



New South Wales

Parking Space Levy Act 2009 No 5

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Parking Space Levy Act 2009 No 5

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New South Wales

Parking Space Levy Act 2009 No 5

Act No 5, 2009

An Act to impose a levy on parking spaces in certain areas; to provide for the application of the revenue; and to repeal the *Parking Space Levy Act 1992* and the regulations under that Act. [Assented to 30 March 2009]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Parking Space Levy Act 2009*.

2 Commencement

This Act commences on a day to be appointed by proclamation.

3 Object

The object of this Act is to discourage car use in leviable districts by imposing a levy on parking spaces (including parking spaces in parking stations), and by using the revenue to encourage the use of public transport (in particular, public transport to and from, or within, those districts).

4 Definitions

(1) In this Act:

Chief Commissioner means the Chief Commissioner of State Revenue referred to in section 60 of the *Taxation Administration Act 1996*.

exercise a function includes perform a duty.

financial year means a year commencing on 1 July.

function includes a power, authority or duty.

leviable district means a district established by the regulations as a leviable district.

leviable premises—see section 7.

levy means the parking space levy imposed by this Act on leviable premises.

owner, in relation to leviable premises, includes:

- (a) any person who jointly or severally, whether at law or in equity, is entitled to the premises for any estate of freehold in possession, and
- (b) any person who is entitled to receive, or is in receipt of, or if the premises were let to a tenant would be entitled to receive, the rents and profits of the premises, whether as beneficial owner, lessor, trustee, mortgagee in possession, or otherwise, and
- (c) any person to whom a lease or licence to occupy the premises has been granted, and

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- (d) in the case of premises comprising a public road or public reserve (within the meaning of the *Local Government Act 1993*), the council of the local government area within which the public road or public reserve is situated, and
 - (e) in the case of premises that are the subject of a strata scheme under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, the owners corporation for that scheme constituted under section 11 of the *Strata Schemes Management Act 1996*, and
 - (f) in the case of premises that are a community, precinct or neighbourhood scheme within the meaning of the *Community Land Development Act 1989*, the association for the scheme constituted under section 25 of that Act.

parking space means a space that is situated on premises in a leviable district, being a space:

- (a) that is used, or set aside, for the parking of motor vehicles, or
- (b) that is declared by the regulations to be a parking space for the purposes of this Act.

premises includes any land and any building.

- (2) The regulations may establish a leviable district by reference to local government areas (or parts of local government areas), boundaries, plans or otherwise.
- (3) Notes included in this Act do not form part of this Act.

5 Act to be read with Taxation Administration Act 1996

This Act is to be read together with the *Taxation Administration Act 1996*.

Note. The *Taxation Administration Act 1996* makes provision for the administration and enforcement of taxation laws. This Act is a taxation law for the purposes of that Act.

6 Act binds the Crown

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

Part 2 Parking space levies

7 Leviable premises

- (1) For the purposes of this Act, premises are leviable premises in any financial year if, at any time during the previous financial year:
 - (a) the premises were located in a leviable district, and
 - (b) one or more parking spaces were situated on the premises.
- (2) Despite subsection (1), premises are not leviable premises if they are declared by the regulations not to be leviable premises.

8 Imposition of parking space levy

- (1) A parking space levy is imposed on 1 July each year on all leviable premises.
- (2) The amount of the levy for any leviable premises is the amount calculated in respect of the premises in accordance with the regulations.
- (3) A person who, as at 1 July in any year, is the owner of leviable premises is liable for payment of the levy for the premises.
- (4) If the premises are owned by 2 or more persons, the owners are jointly and severally liable for payment of the levy.
- (5) The levy is to be paid to the Chief Commissioner.
- (6) The Chief Commissioner may retain from the levies paid under this section such commission (if any) as may be agreed on between the Chief Commissioner and the Minister.

9 Lodging of returns

- (1) A person who, as at 1 July in any year, is the owner of leviable premises must, on or before 1 September in that year, furnish a return to the Chief Commissioner in relation to the parking spaces situated on those premises at any time during the previous financial year.

Note. See section 34 of the *Taxation Administration Act 1996* which requires a return to be in a form approved by the Chief Commissioner, and section 36 of that Act which allows the Chief Commissioner to extend the time for lodgment.
- (2) If the premises are owned by 2 or more persons, the requirements of this section are satisfied if a return is furnished by any one of them.
- (3) A person's obligation to furnish a return under this section continues despite any failure by the person to furnish such a return in due time.

10 Statutory trust

All parking space levies paid to the Chief Commissioner under this Act are subject to a statutory trust for their use for the purposes referred to in section 11 (3), and must be used accordingly.

11 Public Transport Fund

- (1) There is established in the Special Deposits Account an account to be called the Public Transport Fund.
- (2) There is payable into the Public Transport Fund:
 - (a) all money appropriated to the Public Transport Fund from the Consolidated Fund, and
 - (b) any interest received in respect of the investment of money belonging to the Fund, and
 - (c) any money directed to be paid into the Fund by or under this or any other Act.
- (3) There is payable out of the Public Transport Fund:
 - (a) money to finance public transport services, and
 - (b) money to finance projects that facilitate access by public transport to and from, or within, leviable districts, including projects for the construction, maintenance and ongoing management of parking facilities, and other such infrastructure, and
 - (c) money to finance initiatives for the communication of information to commuters, including initiatives that make use of new technologies, and
 - (d) money to pay amounts that become payable under Parts 4 and 10 of the *Taxation Administration Act 1996* in relation to parking space levies paid to the Chief Commissioner, and
 - (e) money that is directed to be paid from the Fund by or under this or any other Act.
- (4) Money is to be paid out of the Public Transport Fund in accordance with directions of the Minister.

Part 3 Miscellaneous

12 Chief Commissioner's guidelines

- (1) The Chief Commissioner may, by order published in the Gazette, establish guidelines, not inconsistent with this Act or the regulations, as to:
 - (a) what does, and what does not, constitute a parking space in any particular circumstances, and
 - (b) whether, in particular circumstances, a parking space is, or is not, to be exempted from the calculation of the levy in respect of any leviable premises.
- (2) Such an order may only be made with the approval of the Minister.
- (3) In any proceedings in which a matter referred to in subsection (1) (a) or (b) is called into question, a court must have regard to any such guideline for the purpose of determining the question.

13 Delegation

- (1) The Minister may delegate to any person any of the Minister's functions under this Act, other than this power of delegation.
- (2) A delegate may subdelegate to any person any function delegated under this section if the delegate is authorised in writing to do so by the Minister.

14 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following matters:
 - (a) the manner in which the number of parking spaces on any leviable premises is to be calculated,
 - (b) the amount of the levy payable in respect of leviable premises, and the manner in which it is to be calculated,
 - (c) the circumstances in which parking spaces may be exempted from the calculation of the levy,
 - (d) the administration of the Public Transport Fund,
 - (e) the establishment of arrangements for contributions towards payment of the levy by specified classes of persons who use parking spaces in leviable premises.

- (3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

15 Parking Space Levy Regulation 2009

- (1) Schedule 2 is taken to be and has effect as a regulation made under this Act.
- (2) Part 2 of the *Subordinate Legislation Act 1989* does not apply to the regulation set out in Schedule 2 (but applies to any amendment or repeal of the regulation).
- (3) For the purposes of section 10 of the *Subordinate Legislation Act 1989*, the regulation set out in Schedule 2 is taken to have been published on the day on which this section commences.
- (4) Sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to the regulation set out in Schedule 2 (but apply to any amendment or repeal of the regulation).
- (5) Schedule 2 is repealed on the day following the day on which this section commences.

Note. The continued effect of the regulation set out in Schedule 2 is unaffected by the repeal of Schedule 2. See section 30 of the *Interpretation Act 1987*.

16 Repeals

The *Parking Space Levy Act 1992* and the *Parking Space Levy Regulation 1997* are repealed.

17 Amendment of Taxation Administration Act 1996 No 97

- (1) Omit "*Parking Space Levy Act 1992*" from section 4.
Insert instead "*Parking Space Levy Act 2009*".
- (2) Omit "*Parking Space Levy Act 1992*" from section 82 (k) (xiii).
Insert instead "*Parking Space Levy Act 2009*".

18 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definition

In this Part:

the former Act means the *Parking Space Levy Act 1992*, as in force immediately before the commencement of this Act.

3 Returns under the former Act

Section 9 of this Act applies to any return that was required to be furnished under section 15 of the former Act but that had not been furnished before the commencement of this Act.

4 Obligations of persons in public sector positions

Any arrangements that, immediately before the commencement of this Act, were in force under section 17 of the former Act are taken to have been made for the purposes of the regulations under this Act.

5 Public Transport Facilities Fund

Money held in the Public Transport Facilities Fund established under the former Act is to be paid into the Public Transport Fund established under this Act.

6 Operation of Taxation Administration Act 1996

Anything done under the *Taxation Administration Act 1996* for the purposes of, or in connection with, the former Act is taken to have been done for the purposes of, or in connection with, this Act.

Schedule 2 Parking Space Levy Regulation 2009

(Section 15)

1 Name of Regulation

This Regulation is the *Parking Space Levy Regulation 2009*.

2 Definitions

(1) In this Regulation:

base rate—see clause 8.

car stacker means an apparatus that can stack 2 or more motor vehicles on 2 or more levels.

Category 1 area means an area described in Part 1 of Schedule 1.

Category 2 area means an area described in Part 2 of Schedule 1.

exempt parking space—see clause 7.

mobility parking scheme authority means an authority of that description issued pursuant to the regulations under the *Road Transport (Safety and Traffic Management) Act 1999*.

parking area means that part of any premises that is used, or set aside, for the parking of motor vehicles.

regular parking space means a parking space that is not a stacked parking space.

stacked parking space means a parking space created by a car stacker.

the Act means the *Parking Space Levy Act 2009*.

(2) Notes included in this Regulation do not form part of this Regulation.

3 Leviable districts (s 4 (1), definition of “leviable district”)

Each district referred to in Schedule 1 is established as a leviable district for the purposes of the Act.

4 Leviable premises—exclusion of on-street parking (s 7 (2))

The carriageway of any street, road or lane open to or used by the public is declared not to be leviable premises for the purposes of the Act.

5 Stacked parking spaces (s 4 (1), definition of “parking space”)

A stacked parking space is declared to be a parking space for the purposes of the Act.

6 Calculation of parking space numbers (s 14)

(1) The number of parking spaces on any premises is the sum of:

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- (a) the number of regular parking spaces in each parking area on the premises, and
 - (b) the number of stacked parking spaces on the premises.
- (2) The number of regular parking spaces in a parking area is the sum of the following:
- (a) in respect of those portions of the parking area in which parking spaces are designated in any way:
 - (i) the number of designated parking spaces in those portions, or
 - (ii) the number of parking spaces obtained by dividing the total area of those portions (in square meters) by 18, and disregarding any remainder,whichever is the greater,
 - (b) in respect of those portions of the parking area in which parking spaces are not designated in any way, the number of parking spaces obtained by dividing the area of those portions (in square meters) by 18, and disregarding any remainder.
- (3) The number of stacked parking spaces on any premises is the maximum number of motor vehicles that can reasonably be accommodated by the car stackers on the premises.

7 Exempt parking spaces (s 14)

- (1) A parking space on leviable premises in a Category 1 or Category 2 area is an exempt parking space while it is set aside exclusively for one or more of the following purposes:
 - (a) the parking of bicycles or motor cycles,
 - (b) the parking of motor vehicles by persons who reside on the premises or on adjoining premises,
 - (c) the parking of motor vehicles by persons who hold mobility parking scheme authorities,
 - (d) the parking of motor vehicles for the purpose of loading or unloading goods or passengers, but not if vehicles are permitted to park in the space otherwise than while goods or passengers are being loaded or unloaded,
 - (e) the parking of motor vehicles by persons who, on a casual basis, provide services to the premises, other than vehicles used by employees, contractors or consultants whose usual place of work is on the premises,
 - (f) the parking (without charge) of a mobile crane, a forklift truck, a tractor or a front-end loader,

- (g) the parking (without charge) of an ambulance, fire brigade motor vehicle or police motor vehicle, but only if the parking space is the one used for garaging the vehicle overnight,
 - (h) the parking (without charge) of a motor vehicle used only for the carrying out of deliveries or the provision of services, but only if:
 - (i) the parking space is the one used for garaging the vehicle overnight, and
 - (ii) the owner of the vehicle is also the owner or occupier of the premises,
 - (i) in the case of premises owned or occupied by the council of the local government area, the parking (without charge) of motor vehicles by persons other than officers or employees of the council,
 - (j) in the case of premises owned or occupied by:
 - (i) a religious body or religious organisation in respect of which a proclamation is in force under section 26 of the *Marriage Act 1961* of the Commonwealth, or
 - (ii) a religious body within a denomination in respect of which such a proclamation is in force, or
 - (iii) a public charity or public benevolent institution,the parking (without charge) of any motor vehicle.
- (2) For the purposes of subclause (1) (b), the several lots in a strata scheme under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986* are taken to adjoin each other, regardless of their location.
- (3) A parking space on leviable premises in a Category 1 or Category 2 area is an exempt parking space while it is an unused casual parking space or an unleased tenant's parking space.
- (4) For the purposes of subclause (3):
- (a) a parking space is an ***unused casual parking space*** if it is set aside for use by the public for the parking of motor vehicles but remains unused for that purpose, and
 - (b) a parking space is an ***unleased tenant's parking space*** if it is unavailable for use as a parking space except under a lease or licence under which a tenant of the premises in which it is located has exclusive use of it and no such lease or licence is in force.
- (5) A parking space on leviable premises in a Category 2 area is an exempt parking space while it is set aside exclusively for one or more of the following purposes:
- (a) the parking of motor vehicles by customers of a retail shop,

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- (b) the parking of motor vehicles on the shopping centres referred to in Schedule 2 by persons employed at a retail shop on those premises,
 - (c) the parking of motor vehicles by guests or customers of a hotel or motel,
 - (d) the parking of motor vehicles by members and guests of members of a registered club,
 - (e) the parking of motor vehicles by customers of a restaurant,
 - (f) the parking of motor vehicles by patients of a medical centre,
 - (g) the parking of motor vehicles by customers of a car sales establishment, car servicing or repair centre, or car wash,
 - (h) the parking of motor vehicles by clients and guests of clients of a funeral parlour,
 - (i) the parking of motor vehicles that are displayed or stored on the premises for the purpose of their being offered for sale or hire.

8 Base rate (s 8)

- (1) For the financial year beginning 1 July 2009, the base rate of the levy is:
 - (a) \$2,000, in relation to premises in a Category 1 area, and
 - (b) \$710, in relation to premises in a Category 2 area.
- (2) For any subsequent financial year, the base rate of the levy in relation to premises in a Category 1 or Category 2 area is the CPI adjusted levy for premises in that area, as determined in accordance with the following formula:

$$C = \frac{L \times A}{B}$$

where:

C is the CPI adjusted levy being determined (with amounts of less than \$5 being rounded down to the next lower multiple of \$10 and amounts of \$5 or more being rounded up to the next higher multiple of \$10).

L is the base rate for the base year for premises in that area.

A is the sum of the consumer price index numbers for the June, September, December and March quarters immediately prior to 1 April of the year preceding the financial year for which the base rate is being calculated.

B is the sum of the consumer price index numbers for the June, September, December and March quarters immediately prior to 1 April of the year preceding the base year.

(3) In this clause:

base year means the financial year for which the base rate is fixed under subclause (1).

consumer price index means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

9 Amount of levy (s 8)

The amount of the levy for any premises for any financial year is the sum of the amounts determined in accordance with the following formula in relation to each parking space on the premises:

$$A = \frac{B \times N}{Y}$$

where:

A represents the amount payable in relation to the parking space.

B represents the base rate of the levy for the premises for that year.

N represents the number of days during the previous financial year for which:

- (a) the premises were in a leviable district, and
- (b) the parking space was in existence, and
- (c) the parking space was not an exempt parking space.

Y represents the number of days in the previous financial year (365 or 366, as the case may be).

10 Notice of base rate

- (1) On or before 1 July in each financial year, the Minister is to publish a notice in the Gazette specifying the base rate of the levy for that year:
 - (a) for premises within the Category 1 areas, and
 - (b) for premises within the Category 2 areas,as fixed under clause 8.
- (2) A failure to publish such a notice for a financial year does not affect the validity of the levy for that year.

11 Obligations of persons in government service positions

- (1) This clause applies to a government employee who is entitled to use one or more parking spaces in his or her capacity as a government employee, other than a government employee who is the holder of a mobility parking scheme authority.
- (2) The government employee must make arrangements for payment of the whole or a proportion of the levy payable for one of those spaces

commensurate with the use the person makes of the space or spaces in conjunction with travel by the person to or from the person's place of work for duties during the person's normal working hours at that place.

- (3) Those arrangements must be entered into with the relevant person on or before:
- (a) the day occurring one month after the relevant entitlement arises, or
 - (b) 1 September in the relevant financial year, whichever is the later.
- (4) Payments in accordance with those arrangements are to be made by the government employee out of his or her remuneration as a government employee.
- (5) This clause applies despite any contract to the contrary.
- (6) In this clause:

government employee means a person who holds a government service position.

government service position means:

- (a) a position in the Chief Executive Service or Senior Executive Service under the *Public Sector Employment and Management Act 2002* or in the NSW Police Force Senior Executive Service under the *Police Act 1990*, or
- (b) a position in the Government Service, in the NSW Police Force, in the Teaching Service, in the service of a public authority or in the service of Parliament, or
- (c) a statutory position (or other position in the service of the Crown) to which an appointment is made by the Governor, a Minister or a Department Head, or
- (d) the office of a member of the Legislative Council or of the Legislative Assembly, or
- (e) the office of a Minister of the Crown.

position includes a position to which a person is appointed or employed under a contract of services or under a contract for services and any employment (whether or not a separate position).

relevant person, in relation to a government employee, means the person specified in Schedule 3 in relation to the government service position held by that employee, or such other person as that person may nominate for the purposes of this clause.

- (7) An amendment to Schedule 3 does not apply to arrangements in force immediately before the commencement of the amendment, and that

Schedule, as in force when the arrangements were entered into, continues to apply to the arrangements as if it had not been amended.

Schedule 1 Leviable districts

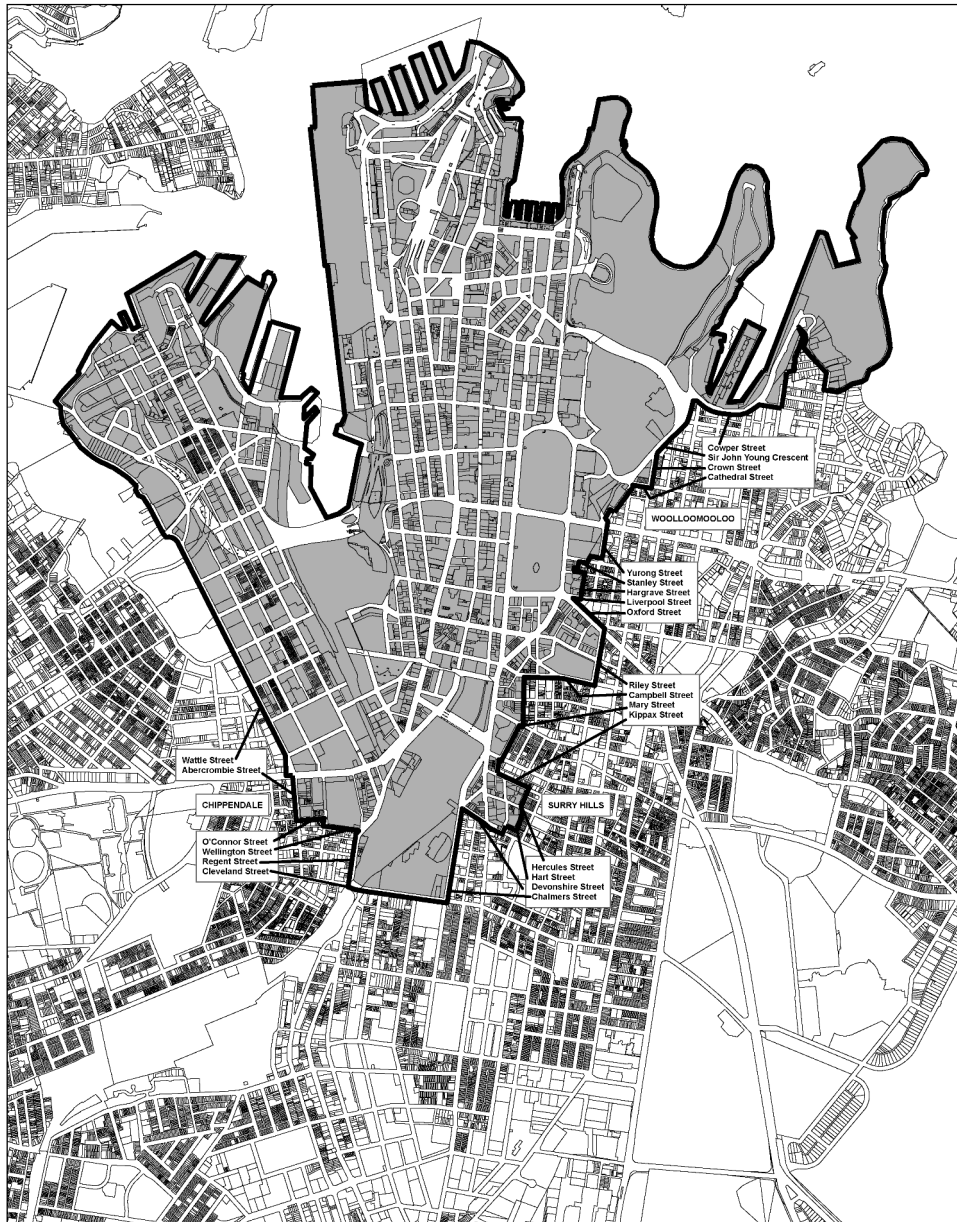
(Clauses 2 and 3)

Part 1 Category 1 areas

1 City of Sydney

That part of the City of Sydney shown edged with a heavy unbroken line on the map marked “Parking Space Levy Act 2009—City of Sydney—Leviable District”, signed by the Minister and deposited in the offices of the Ministry of Transport.

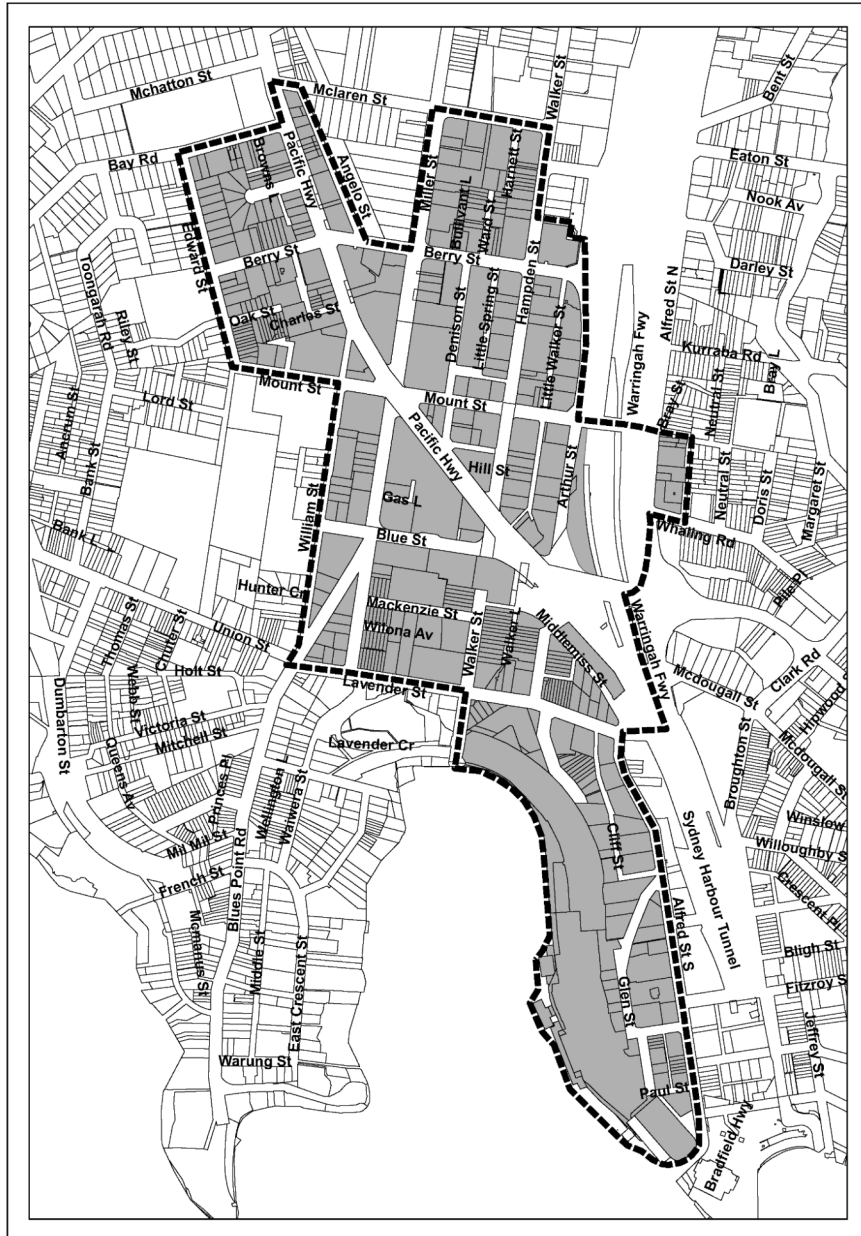
Note. An illustration of the map is as follows:

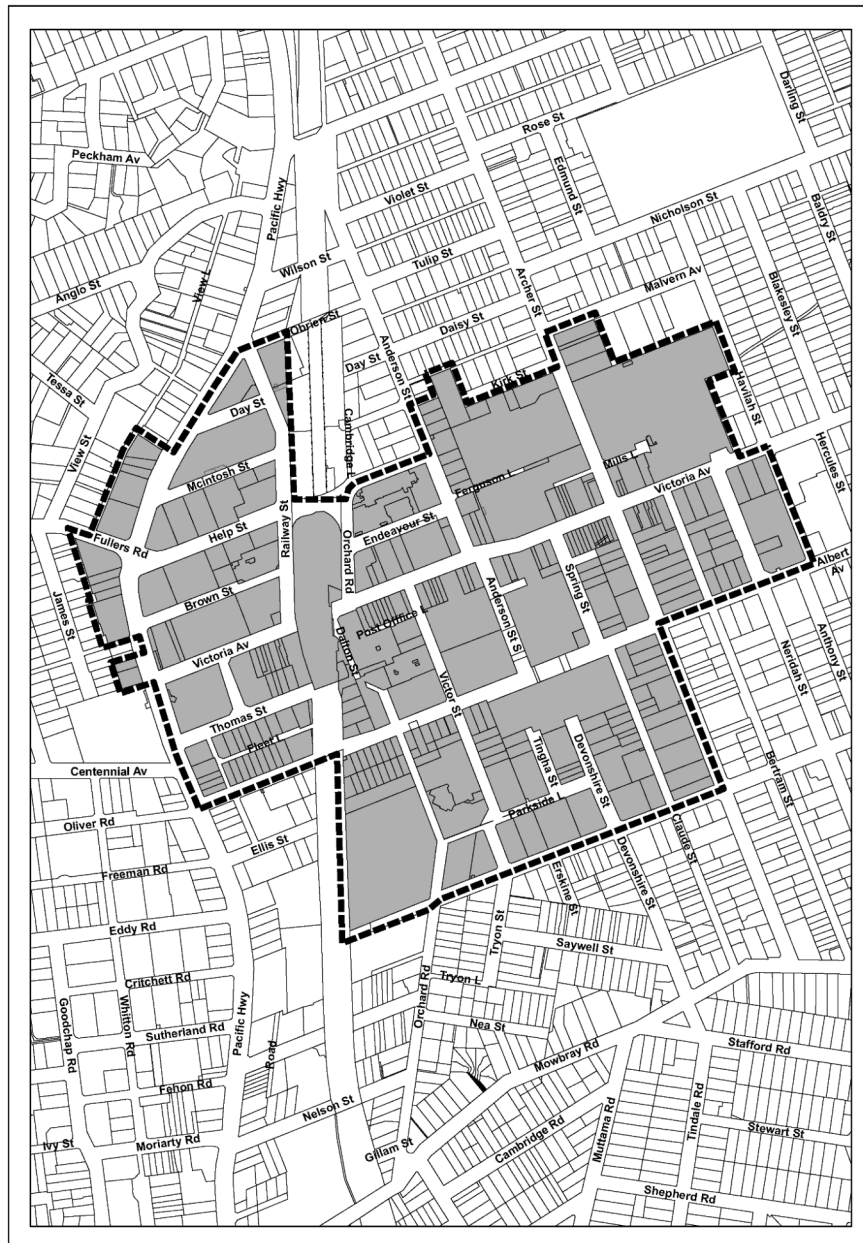


2 North Sydney

That part of North Sydney shown edged with a heavy broken line on the map marked “Parking Space Levy Act 2009—North Sydney—Leviable District”, signed by the Minister and deposited in the offices of the Ministry of Transport.

Note. An illustration of the map is as follows:

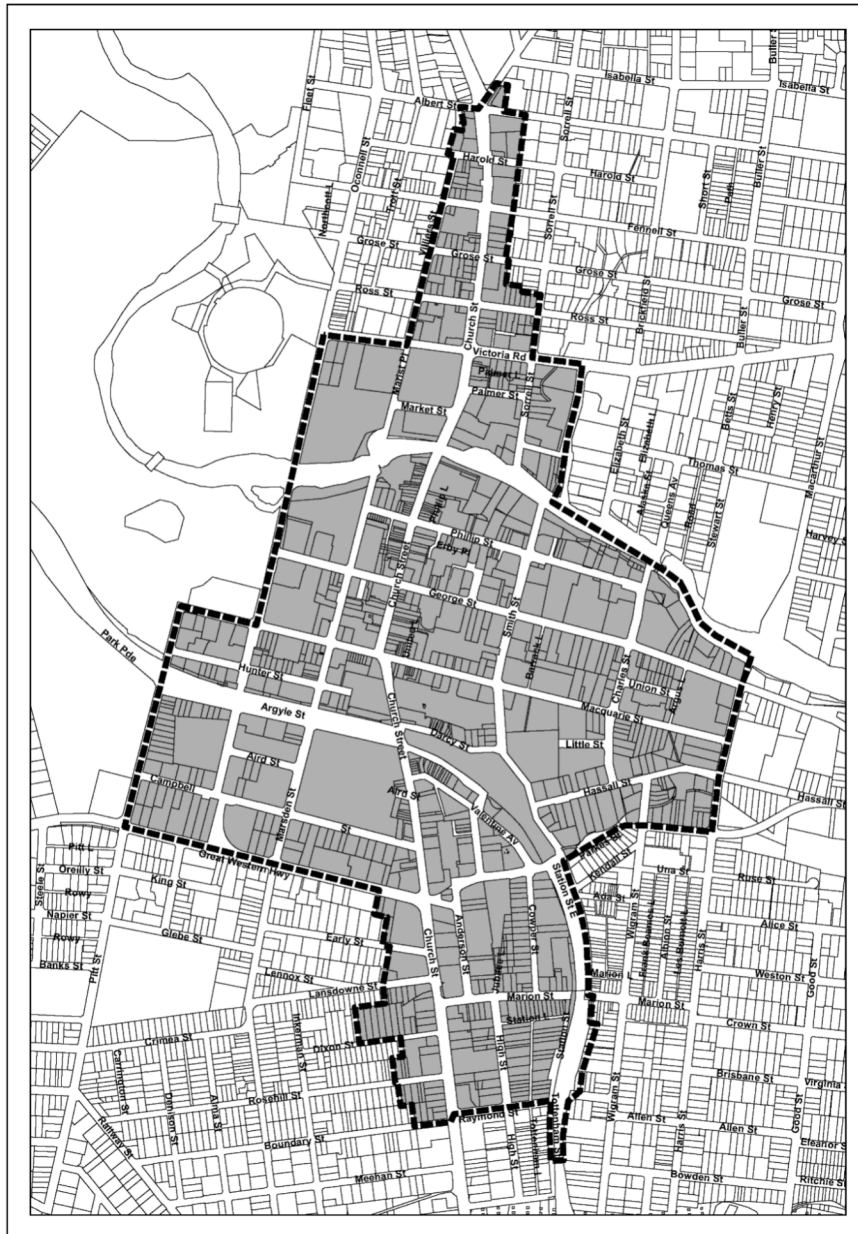




5 Parramatta

That part of Parramatta shown edged with a heavy broken line on the map marked “Parking Space Levy Act 2009—Parramatta—Leviable District”, signed by the Minister and deposited in the offices of the Ministry of Transport.

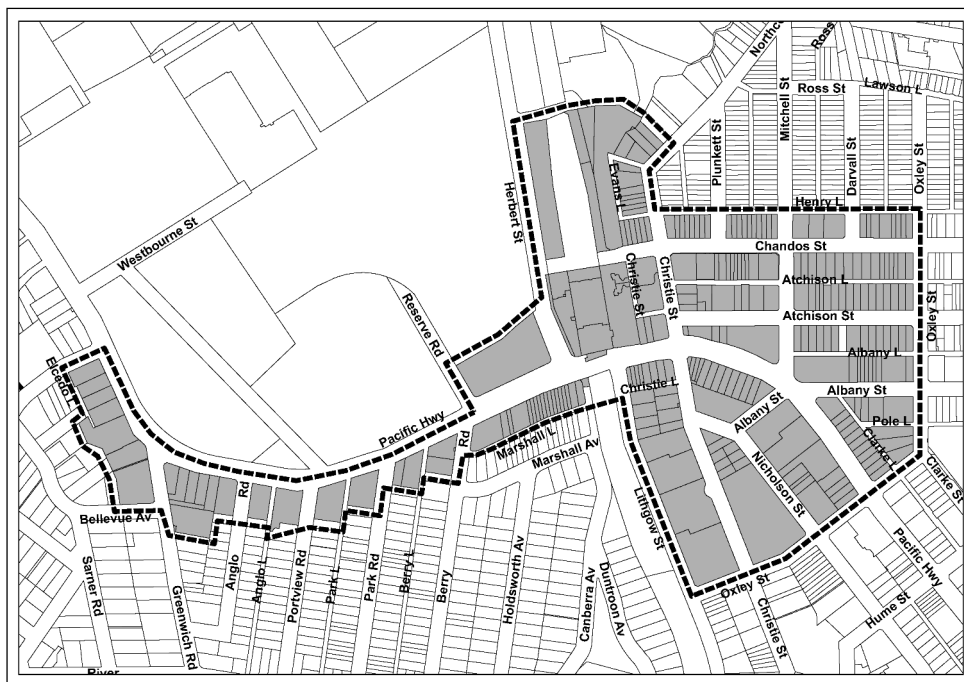
Note. An illustration of the map is as follows:



6 St Leonards

That part of St Leonards shown edged with a heavy broken line on the map marked “Parking Space Levy Act 2009—St Leonards—Leviable District”, signed by the Minister and deposited in the offices of the Ministry of Transport.

Note. An illustration of the map is as follows:



Schedule 2 Shopping centres

(Clause 7)

| Premises | Address | Bounded generally by |
|--------------------------|--|------------------------------------|
| Bondi Junction | | |
| Eastgate Shopping Centre | 71–85 Spring Street, Bondi Junction | Spring St, Newland St and Ebley St |

| Premises | Address | Bounded generally by |
|--|---------------------------------------|---|
| Westfield Bondi Junction Shopping Centre | 480–510 Oxford Street, Bondi Junction | Grafton St, Grosvenor St, Bronte Rd, Gray St, Ann St, Ebley St, Hollywood Ave and Adelaide St |
| Chatswood | | |
| Chatswood Chase Shopping Centre | 345 Victoria Avenue, Chatswood | Archer St, Victoria Ave and Havilah St |
| Myer Department Store | 49–51 Albert Avenue, Chatswood | Victor St, Albert Ave, Anderson St and Victoria Ave Mall |
| Westfield Chatswood Shopping Centre | 1 Anderson Street, Chatswood | Anderson St, Albert Ave, Spring St and Victoria Ave |
| Parramatta | | |
| Westfield Parramatta Shopping Centre | 159–175 Church Street, Parramatta | Argyle, O’Connell, Campbell and Church Sts |

Schedule 3 Public sector arrangements

(Clause 11)

| | | |
|---|---|--|
| 1 | A person holding office in the Chief Executive Service or Senior Executive Service under the <i>Public Sector Employment and Management Act 2002</i> or in the NSW Police Force Senior Executive Service under the <i>Police Act 1990</i> | The person with whom the person in that position has entered into a contract of employment in accordance with that Act |
| 2 | A person in a position in the Government Service | The appropriate Department Head, within the meaning of the <i>Public Sector Employment and Management Act 2002</i> |
| 3 | A person in a position in the NSW Police Force | The Commissioner of Police |
| 4 | A person in a position in the Teaching Service | The Director-General of the Department of Education and Training |
| 5 | A person in a position in the service of a public authority | The chief executive of that authority |

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Schedule 2 Parking Space Levy Regulation 2009

| | | |
|----|--|--|
| 6 | A person in a statutory position (or any position in the service of the Crown not otherwise covered in this Table) | The person who for the time being makes appointments to such a position or, if made by the Governor, the Minister who for the time being makes recommendations for appointments to such a position |
| 7 | A person holding the office of a member of the Legislative Council | The Clerk of the Legislative Council |
| 8 | A person in a position in the service of the Legislative Council | The Clerk of the Legislative Council |
| 9 | A person holding the office of a member of the Legislative Assembly | The Clerk of the Legislative Assembly |
| 10 | A person in a position in the service of the Legislative Assembly | The Clerk of the Legislative Assembly |
| 11 | A member of the joint personnel of Parliament | The Clerk of the Legislative Council and the Clerk of the Legislative Assembly |
| 12 | A person holding the office of a Minister of the Crown | The Treasurer |

[Agreement in principle speech made in Legislative Assembly on 11 March 2009
Second reading speech made in Legislative Council on 25 March 2009]

BY AUTHORITY