of the above parking spaces are to be provided for people with disabilities.

5. Accordingly, the Development Conditions appear to:

   (a) require two spaces for people with disabilities; and

   (b) impose the requirement that the Disabled Visitor Parks be:

(i) freely accessible; and

(ii) shared between the residential and commercial schemes,

for use by its bona fide visitors.

6. Generally, bodies corporate are:

(a) unable to restrict the use by visitors of council mandated visitor parking in a scheme; and

(b) required to prevent the use by non-visitors of council mandated visitor parking in a scheme - which extends to owners and occupiers of lots.

7. Adjudicators have consistently confirmed this position, providing the following guidance:

7.1 In *Palm Pacifique* [2017] QBCCMCmr 300, the adjudicator provided:

It is generally a local authority requirement that a scheme carries a certain number of visitor car parking spaces, and if this is the case, it is not within the power of the committee or body corporate to allow usage by anyone other than bona fide visitors (**Palm Pacifique Order**).

7.2 In *Sailz Whitsunday* [2009] QBCCMCmr 305, the adjudicator provided (our emphasis):

Unless specifically stated, I am of the view that visitor car parking must be freely accessible to visitors with no encumbrances, and be free of charge, and that access and egress must not be restricted by keys or barriers in any way tending to privatise the space, or reserve the space for another. It follows that a restriction on times of use flies in the face of the purpose of the "visitor car park" since bona fide visitors may stay overnight…

A bona fide visitor is someone who is not the owner or occupier, however temporary that occupation may be. If holiday-makers are renting units, they are treated as "occupiers" and must use the unit's exclusive use area carport. A visitor is someone who calls on the owner or occupier. The length of time over which a visitor needs to stay may vary depending on the purpose of the visit.

8. The general position is that visitor parking must at all times be freely accessible to visitors. Ostensibly, this would include the *disabled* visitors of the Scheme, in accordance with the Development Conditions.

9. Accordingly:

(a) the Disabled Visitor Parks must be freely accessible to 'bona fide visitors' of the residential and commercial schemes and are not for use by owners and occupiers of the Scheme;

(b) those bona fide visitors can only use the Disabled Visitor Parks if they have a disability;

(c) the Body Corporate cannot lawfully impose any time restrictions (or any other restriction) on the use of the Disabled Visitor Parks in circumstances where the Development Conditions require "24 hour restricted access". Any restriction on the use of such parks would appear to be in breach of the Development Conditions; and

(d) providing that there are 2 car parking spaces which are dedicated to visitors of the residential and commercial schemes, the Body Corporate is complying with the Development Conditions regarding the use of these visitor car parks.

By-laws

10. Relevantly:

10.1 by-law 18.1 of the community management statement (**CMS**) provides (our emphasis):

Owners must not:

(1) park a vehicle, or allow a vehicle, motor cycle or bicycle to stand, other than in a designated area for parking of vehicles, motor cycles and bicycles respectively in the Car Parking Facility; or

(2) without the approval of the Body Corporate, park a vehicle, motor cycle or bicycle, or allow a vehicle, motor cycle or bicycle to stand, on any other part of the Common Property; and

(3) permit an Invitee to park a vehicle, motor cycle or bicycle, or allow a vehicle, motor cycle or bicycle to stand, on the Common Property, other than in a designated area for parking of vehicles, motor cycles and bicycles respectively in the Car Parking Facility.

10.2 "Car Parking Facility" is defined to mean:

the car parking facilities for the Scheme, located on Scheme land and which may be the subject of Rights, respectively:

(a) under exclusive use By-laws in this Schedule C; or

(b) comprising Body Corporate Assets.

10.3 by-law 33.1 provides:

(2) Vehicular spaces: the Body Corporate must ensure that the Car Parking Facility:

(a) Access to any designated visitor parking bay is not restricted by any roller door, gate or similar device preventing access / egress to any visitor bay to the Scheme, except for after hours security purposes and with the aid of an intercom / exit button to facilitate access for bona fide visitors;

(b) contains:

(i) at least 25 car parks to be shared between the visitors of the residential and visitors of the Retail Lot, with the exception of 2 car parks for the Retail Lot (which may be dedicated by exclusive use);

(ii) 2 van spaces which are not be allocated to any specific unit/tenancy;

(c) each residential Lot must be allocated at least 1 car space and no more than 2 car spaces (for 2 bedroom units) by way of exclusive use.

(3) Visitor car parking:

(a) An Owner or occupier must not, without the Body Corporate's written approval:

(i) park a vehicle, or allow a vehicle to stand, on the Common Property; or

(ii) permit an Invitee to park a vehicle, or allow a vehicle to stand, on the Common Property, except for the designated visitor parking which must remain available at all times for the sole use of visitor's vehicles.

(b) An approval under By-law 33.1 (3)(a) must state the period for which it is given, with the exception of designated visitor parking.

10.4 section 3.1 of Schedule D of the CMS provides:

The Body Corporate and each Owner must ensure that they comply with the conditions of applicable Development Approvals for the Scheme land.

11. Accordingly:

11.1 the by-laws are consistent with the Development Conditions;

11.2 owners and occupiers:

(a) have rights to park their vehicles on their lot (and any of their exclusive use areas), pursuant to the by-laws; and

(b) must not park their vehicles on the common property in a:

(i) visitor parking space (as these are dedicated to 'bone fide visitors' of the Scheme); and

(ii) way that contravenes the by-laws as owners and occupiers must not contravene the by-laws;

11.3 the only way in which parking by an owner or occupier contravenes the by-laws can be enforced is through the by-law enforcement process. If the Body Corporate would like an advice on the by-law enforcement process, please confirm those instructions; and

11.4 the by-laws permit visitors of owners and occupiers at the commercial and residential schemes to park their vehicles in an area designated for visitor car parking (i.e., the Car Parking Areas).

Moving forward

12. In summary, the Development Conditions for the Scheme impose the requirement that the Disabled Visitor Parks be:

(a) freely accessible; and

(b) shared between the residential and commercial schemes,

for use by its 'bona fide visitors' for people with disabilities.

13. If the Body Corporate would like an advice on any enforcement mechanisms with respect to non-compliance with the Development Conditions or by-laws, please let us know.

14. Otherwise, please contact us with any queries.

Yours faithfully

Mahoneys

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