

Parking Space Levies – The Question of Visitor Spaces

Are Visitor Parking Spaces Exempt from Levies?

A recent decision of the Appeal Panel of NCAT has re-examined the question of as to whether visitor parking spaces in a residential strata complex qualify for exemption from levies which may be payable pursuant to the *Parking Space Levy Act 2009* (NSW).

NSW Government Introduces the Parking Space Levy Act

An attempt to discourage or reduce traffic congestion in certain key Sydney business districts, in 2009 the NSW Government introduced the *Parking Space Levy Act*, the effect of which was to make a levy payable by landowners on certain off-street parking spaces located in specified districts.

In broad terms, the districts to which the legislation currently applies are:

- Sydney CBD;
- North Sydney/Milsons Point;
- Bondi Junction;
- Chatswood;
- Parramatta; and
- St Leonards.

There are designated maps which set out in detail the parts of those areas to which the levy applies, and the levy has two categories. Category 1 (Sydney CBD and North Sydney/Milsons Point) has the highest levy rate, and the balance of

districts are designated as Category 2, for which a lower rate is payable.

The relevant legislation also contains exemptions, one of which is set out in Regulations 7 & 8 of the *Parking Space Levy Regulation 2009* (the Regulation). One of the exempt purposes is where the parking spaces are for “the parking of motor vehicles by persons who reside on the premises or an adjoining premises”.

NCAT Disputes Visitor Car Space Assessment

The premises in question in this case were located in Milsons Point, and were therefore designated as “Category 1”. The Chief Commissioner of State Revenue made a determination that the strata scheme in Milsons Point was liable to pay a car space levy on 5 of 7 car spaces which were set aside for visitors to the property. The strata scheme itself is a mixed commercial and residential building containing 33 residential apartments and 7 commercial suites.

An application was made by the strata scheme to the NSW Civil and Administrative Tribunal (**NCAT**) disputing the assessment made by the Chief Commissioner of State Revenue on the basis that the visitor car spaces in question should have been considered as “exempt” parking spaces.

Specifically, the strata scheme’s original application to NCAT argued that the exemptions described in Regulations 7 and 8 of the Regulations for “the parking of motor vehicles by persons who reside on the premises or an adjoining premises” should include parking spaces set aside for visitors of persons who reside on the premises.

The original decision of NCAT was that visitor car spaces were not exempt. The owners corporation then appealed the original NCAT decision in relation to this issue to the Appeal Panel.

The Decision of the Appeal Panel

The Appeal Panel rejected the proposition that parking for guests of residents was intended to be covered by the relevant exemption.

The Appeal Panel noted that Regulations 7 and 8 contained a number of specific exemptions including for parking of contractors and consultants providing services on the premises. The Appeal Panel argued that if the Parliament had intended for an exemption to be granted for the parking of “guests”, then it could have included that exemption explicitly within those Regulations, which it did not.

The Appeal Panel noted that limiting the exemption in this way was also consistent with the aims of the legislation, being to discourage car use in the area. The Appeal Panel found that the parking spaces in question were for a combination of exempt and non-exempt purposes, and therefore not “exclusively” set aside for an exempt purpose.

The Appeal Panel therefore upheld the original decision of NCAT, and the original decision of the Chief Commissioner of State Revenue to apply the levy to these car spaces was affirmed.

The Conclusion

Although the Act and the Regulations apply only to a limited set of areas within Sydney, it is within the power of the Government to expand the list of areas to which that levy will apply in the future. In light of current public policy settings regarding driving and motor vehicle use generally, the exercise of that power to expand the list of leviable areas in Sydney must be considered a possibility.

Owners Corporations within Category 1 and Category 2 areas should be aware of their obligations under the Act and the

Regulations, and the applicability of those legislative instruments to their particular circumstances.

Need Help with a Parking Issue?

We are happy to provide guidance to strata schemes who seek interpretation of the application of any Ruling in relation to levies of this kind or simply require general parking advice in relation to the issue.



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Since 1990, Warwick has specialised in strata law, property law and litigation. Recognised for his expertise, he is also a NSW Law Society Accredited Specialist in Property Law. In 2021 he was selected to serve on the Property Law Committee of the Law Society of NSW. [Profile](#) I [LinkedIn](#)

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For all strata law advice including by-laws, building defects and levy collections contact our specialist NSW and Sydney strata lawyers [here](#) or call 02 9562 1266, we're happy to assist.