

Queensland



LOCAL GOVERNMENT (CHINATOWN AND THE VALLEY MALLS) ACT 1984

**Reprinted as in force on 4 July 2000
(includes amendments up to Act No. 5 of 2000)**

Reprint No. 1D *

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Information about this reprint

This Act is reprinted as at 4 July 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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LOCAL GOVERNMENT (CHINATOWN AND THE VALLEY MALLS) ACT 1984

[as amended by all amendments that commenced on or before 4 July 2000]

An Act to provide for the establishment, management, operation, extension and use of pedestrian malls, in Brisbane, to be known as the Chinatown Mall and The Valley Mall and for related purposes

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Local Government (Chinatown and The Valley Malls) Act 1984*.

3 Interpretation

In this Act—

“**Chinatown Mall**” means the Chinatown Mall established under this Act.

“**court**” means the Planning and Environment Court.

“**extension works**” means all works, facilities and conveniences necessary or desirable to be carried out or provided in a mall area or a mall extension area in connection with the establishment of a mall or an extension of a mall by the inclusion of a mall extension area, and includes any works to facilitate the passage of traffic, vehicular or otherwise over or under a mall area or a mall extension area.

“**mall**” means a mall established and, where applicable, extended under this Act and in relation to—

- (a) the Chinatown Mall, means the Chinatown Mall established and, where applicable, extended under this Act; and

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(b) The Valley Mall, means The Valley Mall established and, where applicable, extended under this Act.

“mall area” in relation to—

- (a) the Chinatown Mall, means the road area within the city delineated and shown stippled on the plan in schedule 1; and
- (b) The Valley Mall, means the road area within the city delineated and shown stippled on the plan in schedule 2.

“mall extension area” means the road area identified as a mall extension area in an order in council made pursuant to section 5C.

“officer” means a person holding office under or employed by the council.

“rateable property” means—

- (a) if the council makes and levies in respect of any land a general rate under the City of Brisbane Act 1924, section 44—that land; or
- (b) if at any time a general rate such as is referred to in paragraph (a) is not made and levied—land within the areas shown delineated with a heavy black line on the map in schedule 3 and respectively marked ‘A’, ‘B’, ‘C’ and ‘D’.

“the city” means the area from time to time included in the City of Brisbane constituted and declared by the *City of Brisbane Act 1924*.

“the committee” means the Chinatown and The Valley Malls Advisory Committee established under this Act.

“the council” means Brisbane City Council constituted pursuant to the *City of Brisbane Act 1924*.

“the town clerk” means the town clerk of the council.

“The Valley Mall” means The Valley Mall established under this Act.

“vehicle” includes any articulated vehicle, barrow, cab, car, carriage, cart, dray, hand cart, lorry, motor vehicle, multi-wheeled vehicle, omnibus, tractor or traction engine, trailer, trolley vehicle, truck, van, velocipede, wagon or other means of transport or conveyance whatsoever designed for movement on wheels, whether or not it is at the material time capable of being operated or used in a normal manner but does not include a perambulator or a wheelchair.

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“**working beast**” means a beast used, or of a species capable of being used, for carrying persons or for burden or draught.

“**works**” means all works, facilities and conveniences necessary or desirable to be carried out or provided in a mall area in connection with the establishment of the Chinatown Mall or, as the case requires, The Valley Mall.

PART 2—ESTABLISHMENT OF MALLS

Division 1—Chinatown Mall

5 Establishment of Chinatown Mall

(1) On and from the commencement of the *Local Government (Chinatown Mall) Act Amendment Act 1987* the mall area shall be a pedestrian mall and shall be known as the Chinatown Mall.

(2) The management, operation and use of the mall shall be subject to and shall accord with this Act and the local laws of the council made with respect thereto.

Division 2—The Valley Mall

5A Appointed day—The Valley Mall

(1) If requested by the council so to do, the Minister may recommend to the Governor in Council that a day be appointed under this section.

(2) The Governor in Council may, by order in council on the recommendation of the Minister, appoint a day¹ for the purpose of the establishment of The Valley Mall.

(3) The day appointed in this section—

¹ The appointed day is 15 December 1990 (see order in council pubd gaz 15 December 1990 p 1872).

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- (a) shall be a day subsequent to the completion of the undertaking and provision of works in relation to The Valley Mall pursuant to part 3; and
- (b) is in this Act, referred to, in relation to The Valley Mall, as the appointed day.

5B Establishment of The Valley Mall

(1) On and from the appointed day the mall area shall be a pedestrian mall and shall be known as The Valley Mall.

(2) The management, operation and use of the mall shall be subject to and shall accord with this Act and the local laws of the council made with respect thereto.

Division 3—Extension of malls

5C Declaration of mall extension area

(1) The council may request that the Minister recommend to the Governor in Council that a mall be extended.

(2) The Governor in Council may, by order in council, on the recommendation of the Minister declare a road area, identified in the order in council, within the city to be a mall extension area.

(3) A road area that is not contiguous with a mall may be declared a mall extension area.

5D Nominated day

(1) Where the Governor in Council makes a declaration pursuant to section 5C(2) the council may request that the Minister recommend to the Governor in Council that a day be nominated under this section for the purpose of extending a mall.

(2) The Governor in Council may, by order in council on the recommendation of the Minister, nominate in respect of a declaration made pursuant to section 5C(2) a day for the purpose of extending a mall.

(3) A day nominated under this section—

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- (a) shall be a day subsequent to the completion of the undertaking and provision of the relevant extension works pursuant to part 3;
- (b) is in this Act, in respect of a mall extension area declared pursuant to section 5C(2), referred to as a nominated day.

5E Extension of mall

On and from the nominated day in respect of a declaration made pursuant to section 5C(2) the mall extension area referred to in that declaration shall become a part of the mall to which it relates.

Division 4—Traffic on malls

6 Restricted traffic on mall

Notwithstanding any other provision of law, a person—

- (a) shall not drive or ride or permit another person to drive or ride a vehicle or working beast on any part of a mall;
- (b) shall not suffer a vehicle or working beast, of the use of which the person has control, to be on any part of a mall;

except, in either case, pursuant to and in accordance with a notification given or permit issued by or on behalf of the council pursuant to this Act.

Maximum penalty—\$500.

PART 3—POWERS OF COUNCIL

7 Construction and provision of works or extension works

In addition to all other powers had by it according to law, the council may as a function of local government, undertake or provide all or any part of the works or extension works, or arrange for the undertaking or provision of all or any part of the works or extension works, and may as a function of local government do all things necessary or desirable for or

incidental to undertaking or providing the works or extension works or any part thereof.

8 Closure of road

(1) The council may, by notification published in the gazette and in a newspaper that circulates throughout the city, close the whole or any part of a mall area or a mall extension area against all traffic or against traffic of a particular description and, by a like notification, may vary or revoke a notification previously given under this section.

(2) A notification given under this section—

- (a) shall specify a day on which it is to become effective, and shall become effective on that day;
- (b) unless it is a notification of revocation, shall, upon becoming effective, continue to have force and effect (as varied, if it be subsequently varied) until its revocation or until the appointed day, whichever is the earlier.

(3) A person shall not contravene or fail to comply with a notification given under this section and in force for the time being.

Maximum penalty—\$500.

14 Operation etc. of mall

(1) In addition to all other powers had by it according to law the council may, as a function of local government, do all things necessary for or incidental to the management, maintenance, cleaning, operation, promotion, development or use of a mall.

(2) Without limiting the generality of the powers conferred by subsection (1), the council may permit the use of any part of a mall and the erection and use of any building or structure in any part of that mall upon such terms and conditions as it thinks fit.

(3) The council may exercise any of its powers in relation to a mall area or mall extension area, whether those powers are conferred by this section or otherwise, before the appointed day or, as the case requires, the relevant nominated day if the exercise of the power is, in its opinion, necessary or convenient for the management, maintenance, cleaning, operation,

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promotion, development or use of the mall or mall as extended immediately upon its establishment or, as the case may be, extension.

15 Entry of vehicles and beasts into mall

(1) The council may, by notification published in the gazette and in a newspaper that circulates throughout the city, specify—

- (a) vehicles or working beasts that may enter upon or be on any part of a mall;
- (b) hours within which or occasions on which vehicles or working beasts may enter upon or be on any part of a mall.

(2) The council may in writing permit a vehicle or working beast specified in the permit to enter upon and be on any part of a mall for the purposes and for the period and subject to the conditions (if any) specified in the permit.

(3) A notification given under subsection (1)—

- (a) may define the vehicles to which it relates by reference to vehicles generally, vehicles of a specified class or description, vehicles used for a specified purpose, vehicles used by a specified person or persons of a specified class or vehicles used in specified circumstances;
- (b) may so specify hours to which it relates that the hours differ according to different classes or descriptions of vehicles or different uses of vehicles;
- (c) shall specify the day on which the notification shall become effective.

(4) A permit issued under subsection (2) shall specify the day on which the permit shall become effective.

(5) The council—

- (a) may vary or revoke a notification given under subsection (1) by a like notification;
- (b) may revoke a permit issued under subsection (2) by notice of revocation in writing given to the holder of the permit.

(6) A notification given under subsection (1) shall continue to have force and effect, as varied if it be subsequently varied, and a permit issued under

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subsection (2) shall continue to have force and effect until, in either case, its revocation.

(7) A power conferred by this section may be exercised at any time after the commencement of this Act, and before the appointed day as if the mall had been established at the commencement of this Act and, if so exercised, the day on which a notification given under subsection (1) or a permit issued under subsection (2) shall become effective may be specified by reference to the appointed day or to a day subsequent to the appointed day and not otherwise.

18 Local laws

(1) The power conferred on the council by the *City of Brisbane Act 1924* to make local laws includes power to make local laws—

- (a) prohibiting or regulating any display, amusement or other activity whatsoever in a mall or in the vicinity of a mall;
- (b) providing for fixing, varying and revoking, by resolution of the council, fees and charges—
 - (i) for use of a mall or any part of a mall for any display, amusement or other activity whatsoever;
 - (ii) for any service provided by the council in or in connection with a mall;
- (c) providing for the collection and recovery of fees and charges referred to in paragraph (b);
- (d) prohibiting or regulating any matter or thing connected with the external appearance or character of any building or other structure in or abutting a mall.

(1A) However, in relation to the Chinatown Mall such powers of prohibition and regulation shall be exercised with a view to promoting an oriental design and theme of that mall.

(2) A local law made by the council in relation to any matter referred to in subsection (1) shall be of force and effect and shall be complied with notwithstanding any provision of the *Transport Operations (Road Use Management) Act 1995* and to the extent that a provision of the local law is inconsistent with a provision of that Act or of any other law that prohibits or regulates any activity on a road the provision of the local law shall prevail and the provision of that Act or that other law shall be inoperative.

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(3) A local law of a description referred to in subsection (1) may be made at any time after the commencement of this Act and before the appointed day but any local law so made shall not take effect until the appointed day at the earliest.

(4) A local law of a description referred to in subsection (1) in force immediately before the relevant nominated day shall also on and from that nominated day have force and effect in relation to the mall extension area to which that nominated day relates.

PART 4—ADVISORY COMMITTEE

20 Reconstitution of committee

(1) On the date of commencement of this Act the existing members of the Chinatown Mall Advisory Committee shall go out of office and that committee shall be reconstituted and shall be known as the Chinatown and The Valley Malls Advisory Committee and shall thereafter consist of 12 members.

(2) The committee shall consist of—

- (a) the mayor of the city who shall be a member ex officio; and
- (b) the councillor of the council who represents for the time being the electoral ward constituted for the purposes of the *City of Brisbane Act 1924* that includes the mall areas, who shall be a member ex officio; and
- (c) the member of the Legislative Assembly who represents for the time being the State electoral district that includes the mall areas, who shall be a member ex officio; and
- (d) a person appointed by the council on the nomination of the Minister; and
- (e) 6 persons appointed by the council with the prior approval of the Minister—
 - (i) 1 of whom shall be a person who is an owner or is employed by an owner of rateable property situated within area 'A'; and

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- (ii) 1 of whom shall be a person who is an owner or is employed by an owner of rateable property situated within area 'B'; and
- (iii) 1 of whom shall be a person who is carrying on business or is employed by a person carrying on business from rateable property situated within area 'A'; and
- (iv) 1 of whom shall be a person who is carrying on business or is employed by a person carrying on business from rateable property situated within area 'B'; and
- (v) 1 of whom shall be a person—
 - (A) who is an owner or is employed by an owner of; or
 - (B) who is carrying on business or is employed by a person carrying on business from;
 rateable property situated within area 'C'; and
- (vi) 1 of whom shall be a person—
 - (A) who is an owner or is employed by an owner of; or
 - (B) who is carrying on business or is employed by a person carrying on business from;
 rateable property situated within area 'D'; and
- (f) 2 other persons appointed by the council.

(3) The council shall appoint one member of the committee to be the chairperson of the committee.

(4) Where any person appointed as a member pursuant to subsection (2)(e)—

- (a) is an owner or is employed by an owner of rateable property; or
- (b) is carrying on business or is employed by a person carrying on business;

in 1 or more of area 'A', area 'B', area 'C' or area 'D', the resolution so appointing that person shall specify the area in relation to which that person is so appointed.

(5) In this section—

“area 'A'”, “area 'B'”, “area 'C'” and “area 'D'” mean those parts of the city the boundaries of which are shown delineated with a heavy

black line on the map in schedule 3 and which are respectively marked 'A', 'B', 'C' and 'D'.

“owner”, in respect of rateable property means the person who at the relevant time is liable for the payment of a general rate in respect of that property.

21 Tenure of office

(1) A member of the committee, other than a member ex officio, shall subject to this Act hold office as such until the day or time specified in the instrument of the member's appointment as such as the day or time on or at which the member shall cease to hold that office.

(2) A member appointed to fill a casual vacancy in the office of a member of the committee shall hold office for the unexpired portion of the term of office of the member in whose place he or she was appointed.

(3) A person whose term of office as a member of the committee has expired is, subject to section 20(2), eligible for reappointment.

22 Deputy of members

(1) A member of the committee who through absence, illness or other cause is unable to perform the duties as such member may, by notice in writing given to the secretary to the committee, appoint a person as the member's deputy to act for the member during the continuance of his or her inability and the person so appointed shall while so acting, be deemed to be a member of the committee and where the person is appointed as deputy of the member who is chairperson of the committee, to be chairperson of the committee.

(2) A person shall not be appointed to act as a deputy of a member appointed pursuant to a subparagraph of section 20(2)(e) unless that person is eligible to be a member of the committee under the relevant subparagraph.

23 Removal of members of committee

The council may for good cause, by notice in writing given to a member of the committee, other than a member ex officio, remove that member from office on the committee but, in respect of a member nominated by the

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Minister, or in respect of a member of a description referred to in section 20(2)(e), only with the Minister's approval first had and obtained.

24 Casual vacancies

A casual vacancy occurs in the office of a member of the committee if—

- (a) the member dies; or
- (b) being a member referred to in section 20(2)(e), the member ceases to hold the qualification by reason of which the member was appointed to the committee; or
- (c) the member resigns by notice in writing given to the council; or
- (d) the member is removed from office by the council pursuant to section 23.

25 Meetings and quorum

(1) The committee shall meet as often as it thinks necessary to perform its function under this Act.

(2) The procedure for calling meetings of the committee and for conducting business at the committee's meetings shall, subject to this Act, be as determined by the committee.

(3) Business shall not be conducted at a meeting of the committee unless a quorum is present.

(3A) A majority of the members for the time being constituting the committee of whom—

- (a) 1 at least shall be a member ex officio or the deputy of a member ex officio; and
- (b) 2 at least shall be members of a description referred to in section 20(2)(e) or the deputy of a member of that description;

shall constitute a quorum at a meeting of the committee and, subject to the foregoing provisions, any duly convened meeting shall be competent to transact any business of the committee and may exercise all the powers and discharge all the duties and functions of the committee.

(4) A decision evidenced by the majority of the votes cast by the members present at a duly convened meeting of the committee shall be the decision of the committee.

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(4A) The person who presides at any meeting of the committee shall have a casting vote in the event of an equality of votes in respect of any business before that meeting.

(5) The chairperson of the committee shall preside at every meeting of the committee at which the chairperson is present and in the chairperson's absence, the chairperson's deputy (if the chairperson's deputy is present) shall preside.

(5A) In the absence of both the chairperson and the chairperson's deputy from any meeting of the committee the members present shall, from amongst their number, elect a member to preside at that meeting and at that meeting the member, while so presiding, shall have and may exercise and discharge all the powers, duties and functions of the chairperson.

(6) The committee shall cause accurate minutes to be kept of proceedings at its meetings.

26 Secretary to committee

The council shall provide an officer to be the secretary to the committee.

27 Function and power of committee

(1) The function of the committee shall be—

- (a) the furnishing to the council of information and advice on matters—
 - (i) relevant to the exercise by the council of its powers under sections 14 and 15; or
 - (ii) referred to it by the council concerning the exercise by the council of any of its other powers conferred by this Act; and
- (b) where the council enters into arrangements with any person to perform on its behalf any things necessary for or incidental to the management, maintenance, cleaning, operation, promotion, development or use of the mall, the furnishing to the council of information and advice on the manner in which the arrangements entered into are being conducted.

(2) In the proper discharge of its function the committee shall, through its chairperson, furnish a report to the town clerk as soon as is practicable after each meeting of the committee—

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- (a) informing the council of its opinion and recommendations on matters referred to it by the council for information and advice, being matters considered at that meeting; and
- (b) if it thinks fit, drawing the council's attention to matters that it considers relevant to the powers of the council conferred by this Act and informing the council of its recommendations as to courses of action available or desirable in relation to those matters.

(3) Upon receipt by the town clerk of a report such as is referred to in subsection (2) the town clerk shall refer the report to the nominated standing committee for consideration and report to the council.

(4) In this section—

“nominated standing committee” means that standing committee of the council appointed by it by resolution to be the standing committee to which a report such as is referred to in subsection (2) shall be referred by the town clerk for consideration and report thereon to the council.

(5) For the purpose of ascertaining information and formulating advice to be furnished under this section, the committee may require any person to furnish relevant information which that person is capable of furnishing and the person, so far as the person is able, shall comply with the request.

PART 5—RECOVERY OF PENALTIES BY NOTICES

28 Interpretation

In this part—

“authorised officer” means an officer who has been appointed by the council by resolution to be an authorised officer for the purposes of this part.

“owner” means, in relation to a vehicle that is registered in a State or Territory under a law of that State or Territory providing for the registration of vehicles, the person in whose name the vehicle is so registered.

“prescribed infringement” means—

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- (a) an offence defined in section 6 or 8(3); or
- (b) an offence defined in a local law referred to in section 18(1) which offence is, in that local law, declared to be a prescribed infringement for the purposes of this part.

“statutory declaration” means a declaration under and in accordance with the *Oaths Act 1867*.

29 Appointment of authorised officers

(1) The council may by resolution appoint an officer to be an authorised officer for the purposes of this part.

(2) The town clerk shall cause each authorised officer to be provided with an appropriate means of identifying himself or herself as an authorised officer.

30 Requirement for name and address

Where an authorised officer believes on reasonable grounds that a person has committed or is committing a prescribed infringement the authorised officer may require that person—

- (a) to state the person’s name and address; and
- (b) to supply evidence of the correctness of a name and address given by the person in response to a requisition made on the person under this section.

31 Service and effect of infringement notice

(1) Where an authorised officer believes on reasonable grounds that a prescribed infringement has been committed, the authorised officer may serve or cause to be served an infringement notice in accordance with this part.

(2) An infringement notice may be served—

- (a) where the prescribed infringement concerns a vehicle or working beast and that vehicle or beast remains on a mall area—
 - (i) by serving the notice personally on any person who is driving, riding or appears to be in charge of the vehicle or beast; or

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- (ii) in the case of the vehicle—by securely placing or affixing the notice on the vehicle in a conspicuous position;
- (b) where the prescribed infringement concerns a vehicle and the owner of the vehicle has furnished a declaration in accordance with section 32(3)—
 - (i) by serving the notice personally or by post on the person whose name is specified in the declaration as that of the person in charge of the vehicle at the time of the prescribed infringement alleged; or
 - (ii) by leaving the notice at the place of residence or business of that person last-known to the authorised officer with some person apparently over the age of 16 years and apparently an occupant of or employed at that place;
- (c) where the prescribed infringement concerns a vehicle and a declaration has been furnished in accordance with section 32(4)—
 - (i) by serving the notice personally or by post on the person whose name is specified in the declaration as that of the person to whom the vehicle has been sold before the time of the prescribed infringement alleged; or
 - (ii) by leaving the notice at the place of residence or business of that person last-known to the authorised officer with some person apparently over the age of 16 years and apparently an occupant of or employed at that place;
- (d) in any other case—
 - (i) where the prescribed infringement concerns a vehicle or working beast—by serving the notice personally on the person who appears to have committed that prescribed infringement or, in the case of a vehicle, by serving the notice personally or by post on the owner of the vehicle; or
 - (ii) where the prescribed infringement does not concern a vehicle or working beast—by serving the notice personally or by post on the person who appears to have committed the prescribed infringement;

or in either case, where service by post is permissible, by leaving the notice at the place of residence or business of such owner or person last-known to the authorised officer with some person

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apparently over the age of 16 years and apparently an occupant of or employed at that place.

(3) Where an infringement notice in relation to a prescribed infringement is to be served by post on a person it may be addressed to the person—

- (a) in the case of the owner of a vehicle registered under a law of a State or Territory providing for the registration of vehicles—at the latest address of the owner shown in the record of registration of the vehicle; or
- (b) in the case of a person whose name is specified in a declaration furnished in accordance with section 32(3) or 32(4)—at the person's address shown in the declaration; or
- (c) in any other case—at the place of residence or business of that person last-known to the authorised officer.

(4) Where an infringement notice is served as provided in subsection (2)(a)(ii), it shall be deemed to be served on the owner of the vehicle.

(5) An infringement notice shall be in a form approved by the town clerk and shall—

- (a) be identified by a serial number; and
- (b) subject to subsection (6), clearly show on its face the full name, or surname and initials, and address of the person on whom it is served; and
- (c) clearly specify the nature of the prescribed infringement alleged; and
- (d) where the prescribed infringement concerns a vehicle or working beast, clearly specify the vehicle or beast; and
- (e) clearly specify the day, time and place of the commission of the prescribed infringement alleged; and
- (f) contain a notification to the person on whom it is served that, if the person does not wish the matter to be dealt with by a court, the person may before the expiration of the period of 14 days after such service or within such further time as the town clerk or an officer nominated by the town clerk in that behalf and specified therein, whether before or after the expiration of that

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period, allows, pay to the council the amount of the prescribed penalty specified in the notice; and

- (g) specify the place at which and the manner in which the prescribed penalty may be paid; and
- (h) where the prescribed infringement concerns a vehicle, inform the person on whom it is served in general terms of the provisions of section 32(3), (4) and (6) to (9).

(6) An infringement notice that is served as provided in subsection (2)(a)(ii) may be addressed to ‘the owner’ of the vehicle without further description of the owner.

(7) Where an infringement notice has been served and before the expiration of the period of 14 days or within such further time as the town clerk, or the officer nominated by the town clerk in that behalf, whether before or after the expiration of that period, allows, the amount of the prescribed penalty is paid in accordance with the notice—

- (a) any liability of a person in respect of the alleged prescribed infringement shall be deemed to be discharged;
- (b) no further proceedings shall be taken in respect of the alleged prescribed infringement.

(8) Nothing in this section prevents the service of more than 1 notice in respect of the same prescribed infringement, but it is sufficient for the application of subsection (7) to a person on whom more than 1 such notice has been served for the person to pay the prescribed penalty in accordance with any 1 of the notices so served on the person.

(9) Where the amount of the prescribed penalty is paid by cheque, payment shall be deemed not to be made unless and until the cheque is honoured upon presentation.

(10) Except as provided in subsection (7), nothing in this section in any way prejudices or affects the institution or prosecution of proceedings in respect of an alleged prescribed infringement or limits the amount of the penalty that may be imposed by a court in respect of a prescribed infringement.

(11) Nothing in this section shall be construed as requiring the serving of a notice under this section or as affecting the liability of a person to be prosecuted in a court in respect of an alleged prescribed infringement in relation to which a notice has not been served.

32 Liability for prescribed infringements and exculpation

(1) Except as provided in this section, where—

- (a) a prescribed infringement that concerns a vehicle occurs; and
- (b) an infringement notice in relation to the infringement is served on the owner of the vehicle;

the owner of the vehicle at the time of the infringement shall be deemed to have committed the infringement notwithstanding that the actual offender may have been another person.

(2) Nothing in this section affects the liability of an actual offender other than the owner of the vehicle but—

- (a) the owner and the actual offender shall not both be liable for the same prescribed infringement; and
- (b) where a penalty has been imposed on a person in respect of a prescribed infringement, a further penalty shall not be imposed upon or recovered from another person in respect of the same prescribed infringement.

(3) The owner of a vehicle shall not, by virtue of this section, be deemed to have committed a prescribed infringement if, not later than 10 days after the service on the owner of a summons in respect of the prescribed infringement alleged, there is furnished to the town clerk a statutory declaration made by the owner or, where the owner is a body corporate by a director, manager or secretary of the body corporate, stating—

- (a) in the case where the owner is a body corporate—
 - (i) that the declaration is made for the purposes of this section; and
 - (ii) that the vehicle was not being used for the purposes of the body corporate at the time of the prescribed infringement alleged; and
 - (iii) the name and address of the person who was in charge of the vehicle at that time; and
- (b) in any other case—
 - (i) that the declaration is made for the purposes of this section; and

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- (ii) that the owner was not in charge of the vehicle at the time of the prescribed infringement alleged; and
- (iii) the name and address of the person who was in charge of the vehicle at that time.

(4) The owner of a vehicle shall not, by virtue of this section, be deemed to have committed a prescribed infringement if, not later than 10 days after the service on the owner of a summons in respect of the prescribed infringement alleged, there is furnished to the town clerk a statutory declaration made by the owner or, where the owner is a body corporate, by a director, manager or secretary of the body corporate, stating—

- (a) in the case where the owner is a body corporate—
 - (i) that the declaration is made for the purposes of this section; and
 - (ii) facts which establish that the body corporate had sold the vehicle before the time of the prescribed infringement alleged and which include the name of the person to whom the vehicle was so sold and the address at which such person may be readily located, the time of the sale, and the name and address of the agent (if any) who made the sale on behalf of the body corporate; and
- (b) in any other case—
 - (i) that the declaration is made for the purposes of this section; and
 - (ii) facts which establish that the owner had sold the vehicle before the time of the prescribed infringement alleged and which include the name of the person to whom the vehicle was so sold and the address at which such person may be readily located, the time of the sale, and the name and address of the agent (if any) who made the sale on the owner's behalf.

(5) Where a declaration has been furnished in accordance with subsection (4), the provisions of this section shall thereafter have effect as if the person named in the declaration as the person to whom a vehicle was sold were, as from the time of the sale, the person in whose name the vehicle is registered under a law of a State or Territory providing for the registration of vehicles.

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(6) The owner of a vehicle that an alleged prescribed infringement concerns may—

- (a) where an infringement notice has, otherwise than under section 31(2)(a)(ii), been served on the owner in relation to the prescribed infringement, not later than 10 days after the date of service of the notice; or
- (b) where an infringement notice has not, otherwise than under section 31(2)(a)(ii), been served on the owner in relation to the prescribed infringement, not later than 10 days after the date of service of a summons for the prescribed infringement;

furnish to the town clerk a statutory declaration made by the owner or, where the owner is a body corporate, by a director, manager or secretary of the body corporate, stating—

- (c) in the case where the owner is a body corporate—
 - (i) that the declaration is made for the purposes of this section; and
 - (ii) that to the knowledge of the declarant, from the facts as set out in the declaration, the vehicle was not being used for the purposes of the body corporate at the time of the prescribed infringement alleged; and
 - (iii) that the declarant has not been able to ascertain who was in charge of the vehicle at that time; and
 - (iv) the nature of the inquiries made for the purposes of ascertaining the name and address of the person who was in charge of the vehicle at that time; and
- (d) in any other case—
 - (i) that the declaration is made for the purposes of this section; and
 - (ii) that the owner was not in charge of the vehicle at the time of the prescribed infringement alleged; and
 - (iii) that the owner has not been able to ascertain who was in charge of the vehicle at that time; and
 - (iv) the nature of the inquiries made for the purpose of ascertaining the name and address of the person who was in charge of the vehicle at that time.

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(7) The owner of a vehicle that an alleged prescribed infringement concerns may—

- (a) where an infringement notice has, otherwise than under section 31(2)(a)(ii), been served on the owner in relation to the prescribed infringement—not later than 10 days after the date of service of the notice; or
- (b) where an infringement notice has not, otherwise than under section 31(2)(a)(ii), been served on the owner in relation to the prescribed infringement—not later than 10 days after the date of service of a summons for the prescribed infringement;

furnish to the town clerk a statutory declaration made by the owner or, where the owner is a body corporate, by a director, manager or secretary of the body corporate, stating—

- (c) that the declaration is made for the purposes of this section; and
- (d) facts which establish that the vehicle was at the time of the alleged prescribed infringement, stolen or illegally taken or used.

(8) At the hearing of a prosecution for a prescribed infringement against the owner of a vehicle who has furnished a declaration under subsection (6), the court shall dismiss the charge if it is satisfied (whether on the statements contained in the declaration or otherwise) that—

- (a) in the case where the owner is a body corporate—
 - (i) the vehicle was not being used for the purposes of the body corporate at the time of the prescribed infringement alleged; and
 - (ii) the inquiries made for the purpose of ascertaining the name and address of the person who was in charge of the vehicle at that time were reasonable in the circumstances of the case and were carried out with due diligence; and
- (b) in any other case—
 - (i) the owner was not in charge of the vehicle at the time of the prescribed infringement alleged; and
 - (ii) the inquiries made for the purpose of ascertaining the name and address of the person who was in charge of the vehicle at that time were reasonable in the circumstances of the case and were carried out with due diligence.

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(9) At the hearing of a prosecution for a prescribed infringement against the owner of a vehicle who has furnished a declaration under subsection (7), the court shall dismiss the charge if it is satisfied (whether on the statements contained in the declaration or otherwise) that the vehicle was, at the time of the alleged prescribed infringement, stolen or illegally taken or used.

33 Facilitation of proof

(1) At the hearing of a prosecution for a prescribed infringement in relation to which an infringement notice has been served under section 31, a certificate purporting to be signed by the town clerk or an officer nominated by the town clerk in that behalf and stating—

(a) that—

- (i) the town clerk or that nominated officer did not allow further time, for the purpose of section 31(7), for the payment of the prescribed penalty in respect of the prescribed infringement; and
- (ii) the prescribed penalty in respect of the prescribed infringement was not paid in accordance with the infringement notice within 14 days after the date of service of the notice; or

(b) that—

- (i) the town clerk or that nominated officer allowed, for the purpose of section 31(7), the further time specified in the certificate for the payment of the prescribed penalty in respect of the prescribed infringement; and
- (ii) the prescribed penalty in respect of the prescribed infringement was not paid in accordance with the infringement notice within the time referred to in paragraph (a) or within the further time so allowed for the purpose of section 31(7);

is evidence of the matters contained therein.

(2) At the hearing of a prosecution for a prescribed infringement, a certificate purporting to be signed by the town clerk, or an officer nominated by the town clerk in that behalf, and stating that a person specified in the certificate has not, in relation to that prescribed

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infringement, furnished a statutory declaration to the town clerk for the purpose of a provision of section 32 is evidence of the matters contained therein.

(3) In any proceeding for the purpose of this part—

(a) a certificate or document—

- (i) purporting to be issued pursuant to the regulations under the *Transport Infrastructure (Roads) Act 1991* or pursuant to any corresponding legislation, ordinance or law of any State or Territory; or
- (ii) purporting to be under the hand of the secretary of the commissioner of main roads, or any person authorised by the commissioner of main roads in that behalf, or to be under the hand of the person or authority charged with the registration of vehicles under any legislation, ordinance or law of any State or Territory corresponding to the regulations under the *Transport Infrastructure (Roads) Act 1991*, or any person authorised by such person or authority in that behalf;

which states that on any date or during any period the vehicle specified in the certificate or document was registered in the name of the person specified therein is admissible in evidence and is evidence that the person specified in the certificate or document was the owner of the vehicle specified therein at the time or during the period specified therein and, in the absence of evidence to the contrary, is conclusive evidence of such ownership; and

(b) a certificate or document referred to in paragraph (a) shall be taken to have been duly issued or given until the contrary is proved.

34 Service of copy of declaration under s 32(3) or (4)

(1) Where a person is named in a declaration furnished under section 32(3) as being the person who was, at the time of the prescribed infringement alleged, in charge of the vehicle that the prescribed infringement concerns—

(a) that person shall not at the hearing of a prosecution for the prescribed infringement be found guilty of the prescribed

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infringement unless a copy of the declaration has, prior to the hearing, been served on the person in the same manner as a summons may be served under the *Justices Act 1886*; and

- (b) the declaration is admissible in evidence in a prosecution for the prescribed infringement against that person and is evidence that that person was in charge of the vehicle at that time.

(2) Where a person is named in a declaration furnished under section 32(4) as being the person to whom the vehicle that the prescribed infringement concerns was sold before the time of the prescribed infringement—

- (a) that person shall not at the hearing of a prosecution for the prescribed infringement be found guilty of the prescribed infringement unless a copy of the declaration has, prior to the hearing, been served on the person in the same manner as a summons may be served under the *Justices Act 1886*; and
- (b) the declaration is admissible in evidence in a prosecution for the prescribed infringement against that person and is evidence that that person was the owner of the vehicle at that time.

(3) At the hearing of a prosecution for a prescribed infringement, a document purporting to be a declaration furnished in accordance with section 32(3) or (4) shall, unless the contrary is shown, be taken to be such a declaration duly made and furnished.

35 Offences

A person—

- (a) shall not remove, deface or interfere with an infringement notice affixed to a vehicle pursuant to section 31(2)(a)(ii) unless the person is the owner or other person in charge of the vehicle to which the infringement notice is affixed; or
- (b) in response to a requisition made on the person under section 30, shall not—
 - (i) fail to state the person's name and address, or the person's name or address; or
 - (ii) state a false name and address or a false name or address; or

- (iii) supply false evidence of the person's name and address or of the person's name or address; or
- (iv) fail to supply evidence of the person's name and address or of the person's name or address, unless the person has reasonable excuse for the failure.

Maximum penalty—\$500.

PART 6—MISCELLANEOUS PROVISIONS

36 No entitlement to compensation

A person shall not be entitled to compensation on account of injurious affection to any right or interest of a business, commercial or industrial nature by reason of—

- (a) the existence of the Chinatown Mall or The Valley Mall; or
- (b) anything done pursuant to any provision of this Act.

37 Non-application of Land Act, s 371A

On and after the appointed day the provisions of the *Land Act 1994*, chapter 4, part 4 shall not apply with respect to the mall.

39 Appeal against council's decision etc.

(1) A person who is aggrieved by—

- (a) a decision of the council on an application made by the person in relation to any matter provided for by this Act, other than part 5, or by local laws made by the council in relation to any matter referred to in section 18(1)(a) or (d); or
- (b) the council's revocation of a permit issued under section 14(2) or 15(2), of which the person was the holder at the time it was revoked;

may, subject to this section, appeal to the court against that decision or revocation.

(2) An appeal pursuant to the right conferred by subsection (1) shall be made to the court within 30 days from the day on which notification of the council's decision or revocation is communicated to the person by the council.

(3) For the purposes of this section, where notification of the council's decision on any application is not communicated to the applicant within 30 days from the day on which the application was lodged with the officer with whom it is required to be lodged it shall be deemed that the council has refused the application and that notification of that decision has been communicated to the applicant on the 31st day from the day on which the application was so lodged.

40 Execution of this Act dominant

If an exercise under this Act of power concerning any matter is inconsistent with a prior exercise by the council under any other law of a power concerning the same matter, the prior exercise of power under the other law shall cease to be of force and effect upon the exercise of the power under this Act.

44 Prosecutions

(1) A prosecution for an offence against this Act or against a local law made by the council for the purposes of this Act shall be by way of summary proceedings under the *Justices Act 1886* upon complaint of the council, a person authorised in that behalf by the council or, where the defendant has been arrested and charged with the offence, by a police officer.

(2) A complaint referred to in subsection (1) shall be laid within 12 months after the commission of the offence or within 6 months after the offence comes to the complainant's knowledge whichever period is the later to expire.

(3) It shall not be necessary to prove the authority of the complainant in any proceeding in respect of an offence referred to in subsection (1).

(4) Any penalty and other moneys received as a result of proceedings taken by the council in respect of an offence against this Act or against a local law made in respect of a matter referred to in section 18 shall be paid to the council and, where a separate fund has been established by the council in respect of any separate rate or separate rates made and levied or

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in respect of any separate charge or separate charges imposed and collected under the *City of Brisbane Act 1924*, section 44 for all or any of the functions of local government referred to in section 7 or 14, shall be paid by it into that separate fund.

45 Regulations

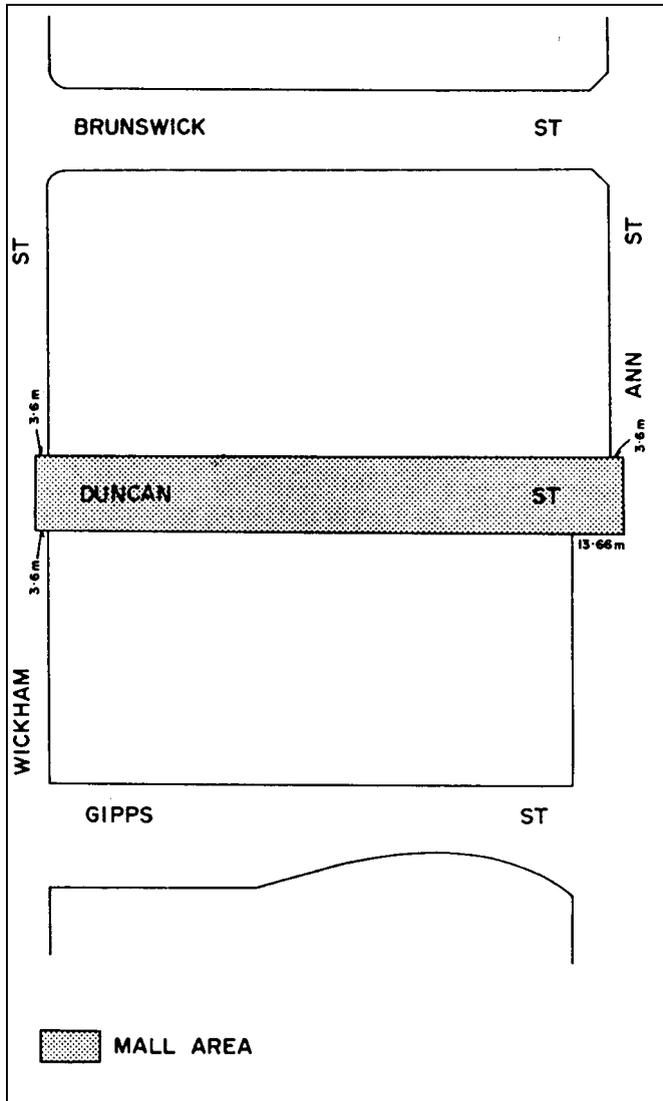
The Governor in Council may make regulations, not inconsistent with this Act, for or with respect to all matters that are required by this Act to be prescribed or that may be convenient for the administration of this Act or that may be necessary or expedient to achieve the objects and purposes of this Act.

46 Local Government (Chinatown Mall) Act 1984 references

In an Act or document, a reference to the *Local Government (Chinatown Mall) Act 1984* is a reference to this Act.

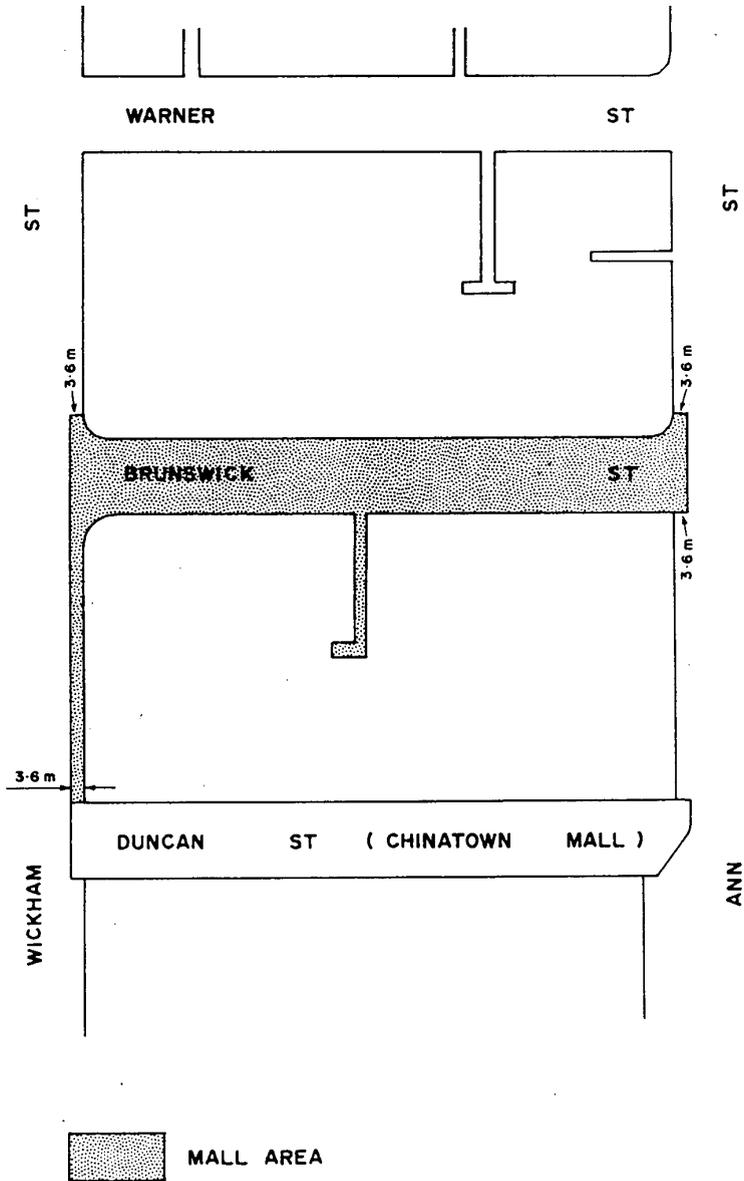
SCHEDULE 1

section 3



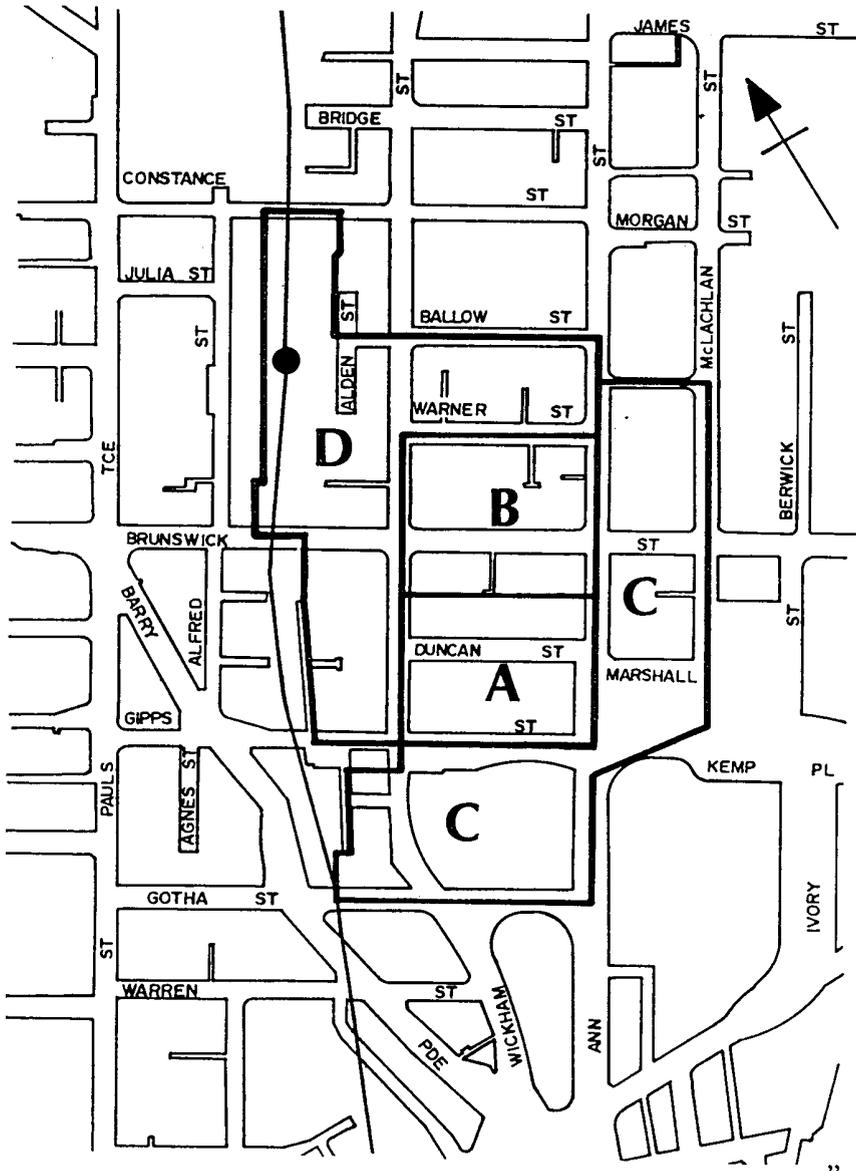
SCHEDULE 2

section 3



SCHEDULE 3

section 20



ENDNOTES

1 Index to endnotes

		Page
2	Date to which amendments incorporated	36
3	Key	36
4	Table of earlier reprints	37
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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 4 July 2000. Future amendments of the Local Government (Chinatown and the Valley Malls) Act 1984 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 58 of 1995	2 February 1996
1A	to Act No. 13 of 1998	14 July 1998
1B	to Act No. 42 of 1999	2 December 1999
1C	to Act No. 4 of 2000	21 March 2000

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citation and remade laws	1
Changed names and titles	1
Obsolete and redundant provisions	1
Renumbered provisions	1

6 List of legislation

Local Government (Chinatown and The Valley Malls) Act 1984 No. 104 (prev Local Government (Chinatown Mall) Act 1984)

date of assent 12 December 1984

commenced on date of assent

as amended by—

Local Government (Chinatown Mall) Act Amendment Act 1987 No. 37

date of assent 30 April 1987

commenced on date of assent

Local Government (Chinatown Mall) Act Amendment Act 1987 (No. 2) No. 79

date of assent 1 December 1987

commenced on date of assent

Local Government (Chinatown Mall) Act Amendment Act 1989 No. 22

date of assent 17 April 1989

ss 1–2 commenced on date of assent see s 2(1))

remaining provisions commenced 27 May 1989 (proc pubd gaz 27 May 1989 p 503)

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Public Service (Administrative Arrangements) Act 1990 (No. 2) No. 80 s 3 sch 5

date of assent 14 November 1990
commenced on date of assent

**Local Government (Chinatown Mall) Act and Another Act Amendment Act 1990
No. 91 pt 2**

date of assent 7 December 1990
commenced on date of assent

Local Government Act 1993 No. 70 ss 1–2, 804 sch

date of assent 7 December 1993
commenced 26 March 1994 (see s 2(5))

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995
commenced on date of assent

Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3), 191 sch

date of assent 23 March 1998
ss 1–2 commenced on date of assent
remaining amdts commenced 30 March 1998 (1998 SL No. 55)

Road Transport Reform Act 1999 No. 42 ss 1–2(1), 54(3) sch pt 3

date of assent 2 September 1999
ss 1–2 commenced on date of assent
remaining provisions commenced 1 December 1999 (see s 2(1))

**Local Government and Other Legislation Amendment Act 2000 No. 4 ss 1, 2(5),
94 sch**

date of assent 16 March 2000
commenced on date of assent (see s 2(5))

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 373 sch 3

date of assent 23 March 2000
ss 1–2, 373 commenced on date of assent (see s 2(2))
remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

7 List of annotations

Long title

amd 1990 No. 91 s 2(1)(a)

Short title

s 1 amd 1990 No. 91 s 2(b)

Arrangement

s 2 amd 1987 No. 79 s 3; 1989 No. 22 s 3; 1990 No. 91 s 4
om R1 (see RA s 36)

Interpretation

s 3 def “**approved body corporate**” om 1990 No. 91 s 5(a)
def “**Chinatown Mall**” ins 1990 No. 91 s 5(a)

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def “**court**” ins 1998 No. 13 s 191 sch
 def “**extension works**” ins 1990 No. 91 s 5(a)
 def “**financial year**” om R1 (see RA s 39)
 def “**Mall**” sub 1990 No. 91 s 5(b)
 def “**Mall area**” sub 1990 No. 91 s 5(c)
 def “**Mall extension area**” ins 1990 No. 91 s 5(c)
 def “**Minister**” sub 1990 No. 80 s 3 sch 5
 om R1 (see RA s 39)
 def “**rateable property**” sub 1990 No. 91 s 5(d)
 def “**the City**” amd 1990 No. 91 s 5(e)
 def “**the Committee**” amd 1990 No. 91 s 5(f)
 def “**the Council**” amd 1990 No. 91 s 5(g)
 def “**the Court**” amd 1990 No. 91 s 5(h)
 om 1998 No. 13 s 191 sch
 def “**the Promotion Committee**” ins 1987 No. 79 s 4
 om 1989 No. 22 s 4
 def “**The Valley Mall**” ins 1990 No. 91 s 5(a)
 def “**works**” amd 1990 No. 91 s 5(i)

PART 2—ESTABLISHMENT OF MALLS

pt hdg amd 1990 No. 91 s 6

Division 1—Chinatown Mall

div hdg ins 1990 No. 91 s 7

Appointed day

s 4 om 1990 No. 91 s 8

Establishment of Chinatown Mall

prov hdg amd 1990 No. 91 s 9

s 5 amd 1987 No. 37 s 2

Division 2—The Valley Mall

div hdg ins 1990 No. 91 s 10

Appointed day—The Valley Mall

s 5A ins 1990 No. 91 s 10

Establishment of The Valley Mall

s 5B ins 1990 No. 91 s 10

Division 3—Extension of malls

div hdg ins 1990 No. 91 s 10

Declaration of mall extension area

s 5C ins 1990 No. 91 s 10

Nominated day

s 5D ins 1990 No. 91 s 10

Extension of mall

s 5E ins 1990 No. 91 s 10

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Division 4—Traffic on malls

div hdg ins 1990 No. 91 s 10

Restricted traffic on mall

s 6 amd 1990 No. 91 s 11

Construction and provision of works or extension works

prov hdg amd 1990 No. 91 s 12(a)

s 7 amd 1990 No. 91 s 12(b)

Closure of road

s 8 amd 1990 No. 91 s 13

Authorizing construction or provision of works

s 9 om 1990 No. 91 s 14

Lawful to exercise s. 9 authority

s 10 om 1990 No. 91 s 14

Permit to use and occupy Mall area

s 11 om 1990 No. 91 s 14

Permit to be assignable

s 12 om 1990 No. 91 s 14

Revocation of authority and permit

s 13 om 1990 No. 91 s 14

Operation etc. of mall

s 14 amd 1987 No. 79 s 5; 1989 No. 22 s 5; 1990 No. 91 s 15

Entry of vehicles and beasts into mall

s 15 amd 1990 No. 91 s 16

Separate rates

s 16 om 1990 No. 91 s 17

Concessions as to separate rates where s. 9 authorization granted

s 17 om 1990 No. 91 s 18

Local laws

prov hdg amd R1 (see RA ss 23 and 23A)

s 18 amd 1990 No. 91 s 19; 1999 No. 42 s 54(3) sch pt 3

Delegation of power

s 19 om 1990 No. 91 s 20

Reconstitution of committee

s 20 amd 1987 No. 37 s 3; 1989 No. 22 s 6

sub 1990 No. 91 s 21

Deputy of members

s 22 amd 1989 No. 22 s 7; 1990 No. 91 s 22

Removal of members of committee

s 23 amd 1989 No. 22 s 8; 1990 No. 91 s 23

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Casual vacancies

s 24 amd 1990 No. 91 s 24

Meetings and quorum

s 25 amd 1989 No. 22 s 9; 1990 No. 91 s 25

Function and power of committee

prov hdg amd 1989 No. 22 s 10(a)

s 27 amd 1987 No. 79 s 6; 1989 No. 22 s 10(b)-(c)

PART IVA—PROMOTION COMMITTEE

pt hdg ins 1987 No. 79 s 7

 om 1989 No. 22 s 11

Establishment of Promotion Committee

s 27A ins 1987 No. 79 s 7

 om 1989 No. 22 s 11

Tenure of office

s 27B ins 1987 No. 79 s 7

 om 1989 No. 22 s 11

Business and meetings

s 27C ins 1987 No. 79 s 7

 om 1989 No. 22 s 11

Secretary; costs

s 27D ins 1987 No. 79 s 7

 om 1989 No. 22 s 11

Function of Promotion Committee

s 27E ins 1987 No. 79 s 7

 om 1989 No. 22 s 11

Interpretation

s 28 def “**statutory declaration**” amd 1990 No. 91 s 26

Service and effect of infringement notice

s 31 amd 1990 No. 91 s 27; 2000 No. 4 s 94 sch

Facilitation of proof

s 33 amd 1990 No. 91 s 28

Service of copy of declaration under s 32(3) or (4)

s 34 amd 1990 No. 91 s 29

No entitlement to compensation

s 36 amd 1990 No. 91 s 30

Non-application of Land Act, s 371A

s 37 amd 1990 No. 91 s 31

Non-application of s. 35 (24B) Local Government Act

s 38 amd 1990 No. 91 s 32

 om 1993 No. 70 s 804 sch

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Appeal against council's decision etc.

s 39 amd 1990 No. 91 s 33

Powers of police officers

s 41 om 2000 No. 5 s 373 sch 3

Directions by police officer

s 42 om 2000 No. 5 s 373 sch 3

Arrest of persistent offender

s 43 om 2000 No. 5 s 373 sch 3

Prosecutions

s 44 amd 1990 No. 91 s 34

Local Government (Chinatown Mall) Act 1984 references

s 46 ins 1995 No. 58 s 4 sch 1

SCHEDULE 1

hdg amd 1990 No. 91 s 35

sch sub 1987 No. 37 s 4

SCHEDULE 2

ins 1990 No. 91 s 36

SCHEDULE 3

ins 1990 No. 91 s 36