

Queensland



ANNO TRICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE

No. 104 of 1984

**An Act to provide for the establishment, management,
operation and use of a pedestrian mall, in Brisbane,
to be known as the Chinatown Mall and for related
purposes**

[ASSENTED TO 12TH DECEMBER, 1984]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *Local Government (Chinatown Mall) Act 1984*.

2. **Arrangement.** This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1-3);

PART II—ESTABLISHMENT OF MALL (ss. 4-6);

PART III—POWERS OF COUNCIL (ss. 7-19);

PART IV—ADVISORY COMMITTEE (ss. 20-27);

PART V—RECOVERY OF PENALTIES BY NOTICES (ss. 28-35);

PART VI—MISCELLANEOUS PROVISIONS (ss. 36-45).

3. **Interpretation.** In this Act except where a contrary intention appears—

“approved body corporate” means a body corporate whose share capital is so held that a person who is an owner of land abutting the Mall area is, or two or more persons, acting conjointly, each of whom is an owner of land abutting the Mall area, are able (directly or indirectly) to exercise or control or significantly influence the exercise of at least 90 per centum of the voting power attaching to shares of the body corporate;

“financial year” means the period from and including the first day of July in one calendar year to and including the last day of June in the next following calendar year;

“Mall” means the Chinatown Mall established under this Act;

“Mall area” means the road area within the City delineated and shown stippled on the plan in the Schedule;

“Minister” means the Minister for Local Government, Main Roads and Racing or other Minister of the Crown charged at the material time, with the administration of this Act and includes a person temporarily performing the duties of the Minister;

“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 separate rate under section 44 of the *City of Brisbane Act 1924-1984* pursuant to the authority conferred by section 16 of this Act, that land; or

- (b) if at any time a separate rate such as is referred to in paragraph (a) is not made and levied, land abutting any part of the Mall area;
- “the City” means the area from time to time included in the City of Brisbane constituted and declared by the *City of Brisbane Act 1924-1984*;
- “the Committee” means the Chinatown Mall Advisory Committee established under this Act;
- “the Council” means Brisbane City Council constituted pursuant to the *City of Brisbane Act 1924-1984*;
- “the Court” means The Local Government Court constituted under the *City of Brisbane Town Planning Act 1964-1984*;
- “the Town Clerk” means the Town Clerk of the Council;
- “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;
- “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 the Mall area in connexion with the establishment of the Mall.

PART II—ESTABLISHMENT OF MALL

4. Appointed day. (1) If he is 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 day for the purpose of the establishment of the Mall.

(3) The day appointed under this section—

- (a) shall be a day subsequent to the completion of the undertaking and provision of works pursuant to Part III; and
- (b) is, in this Act, referred to as the appointed day.

5. Establishment of Mall. (1) On and from the appointed day 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 ordinances of the Council made with respect thereto.

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 the Mall;
- (b) shall not suffer a vehicle or working beast, of the use of which he has control, to be on any part of the 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.

Penalty: \$500.

PART III—POWERS OF COUNCIL

7. Construction and provision of 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 arrange for the undertaking or provision of all or any part of the 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 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 the Mall 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.

Penalty: \$500.

9. Authorizing construction or provision of works. (1) The Council may authorize one or more of the owners of land abutting the Mall area or an approved body corporate to undertake or provide all or any part of the works at the cost of the owner or owners or, as the case may be, the approved body corporate and upon such terms and conditions as are agreed upon and specified in the authority.

(2) The Council may require security to be given or arranged by the person or persons to be authorized under subsection (1) for the due performance of the works to be so authorized to be undertaken or provided and where such security has been given or arranged and the

works have not been undertaken or provided in accordance with the authority granted under subsection (1) in relation to which the security was required the Council may—

- (a) where the security does not consist of money, realize the security and apply the money so realized; or
- (b) where the security consists of money, apply the money as follows:—
 - firstly, in payment of the expenses of the realization (if any) of the security;
 - secondly, in undertaking or providing the works to which the authority related or in restoring (so far as is practicable) the Mall area to the condition in which it was before the authority was granted, as the Council thinks fit;
 - thirdly, in payment of any other expenses incurred by the Council in connexion with the grant of the authority; and
 - lastly, in payment to the person or persons by whom the security was given.

(3) An authority granted under subsection (1) shall continue in force until it is duly revoked by the Council as prescribed by this Act.

10. Lawful to exercise s. 9 authority. Where the Council has granted an authority under section 9 (1) it is lawful for the person or persons to whom the authority is granted and for his, or their or its servants and agents to carry out, in a workmanlike manner and in accordance with the terms and conditions specified in the authority, the undertaking or provision of works to which the authority relates.

11. Permit to use and occupy Mall area. (1) Where—

- (a) any owner or owners of land abutting the Mall area or approved body corporate has or have paid to the Council the cost of all or any part of the works; or
- (b) the Council has granted an authority under section 9 (1) to any owner or owners of land abutting the Mall area or approved body corporate,

the Council may issue to that owner or each of those owners or that approved body corporate a permit in writing to do one or more of the following things:—

- to occupy and use to the exclusion of all other persons such part of the Mall as is specified in the permit;
- to erect a building or other structure of a type specified in the permit in such part of the Mall as is specified in the permit;
- to occupy and use to the exclusion of all other persons a building or other structure (whether or not erected pursuant to a permit issued under this subsection) erected in the Mall and identified in the permit.

(2) A permit may be granted under subsection (1) at any time after the passing of this Act, whether before or after the appointed day, as if the Mall had been established upon the passing of this Act, and shall specify therein a date on and from which it shall be in force:

Provided that, except where and to the extent that the permit authorizes the erection of a building or other structure, the date so specified shall be the appointed day or a date after the appointed day.

(3) It shall be lawful for a person to whom a permit is issued under subsection (1), for as long as the permit is in force, to do, subject to and in accordance with the terms and conditions specified in the permit, that which the permit authorizes him or it to do.

(4) A permit granted under subsection (1) shall continue in force until it is duly revoked by the Council as prescribed by this Act.

12. Permit to be assignable. (1) A permit issued under section 11 (1) may be assigned by the holder thereof for the time being with the approval of the Council first had and obtained and subject to and in accordance with such terms and conditions (if any) as are agreed between the Council and the holder of the permit.

(2) The Council shall not refuse or withhold its approval to an assignment of a permit unless there are reasonable grounds for so doing.

13. Revocation of authority and permit. (1) The Town Clerk may, by notice in writing to the holder of an authority granted under section 9 (1) or to the holder of a permit issued under section 11 (1), call upon the holder to show cause to the Town Clerk or other person nominated by him, at a time and place specified in the notice, why the authority or permit should not be revoked by reason that—

- (a) in the case of an authority granted under section 9 (1)—
 - (i) the holder has not duly exercised the authority thereby conferred to undertake or provide all or any part of the works; or
 - (ii) a term or condition of the authority has been breached;
- (b) in the case of a permit issued under section 11 (1), a term or condition of the permit has been breached; or
- (c) in either case, there exists other good and sufficient reason (specified in the notice) that the authority or permit should be revoked.

(2) If at the time and place specified in a notice to show cause, or to which the hearing may have been adjourned, sufficient cause is not shown to the satisfaction of the person conducting the hearing, the Town Clerk shall recommend to the Council that the authority or permit in question be revoked and, if the Council agrees with that recommendation, it may, by notice in writing to the holder of the authority or permit, revoke the authority or permit as from a date specified in the notice.

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 the Mall.

(2) Without limiting the generality of the powers conferred by subsection (1), the Council may permit the use of any part of the Mall and the erection and use of any building or structure in any part of the Mall (whether under section 11 or otherwise) upon such terms and conditions as it thinks fit.

(3) The Council may exercise any of its powers in relation to the Mall area, whether those powers are conferred by this section or otherwise, before the appointed day if the exercise of the power is, in its opinion, necessary or convenient for the management, maintenance, cleaning, operation, promotion, development or use of the Mall, immediately upon its establishment.

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

16. Separate rates. (1) The power of the Council conferred by section 44 of the *City of Brisbane Act 1924-1984* to make and levy separate rates includes power to make and levy a separate rate or separate rates for all or any of the functions of local government referred to in section 7 or 14 and a separate rate made and levied for any of those functions shall be taken to have been made and levied pursuant to that section 44.

(2) In addition to the powers and obligations had by the Council under section 44 of the *City of Brisbane Act 1924-1984* the Council shall, in respect of making and levying a separate rate for a function of local government referred to in section 7 or 14, have the powers and obligations prescribed by this section.

To the extent of any inconsistency between any provision of this section and a provision of section 44 of the *City of Brisbane Act 1924-1984* the provision of this section shall prevail and the provision of that section shall be inoperative.

(3) For the purpose of referring to the Minister the question whether the exercise and performance of a particular function of local government is or is not for the special benefit of any particular part of the City the Council—

- (a) if it thinks the case warrants it, may divide the part of the City that it considers to be thereby specially benefited into divisions according to the extent to which, in its opinion, the exercise and performance of the particular function of local government is for the special benefit of each division; and
- (b) may include in any such division lands that are not contiguous.

(4) Where the Council has exercised the power conferred on it by paragraph (a) of subsection (3) it shall, on each of the three copies of the map required by section 44 of the *City of Brisbane Act 1924-1984* to be supplied to the Minister and relevant to the exercise of that power, delineate each of the divisions in a manner that indicates the extent to which, in its opinion, the exercise and performance of the particular function of local government is for the special benefit of each division.

(5) Where the Council has exercised the power conferred on it by paragraph (a) of subsection (3) and the Governor in Council has approved the division of the specially benefited part of the City as proposed by the Council, then—

- (a) a separate rate may be made and levied, in accordance with the approval, for the function of local government to which the approval relates, in respect of each division, having regard to the extent to which the exercise and performance of the function is for the special benefit of each division; and
- (b) each separate rate shall be made and levied in respect of each division equally on the rateable value of rateable land in the division.

(6) Notwithstanding section 40 (1) of the *City of Brisbane Act 1924-1984*, one separate fund shall be established in respect of all the separate rates made and levied pursuant to this section and the moneys received by the Council in payment of all those separate rates shall be paid into that fund.

17. Concessions as to separate rates where s. 9 authorization granted. Notwithstanding the provisions of section 16 of this Act or section 44 of the *City of Brisbane Act 1924-1984*, where—

- (a) the Council has granted an authority under section 9 (1) that is in force to one or more of the owners of land abutting the Mall area;
- (b) the Council has granted an authority under section 9 (1) that is in force to an approved body corporate;
- (c) one or more of the owners of land abutting the Mall area has paid to the Council the costs of all or any part of the works; or
- (d) an approved body corporate has paid to the Council the costs of all or any part of the works,

and the Council decides to make and levy a separate rate or separate rates for all or any of the functions of local government referred to in section 7 or 14, the Council may, when referring to the Minister the question whether or not the exercise and performance of those functions of local government are or are not for the special benefit of any particular part of the City—

- (e) exclude from the area of the part of the City said to be specially so benefited—
 - (i) in the case referred to in paragraph (a) or (c), the lands of the owner or owners referred to in that paragraph abutting the Mall area; or
 - (ii) in the case referred to in paragraph (b) or (d), the lands of owners of land abutting the Mall area who are owners of voting shares of the approved body corporate referred to in that paragraph; or

- (f) pursuant to section 16 (3), include the lands abutting the Mall area—
 - (i) in the case referred to in paragraph (a) or (c), of the owner or owners referred to in that paragraph; or
 - (ii) in the case referred to in paragraph (b) or (d), of owners of such lands who are owners of voting shares of the approved body corporate referred to in that paragraph, in a division of the part of the City said to be specially so benefited, with a view to granting a reduction in the separate rate or separate rates made and levied in respect of such lands.

18. Ordinances. (1) The power conferred on the Council by the *City of Brisbane Act 1924-1984* to make ordinances includes power to make ordinances—

- (a) prohibiting or regulating any display, amusement or other activity whatsoever in the Mall or in the vicinity of the Mall;
- (b) providing for fixing, varying and revoking, by resolution of the Council, fees and charges—
 - (i) for use of the Mall or any part of the Mall for any display, amusement or other activity whatsoever;
 - (ii) for any service provided by the Council in or in connexion with the 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 the Mall with a view to promoting an Oriental design and theme of the Mall.

(2) An ordinance 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 *Traffic Act 1949-1984* and to the extent that a provision of the ordinance 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 ordinance shall prevail and the provision of that Act or that other law shall be inoperative.

(3) An ordinance 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 ordinance so made shall not take effect until the appointed day at the earliest.

19. Delegation of power. (1) The Council may from time to time, by resolution, delegate to an officer of the Council any of the powers conferred on it by section 14 or 15.

(2) The Council may make such number of delegations as it thinks fit and may subject a delegation to such conditions as it thinks fit.

(3) The delegation of a power under subsection (1) shall not limit or prejudice the exercise of that power by the Council.

PART IV—ADVISORY COMMITTEE

20. Establishment of committee. (1) The Council may, by resolution, establish a committee to be known as the Chinatown Mall Advisory Committee.

(2) The Committee shall consist of 7 persons as follows:—

(a) the Mayor of the City or, if he is the alderman referred to in paragraph (b), the Vice-Mayor of the City, who shall be a member *ex officio*;

(b) the alderman of the Council who represents for the time being the electoral ward constituted for the purposes of the *City of Brisbane Act 1924-1984* that includes the Mall area, who shall be a member *ex officio*;

(c) a person appointed by the Council subject to subsection (4) who is or is employed by an owner of rateable property;

(d) a person appointed by the Council who is carrying on business or is employed in a business carried on from rateable property;

(e) a person appointed by the Council on the nomination of the Minister;

(f) two other persons appointed by the Council.

(3) The Council shall appoint one member of the Committee to be the chairman of the Committee.

(4) Where—

(a) any one or more of the owners of land abutting the Mall area or an approved body corporate has paid to the Council the cost of all or any of the works; or

(b) the Council has granted to one or more of the owners of land abutting the Mall area or an approved body corporate an authority under section 9 (1) that is in force,

the person appointed by the Council pursuant to paragraph (c) of subsection (2) shall be nominated by the persons referred to in paragraph (a) or in paragraph (b), as the case may be, or if the case require it, by both classes of such persons.

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 his appointment as such as the day or time on or at which he 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 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 re-appointment.

22. Deputy of members. A member of the Committee who through absence, illness or other cause is unable to perform his duties as such member may, by notice in writing given to the secretary to the Committee, appoint a person as his deputy to act for him during the continuance of his inability and the person so appointed shall while so acting, be deemed to be a member of the Committee and where he is appointed as deputy of the member who is chairman of the Committee, to be chairman of the Committee.

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 the member nominated by the Minister, 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) he dies;
- (b) being a member referred to in paragraph (c) or (d) of section 20 (2), he ceases to hold the qualification by reason of which he was appointed to the Committee;
- (c) he resigns by notice in writing given to the Council; or
- (d) he 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.

Four members of the Committee of whom—

- (a) one at least shall be a member *ex officio* or the deputy of a member *ex officio*; and
- (b) one at least shall be a member of a description referred to in paragraph (c) or (d) of section 20 (2) 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.

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 chairman of the Committee shall preside at every meeting of the Committee at which he is present and in his absence, his deputy (if he is present) shall preside.

In the absence of both the chairman and his 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 chairman.

(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 of Committee. (1) The function of the Committee shall be the furnishing to the Council of information and advice on matters—

- (a) relevant to the exercise by the Council of its powers under sections 14 and 15; or
- (b) referred to it by the Council concerning the exercise by the Council of any of its other powers conferred by this Act.

(2) In the proper discharge of its function the Committee shall, through its chairman, furnish a report to the Town Clerk as soon as is practicable after each meeting of the Committee—

- (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 him 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 the expression "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.

PART V—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 of the Commonwealth 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—

(a) an offence defined in section 6 or 8 (3); or

(b) an offence defined in an ordinance referred to in section 18 (1) which offence is, in that ordinance, 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 1867-1981*.

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 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 he may require that person—

(a) to state his name and address; and

(b) to supply evidence of the correctness of a name and address given by him in response to a requisition made on him 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, he 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 the Mall area or the designated road areas—

(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

- (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 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 him—
- (a) in the case of the owner of a vehicle registered under a law of a State or Territory of the Commonwealth providing for

the registration of vehicles, at the latest address of the owner shown in the record of registration of the vehicle;

- (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 his 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 subparagraph (ii) of paragraph (a) of subsection (2), it shall be deemed to be served on the owner of the vehicle.

(5) An infringement notice shall be in a form as prescribed and shall—

- (a) be identified by a serial number;
- (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;
- (c) clearly specify the nature of the prescribed infringement alleged;
- (d) where the prescribed infringement concerns a vehicle or working beast, clearly specify the vehicle or beast;
- (e) clearly specify the day, time and place of the commission of the prescribed infringement alleged;
- (f) contain a notification to the person on whom it is served that, if he does not wish the matter to be dealt with by a court, he 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 him in that behalf and specified therein, whether before or after the expiration of that period, allows, pay to the Council the amount of the prescribed penalty specified in the notice;
- (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 subsections (3), (4), (6), (7), (8) and (9) of section 32.

(6) An infringement notice that is served as provided in subparagraph (ii) of paragraph (a) of subsection (2) 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 him 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 one 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 one such notice has been served for the person to pay the prescribed penalty in accordance with any one of the notices so served on him.

(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;
 - (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;
 - (ii) that he 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 him of a summons in respect of the prescribed infringement alleged, there is furnished to the Town Clerk a statutory declaration made by him 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 he 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 his 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 of the Commonwealth providing for the registration of vehicles.

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

- (a) where an infringement notice has, otherwise than under subparagraph (ii) of paragraph (a) of section 31 (2), 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 subparagraph (ii) of paragraph (a) of section 31 (2), 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—

- (i) in the case where the owner is a body corporate—
 - (A) that the declaration is made for the purposes of this section;
 - (B) 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;
 - (C) that the declarant has not been able to ascertain who was in charge of the vehicle at that time; and
 - (D) 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
- (ii) in any other case—
 - (A) that the declaration is made for the purposes of this section;
 - (B) that the owner was not in charge of the vehicle at the time of the prescribed infringement alleged;
 - (C) that he has not been able to ascertain who was in charge of the vehicle at that time; and
 - (D) 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.

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

- (a) where an infringement notice has, otherwise than under subparagraph (ii) of paragraph (a) of section 31 (2), 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 subparagraph (ii) of paragraph (a) of section 31 (2), 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—

- (i) that the declaration is made for the purposes of this section; and
- (ii) 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.

(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 him 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 him in that behalf, and stating that a person specified in the certificate has not, in relation to that prescribed 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 *Main Roads Act 1920-1984* or pursuant to any corresponding legislation, ordinance or law of any State or Territory of the Commonwealth; 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 of the Commonwealth corresponding to the regulations under the *Main Roads Act 1920-1984*, 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 subsection (3) or (4) of s. 32. (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 infringement unless a copy of the declaration has, prior to the hearing, been served on him in the same manner as a summons may be served under the *Justices Act 1886-1982*; 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 him in the same manner as a summons may be served under the *Justices Act 1886-1982*; 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 subparagraph (ii) of paragraph (a) of section 31 (2) unless he 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 him under section 30, shall not—
 - (i) fail to state his name and address, or his name or address;
 - (ii) state a false name and address or a false name or address;
 - (iii) supply false evidence of his name and address or of his name or address; or
 - (iv) fail to supply evidence of his name and address or of his name or address, unless he has reasonable excuse for his failure.

Penalty: \$500.

PART VI—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 Mall; or
- (b) anything done pursuant to any provision of this Act.

37. Non-application of s. 371A Land Act. On and after the appointed day the provisions of section 371A of the *Land Act 1962-1984* shall not apply with respect to the Mall.

38. Non-application of s. 35 (24B) Local Government Act. The provisions of section 35 (24B) of the *Local Government Act 1936-1984* do not apply with respect to the establishment, management, operation and use of 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 him in relation to any matter provided for by this Act, other than Part V, or by ordinances made by the Council in relation to any matter referred to in paragraph (a) or (d), of section 18 (1); or
- (b) the Council's revocation of a permit issued under section 11 (1), 14 (2) or 15 (2), of which he 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 him 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 thirty-first 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.

41. Powers of police officers. (1) Where a member of the police force believes on reasonable grounds that a person has committed, is committing or is about to commit an offence against this Act or against an ordinance made by the Council for the purposes of this Act he may require that person to state his name and address.

(2) A person shall not, in response to a requisition made on him under subsection (1)—

(a) refuse or fail to state his name and address or his name or address; or

(b) state a false name and address or a false name or address.

Penalty: \$500.

(3) Where an offence by a person against this Act consists in a refusal or failure to state his true name or address in response to a requisition made on him under subsection (1) the alleged offender may be arrested without warrant upon a charge of that offence and taken before a justice to be dealt with according to law.

42. Directions by police officer. (1) A member of the police force may give to any person in the Mall such directions as are in his opinion necessary to eliminate—

(a) a cause of danger to any person or property; or

(b) an impediment to pedestrians or vehicles,

in the Mall.

(2) A direction may be given under subsection (1) notwithstanding that it may prejudice the exercise of any authority conferred by a permit or licence granted under this Act or under ordinances made by the Council for the purposes of this Act.

(3) A person shall comply with a direction given under subsection (1).

Penalty: \$500.

43. Arrest of persistent offender. A person who is found committing an offence against this Act or against an ordinance made by the Council for the purposes of this Act by a member of the police force and who,

after being warned by such member to desist, continues to commit the offence or on the same day as that on which the warning is given commits an offence of the same or a similar nature, may be arrested without warrant by a member of the police force and taken before a justice to be dealt with according to law.

44. Prosecutions. (1) A prosecution for an offence against this Act or against an ordinance made by the Council for the purposes of this Act shall be by way of summary proceedings under the *Justices Act 1886-1982* upon complaint of the Council, a person authorized in that behalf by the Council or, where the defendant has been arrested and charged with the offence, by a member of the police force.

(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 an ordinance 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 under section 16, 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.

