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appears to the executive authority that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) Any expenses incurred by the executive authority under this section may be recovered from the person in default in such manner and subject to such conditions as may be provided by the scheme.

(3) If any question arises whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, such question shall be determined by the Commissioner for Local Government.

Recovery of
moneys

20. Without prejudice to any other powers of a responsible authority, any money due to an executive authority under any provision of this Ordinance or under any provision of a town planning scheme may be recoverable as a civil debt at the suit of the executive authority.

Regulations as
to procedure.

21. (1) The Governor in Council may from time to time make, alter and revoke regulations for regulating the procedure to be observed and the matters to be dealt with—

- (a) with respect to the preparation or adoption of a town planning scheme; and for any necessary surveys preliminary thereto; and
- (b) with respect to obtaining the approval of the Governor in Council to a scheme so prepared or adopted; and
- (c) with respect to the variation or revocation of a scheme; and
- (d) with respect to any inquiries, reports, notices, or other matters required in connexion with the preparation or adoption or the approval of the scheme, or preliminary thereto, or in relation to the carrying out of the scheme or enforcing the observance of the provisions thereof, or the variation or revocation of the scheme; and
- (e) for securing that notice of the proposal to prepare or adopt a scheme shall be given, at the earliest stage possible, to any Local Authority or other authority interested in the land and to the public; and

(f) for securing that the Local Authority or other authority of the district in which any land proposed to be included in a scheme is situated, shall be furnished with a notice of any proposal to prepare or adopt such a scheme, and with a copy of the draft scheme before the scheme is finally made, and that such Local Authority shall be entitled to be heard at any inquiry held in regard to the scheme; and

(g) for securing co-operation on the part of the preparatory authority with the owners and other persons interested in the land proposed to be included in the scheme.

(2) The Governor in Council may, by notice, supplement, vary or exclude, for application in any particular case, any regulation or regulations made under this section.

22. (1) If the Governor in Council is satisfied, after making due inquiry, for which purpose he may appoint a person or persons to hold a local investigation, that a preparatory authority—

Obligation to
prepare or
adopt scheme.

- (a) has unreasonably failed to take the requisite steps for having a satisfactory town planning scheme prepared and approved, in a case where in his opinion a town planning scheme ought to be made; or
- (b) has unreasonably failed to adopt any scheme proposed by owners of any land, in a case where a town planning scheme ought in his opinion to be adopted; or
- (c) has unreasonably refused to consent to any modifications or conditions imposed by the Governor in Council; or
- (d) has unreasonably failed to comply with any regulation made under section 21 of this Ordinance,

the Governor in Council may, as the case requires, order the preparatory authority to prepare and submit for the approval of the Governor in Council a town planning scheme, or to adopt a scheme, or to consent to the modifications or conditions so inserted, or to comply with the regulation or regulations which they have failed to comply with:

Provided that, where a preparatory authority has failed to adopt a scheme, the Governor in Council, in lieu of making such an order as aforesaid, may approve of the proposed scheme, subject to such modifications and conditions, if any, as the Governor in Council may deem fit; and thereupon the scheme shall have effect as if it had been adopted by the preparatory authority and approved by the Governor in Council:

And provided further, that where a preparatory authority has unreasonably failed to comply with any regulation made under section 21, within the period prescribed by such regulation, the Governor in Council may order the preparatory authority to comply therewith within such further period as the Governor in Council may deem fit.

(2) If the Governor in Council is satisfied after making due inquiry, for which purpose he may appoint a person or persons to hold a local investigation, that an executive authority has unreasonably failed to enforce effectively the observance of a scheme, which has been approved, or any provisions thereof, or to execute any works, which, under the scheme or this Ordinance the executive authority is required to execute, the Governor in Council may order the executive authority to do all things necessary for enforcing the observance of the scheme, or any provision thereof effectively, or for executing any works which, under the scheme or this Ordinance, the executive authority is required to execute.

(3) Any order under this section may be enforced by mandamus and the Governor in Council may authorize the Commissioner for Local Government to act in the place and at the expense of the authority, and any expenses incurred by the Commissioner for Local Government in exercising under this section any powers of the preparatory or executive authority shall, on demand, be paid by the authority to the Commissioner for Local Government and shall be recoverable as a debt due to the Crown.

23. (1) Where any Crown land, not being situated within a municipality as defined in the Local Government (Municipalities) Ordinance, 1926, or a township for which a preparatory authority for the purposes of this Ordinance has been appointed under section 2 of this Ordinance has been, or hereafter shall be, made available for alienation for building purposes, such land shall not be sold, or leased for a period exceeding one year, until the Governor in Council shall have approved a town planning scheme in respect of such land:

Obligation to enforce scheme.

Planning of Crown lands outside municipalities.

Provided that, wherever a statutory town planning scheme may be considered inadvisable or unnecessary, such land may be sold, leased or otherwise disposed of, in accordance with a development plan approved by the Commissioner for Local Government.

(2) The Commissioner for Local Government may prepare a town planning scheme in respect of any such land or, on the application of the owner, in respect of any privately owned land not situated within a municipality or township as aforesaid, with the general objects set out in section 3 of this Ordinance, and such scheme shall, if approved by the Governor in Council and published in the Gazette, have the same effect as if it had been lawfully prepared by a preparatory authority, and approved under section 5, and the provisions of this Ordinance shall, so far as the same are consistent and applicable, apply to and in respect of any scheme so prepared.

24. (1) Subject to section 30 of this Ordinance no land within any municipality or township shall, save with the express permission of the Commissioner for Local Government, to be obtained in every case, and upon such conditions as he may impose, be divided or subdivided into lots except in accordance with the provisions of a town planning scheme approved under this Ordinance, or where no such town planning scheme has been approved, then in accordance with a scheme of subdivision made so as to satisfy the requirements of the Townships Private Streets Ordinance, 1924, wherever applied, and with due regard to the suitability of the land for the purpose intended, and with reference to a town plan, or other plan or scheme (not being a statutory town planning scheme under this Ordinance) for the control of development, approved by the Commissioner for Local Government; the development, subdivisions or schemes of subdivision of adjacent areas, the provision, preservation and/or enhancement of amenities, the preservation of trees and natural landscape views and beauties and the provision of adequate principal and secondary means of access to subdivisions, of adequate open spaces, public and private and of facilities for water supply and drainage.

(2) If it should appear to the Commissioner for Local Government that it is not in the public interest that the whole or any part of any land proposed to be subdivided otherwise than in accordance with a statutory town planning scheme

Subdivision of lands.

No. 9 of 1924

or a development plan should be so subdivided or subdivided at all, he may refuse to approve it, or may approve it in whole or in part with or without such modifications and subject to such conditions as he may see fit to prescribe; and the Commissioner for Local Government may require the applicant to submit such additional maps, plans, drawings, documents, statements or information of whatsoever description as he may require.

(3) Any person who feels aggrieved by a decision of the Commissioner for Local Government under this section may appeal to the Governor in Council whose decision shall be final.

(4) The Governor in Council may make rules for the better carrying into effect of the provisions of this section.

Fees.

25. The Commissioner for Local Government may prescribe fees to be charged in respect of anything to be done by the Commissioner under or in pursuance of this Ordinance, and such fees shall be payable by the person at whose request or on whose application such thing is done.

Local rules.

26. When any rule made under the authority of any Ordinance is inconsistent with any town planning scheme approved before or after the making of such rule, and having effect in the area, or in part of the area, in which such rule is in force, then to the extent of such inconsistency, and in the part of the area in which such scheme has effect, the provisions of such scheme shall prevail.

Power to suspend the operation of certain provisions of other laws.

27. Where the carrying out of any provision of an approved scheme would conflict with any provisions, limitations, or conditions of or prescribed by any law in force, the executive authority may apply to the Governor in Council for an order modifying or suspending the provisions of that law, so far as may be necessary to enable effect to be given to the scheme; and thereupon the Governor in Council may, in respect of that scheme but not otherwise, make an order accordingly for the suspension or modification of such provisions or any of them, subject to such conditions and limitations as he thinks fit to impose;

Provided that an order purporting to modify or suspend any provisions of any law in force shall not take effect unless and until it has been approved by resolution of the Legislative Council.

28. Any question arising out of the exercise by an executive authority of any power conferred on it by this Ordinance or by a town planning scheme approved under this Ordinance shall, where not otherwise provided for, either in this Ordinance or by the scheme, be determined by the Supreme Court, unless the parties agree on some other method of determination.

29. For the purposes of this Ordinance, the Commissioner for Local Government may cause such local inquiries to be held as he may think fit, and the costs incurred in relation to any such local inquiry shall be paid by the authorities and persons concerned in the inquiry, or by such of them and in such proportions as he may direct, and he may certify the amount of the costs incurred, and any sum so certified and directed by him to be paid by any authority or person shall be recoverable as a civil debt at the suit of the Commissioner for Local Government.

30. (1) Notwithstanding anything in any Ordinance or in the Mombasa Town Planning Scheme, 1926, or in any order of the Governor in Council to the contrary, the authority responsible for enforcing and executing the Mombasa Town Planning Scheme, 1926, shall, from the date of the commencement of this Ordinance, be the Mombasa Municipal Board as constituted by and under the Local Government (Municipalities) Ordinance, 1926.

(2) The Mombasa Town Planning Scheme, 1926, may be varied, amplified or revoked in whole or in part under and in accordance with the provisions of this Ordinance, and notwithstanding any provision in this Ordinance contained shall, subject to the provisions of subsection (1) of this section, and until so varied, amplified or revoked, be carried out in accordance with the provisions of the scheme and of the Ordinances repealed by this Ordinance.

31. The provisions of this Ordinance shall be binding on the Crown.

32. Subject to the provisions of section 30 of this Ordinance, the Town Planning Ordinance (Chapter 85 of the Revised Edition) as amended by the Town Planning (Amendment) Ordinance, 1926, and the Town Planning (Amendment) Ordinance, 1927, is hereby repealed.

Adjudication.

Local inquiries

Mombasa Town Planning Scheme, 1926 Saving clause.

No. 19 of 1928

Crown to be bound

Repeal

No. 11 of 1926 No. 14 of 1927.

FIRST SCHEDULE.

(Sections 4 and 10)

MATTERS WHICH MAY BE DEALT WITH BY TOWN PLANNING SCHEMES.

1. Public conveniences generally; and particularly churches, schools, educational and recreational institutions, libraries, public buildings, theatres and other places of public entertainment, fountains, refreshment kiosks and other buildings.
2. The dealing with or disposing of land acquired, or to be acquired under the scheme by an executive authority.
3. The replanning and reconstruction of the scheme area, or any part thereof, including any provisions necessary for—
 - (a) the pooling of the lands of several owners (or any lands, roads, streets, or rights-of-way adjacent or near thereto); and apportionment of survey fees, cost of issuing and consolidating new titles, and other expenses of preparing the scheme among the owners concerned;
 - (b) the redivision of such land among such owners;
 - (c) providing for or making new roads, streets, or rights-of-way;
 - (d) adjusting and altering the boundaries, areas, shapes and positions of any such lands, roads, streets, or rights-of-way;
 - (e) effecting such exchanges of land, or cancellation of existing subdivisions as may be necessary or convenient for the purposes aforesaid;
 - (f) adjustment of rights between owners or other persons interested in such lands, roads, streets, or rights-of-way;
 - (g) the vesting of such lands, roads, streets, or rights-of-way, subject or not subject to any rights or trusts; and any other provisions necessary for giving effect to the purposes aforesaid.
4. Limiting the number of apartment, tenement, detached, or other dwelling houses to the acre generally or in any particular locality.

5. Classification of the scheme area for residential, commercial, industrial, and other purposes respectively, including the provision of special areas for factories, or for carrying on industries generally, and for shops, warehouses, stores, stables and other buildings used for commercial or industrial purposes, and fixing the sites for buildings required for any charitable, religious, or public purposes, or for public conveniences as mentioned in paragraph 1 hereof and for open spaces, public and private, and prohibiting the carrying on of any trade or manufacture, or the erection of any building, in a particular part of the area otherwise than in accordance with the provisions of the scheme.
6. Conservation of the natural beauties of the area, including lakes and other inland waters, banks of rivers, foreshores of harbours, and other parts of the sea, hill slopes and summits, and valleys.
7. The preservation and enhancement of historic buildings and objects of historical or scientific interest.
8. Probable routes for railways, tramways, and canals, and probable sites for bridges, docks, harbours, piers, quarries and lighting, water, drainage and sewerage, or any other work or undertaking of a public utility nature.
9. Works ancillary to or consequent on the scheme.
10. The extinction or variation of any right-of-way or easement, public or private, or of any restrictive covenant or covenants affecting land.
11. Power of entry and inspection.
12. Power of the executive authority to acquire land or buildings, or to make any agreement or proposal in respect thereto.
13. Power of the executive authority to remove, alter or demolish and to prohibit, regulate and control the maintenance, alteration and reconstruction of any building which obstructs the observance or carrying out of the scheme.
14. Power of the executive authority to declare any land referred to in the scheme as land reserved for streets to be public or private streets.

15. Power of the executive authority to execute street works on land referred to in the scheme as land reserved for streets, and incidental works upon adjacent land.

16. Power of the executive authority, subject to the approval of the Governor in Council, and subject to such of the provisions of the scheme governing streets as are applicable to land reserved for streets by the scheme, to make an order declaring that any land not reserved for streets by the scheme shall be reserved for streets.

17. Power of the executive authority to fix building lines not shown on the map illustrating the scheme.

18. Power of the executive authority to permit buildings in advance of building lines fixed by the scheme.

19. Power of the executive authority to register trees on private land for preservation.

20. Power of the executive authority to fix improvement lines for existing streets and buildings.

21. Power of the executive authority to borrow money and incur expenditure for the purposes of the scheme.

22. The procedure which is to govern the arbitration of questions which under the Ordinance or the scheme are to be decided by arbitration.

23. Provisions for regulating the administration of any money or property accepted or held by an executive authority for the furtherance of the scheme.

24. The payment of compensation together with the time and manner of payment in respect of property injuriously affected by the scheme.

25. The area to which the scheme is to apply.

26. The recovery of expenses incurred in giving effect to the scheme, and the time and manner of payment of such expenses.

27. The carrying out and completion of the scheme generally, and particularly the time and manner in which, and the persons and authorities by whom or by which the scheme, or any part thereof, shall be carried out, and completed and its observance ensured.

28. Limitation of time for the operation of the scheme, or of any parts of the scheme, or for the execution of any works which are to be executed as part of the scheme.

29. Any matter necessary or incidental to town planning or housing.

The mention of particular matters in this Schedule shall not be held to prejudice or affect the generality of any other matter.

SECOND SCHEDULE.

(Section 4).

Procedure with respect to compulsory pooling and redistribution, and readjustment of the boundaries, areas, shapes or positions of plots or holdings of land.

1. In this Schedule, unless the context otherwise requires, the expression "Registrar" means the officer or officers performing the functions of Registrar under the Crown Lands Ordinance, the Registration of Titles Ordinance and the Land Titles Ordinance, respectively.

Cap. 140.
Cap. 142
Cap. 143.

2. (1) Where any group of plots or holdings of land are compulsorily pooled and redistributed or where the boundaries, areas, shapes or positions of any plots or holdings of land are compulsorily readjusted by a town planning scheme approved under this Ordinance the provisions (c) to (g) both inclusive of the next succeeding subsection shall take effect.

(2) Where any group of plots or holdings of land are compulsorily pooled and redistributed or where the boundaries, areas, shapes or positions of any plots or holdings of land are compulsorily readjusted by the exercise by the executive authority of any power conferred on it by a town planning scheme approved under this Ordinance, the following provisions shall take effect:—

(a) The executive authority shall forthwith serve a notice upon the owners of all land comprised in the scheme of redistribution or readjustment, and shall publish a notice to the same effect in the Gazette, and in some newspaper circulating in the area

(if any) notifying them that a plan of the scheme of redistribution or readjustment is open for inspection at such place and such time and for such period (not being less than one month from the date of the said notice) as may be specified in the notice, and that any objections by any person interested in any land comprised in the scheme of redistribution or readjustment may be made in writing to the executive authority within the same period.

- (b) The executive authority shall consider all objections received under the provision (a) above, and shall approve or amend or withdraw the scheme of redistribution or readjustment as may seem desirable within a period not exceeding three months from the date of the notice aforesaid, and shall forthwith publish a notice in the Gazette and in some newspaper circulating in the area stating that the scheme has been approved (with amendments, if any) or has been withdrawn as the case may be.
- (c) The executive authority shall forthwith furnish to the Registrar particulars in writing of each plot or holding of land comprised in the scheme of redistribution or readjustment. On receipt of such particulars the Registrar shall make an appropriate entry in the register against each title affected by the scheme, and thereafter until the issue of a new document of title as hereinafter provided, all transactions relating to any plot or holding affected by the scheme shall be subject to the provisions of the scheme, and all persons concerned in any such transactions shall be deemed to have express notice of such provisions.
- (d) As soon as may be after receiving the said particulars the Registrar shall prepare new documents of title for issue to each of the several persons amongst whom the said plots or holdings are redistributed or readjusted under the scheme, in order that they may hold the plots or holdings allotted to them or readjusted respectively, under the scheme upon the same terms and conditions and for the same interests on and for which they severally held their original plots or holdings immediately prior to the issue of such new documents of title.

- (e) When a new document of title has been prepared for issue to any person under the scheme the Registrar shall issue a notice in writing to such person intimating that such new document of title has been prepared and is ready to be issued to him and calling upon him to deliver up to the Registrar for cancellation the document or documents of title (including caveats) in lieu of which the new document of title is to be issued; and upon receipt of such document or documents of title the Registrar shall issue the new document of title to the person entitled thereto:

Provided, however, that the Registrar may in his discretion issue the new document of title without having received the document or documents of title required by this subsection to be delivered up.

- (f) Upon the issue of a new document of title to any person under the last preceding paragraph, all right, title and interests in the plot or holding originally held by such person, and in lieu of which a new plot or holding has been allotted to him, shall be deemed to be extinguished.
- (g) Where any document of title required by this subsection to be delivered up to the Registrar for cancellation has been issued under any statutory authority, the new document of title to be issued in lieu thereof shall be deemed to be issued under the same Ordinance or other enactment as the document of title so required to be delivered up.
- (3) Every document of title issued under this section shall have attached thereto a plan signed by the Surveyor General; and any such new document of title shall, except in so far as the scheme may provide to the contrary, be subject to such mortgages, charges, leases, or other encumbrances, trusts and restrictions, if any, whereto the old document of title was subject immediately prior to the extinguishment of the said title, and so that mortgagees, chargees, lessees, and other encumbrancers or persons who were immediately prior to such extinguishment interested in any plot or holding which is pooled or readjusted under the scheme shall have, as nearly as may be, the same remedies and rights against and in the plot or holding held by any person under a new document of title issued in pursuance of this section as they severally had

against and in the plot or holding held by such person under the document of title in lieu of which such new document of title has been issued.

(4) Every new document of title issued under this section shall be registered against the title which has been extinguished in the same register as the document of title in lieu of which such new document of title is issued was registered; and the Registrar shall perform all such acts, endorse all such new documents of title, and make all such entries in the books of his office as may be necessary to give effect to the provisions of this section.

(5) No stamp duty or other fee shall be payable in respect of any act of record or registration required to be performed under the provisions of this schedule.

(6) Any person who without reasonable excuse shall fail or neglect within three months of the issue of the notice prescribed by subsection (2) (e) of this section, to deliver up to the Registrar any document of title required by that subsection to be delivered up, shall be guilty of an offence and shall be liable to a fine not exceeding fifty pounds.

(7) Any person who shall dishonestly or fraudulently use or attempt to use any document of title to land after the right, title or interest purporting to be evidenced by such document, have been extinguished by the operation of this section, shall be deemed to have committed or to have attempted to commit the offence of cheating, and shall be liable to imprisonment for three years.

(8) The date of the issue of the new document of title shall be the date on which it is executed by the Registrar. A new document of title shall be substantially in the following form :-

DOCUMENT OF TITLE.

I Registrar of
in accordance with the Second Schedule of the Town Planning and Development Ordinance, 1931, do hereby declare that is the owner of that piece of land

situate and which is more particularly delineated on the plan No. annexed hereto and thereon bordered red being L.R. No. comprising or thereabouts for the like estate and interest and subject to the same trusts and restrictions as those to which the title registered in Volume Folio was subject and also to the registered mortgages charges leases and other encumbrances as notified in the Schedule hereto and to the following Ordinances with the exception of

PROCEDURE REGULATIONS.

IN EXERCISE of the powers conferred upon him by section 21 of the Town Planning and Development Ordinance, 1931, His Excellency the Governor in Council has been pleased to make the following Regulations:—

Title.

1. These Regulations may be cited as "the Town Planning (Procedure) Regulations, 1931."

Definitions.

2. In these Regulations, unless the context otherwise requires:—

"preparatory authority" and "executive authority" shall have the same meaning as those terms have in the Town Planning and Development Ordinance, 1931.

"owner" in the case of freehold property, means the person (other than His Majesty) owning such property, and, in the case of any property held under a lease for a period of not less than ten years, or for the natural life of any person, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period thereof amount in all to not less than ten years, means the person holding such property under such lease, and in the case of any interest in land means the person holding such interest, and includes joint owners and tenants in common and any agent who receives rents or profits from any such person and also any superintendent, overseer or manager of any such lessee in respect of the holding on which he resides as such superintendent, overseer or manager.

"advertisement" means advertisement in a newspaper circulating in the area to which a town planning scheme applies.

"newspaper" shall include the Official Gazette.

"the Ordinance" means the Town Planning and Development Ordinance, 1931.

3. (1) A preparatory authority deciding to prepare or adopt a town planning scheme shall pass a resolution to the effect that they are proceeding to prepare or adopt a scheme. Resolution to prepare a scheme.

(2) Such resolution shall define the area of the proposed scheme by reference to a map (hereinafter called "Map No. 1") showing by means of boundary lines defined in colour or otherwise the area of the land to which the resolution applies. Map No. 1.

(3) The preparatory authority shall, as soon as may be after passing the resolution, give notice thereof by advertisement and shall include in such advertisement a statement that Map No. 1 or a copy thereof will be open for inspection at a specified place or places, and that any suggestions for the inclusion or exclusion of any lands in or from the area of the proposed scheme may be sent in writing to the preparatory authority within a specified period, not being less than twenty-one days from the date of the first advertisement.

(4) A certified copy of the resolution and of Map No. 1 and of each advertisement shall be sent as soon as may be by the preparatory authority to the Commissioner for Local Government, together with the documents and full particulars of the matters specified in the first schedule to these regulations.

(5) A certified copy of the resolution shall be sent to any interested local authority, or other authority, and, if they so require, of Map No. 1.

4. (1) The preparatory authority shall, so far as may appear to be expedient, during the preparation of a scheme, endeavour to secure the co-operation of the owners or other persons interested in the land included in the scheme, by conference from time to time, as the same shall appear necessary, and the preparatory authority or their officers may meet with the owners or others interested, either singly or collectively, as shall seem most expedient: Provided always that the scheme shall not be prejudiced by the failure of the preparatory authority or their officers to confer with any owner. Co-operation with owners.

(2) Any conferences as aforesaid may be convened by private notice or by public advertisement.

(3) The preparatory authority, during the preparation of a scheme, shall consider any objections or representations

made to them in writing in reference to the scheme, whether by owners of or other persons interested in—

- (a) the land proposed to be included in the scheme; or
- (b) any lands in the neighbourhood of the said land which may be affected by the scheme.

(4) The preparatory authority shall also consider any objections or representations made to them by any local authority or by any district council who may be interested in or affected by the scheme.

5. After the preparatory authority have fully considered and developed their proposals in regard to the whole or part of an area of land in respect of which they have resolved to prepare or adopt a town planning scheme, they shall cause to be printed a draft scheme embodying their proposals and shall cause a map, entitled "Draft Town Planning Scheme, Map No. 2", or, if the case so requires, maps, plans, or drawings (to be marked and numbered consecutively) to be prepared on the scale or scales most suitable and convenient for the purposes thereof, showing clearly by means of boundary lines the area of the land included in the scheme, distinguishing between the parts of the land included within the areas of different local authorities or district councils, and also showing thereon all such particulars and details in relation to the scheme as can conveniently be indicated thereon by the aid of letters or numbers, descriptive notes, distinguishing colours or otherwise; and especially there shall be indicated and distinguished on the said map, maps, plans or drawings, the details specified in the second schedule to these regulations, so far as they may be known to the preparatory authority, and it is practicable to show them.

6. The Draft Town Planning Scheme (hereinafter called "the draft scheme") shall be adopted by resolution by the preparatory authority.

7. (1) The preparatory authority by whom a resolution has been passed adopting a draft scheme shall forthwith give notice thereof by advertisement, and shall include in the notice a statement that a print of the draft scheme, or a certified copy thereof, will be open for inspection at a specified place or places, and that any interested local authority, district council, or other authority or person desiring to object to or make representations with respect to the draft scheme or any part thereof may send the representations or objections in writing to the preparatory authority within a period to be specified in the notice.

Draft scheme—
Map No. 2.

Adoption of
draft scheme.

Publishing
of notice of
draft scheme.

(2) The preparatory authority shall, in addition to the publication by advertisement as aforesaid, serve a notice upon—

- (i) the owners of the freehold of any land included in the scheme;
- (ii) the owners of any leasehold interest in such land, the unexpired period of the lease or sub-lease of which exceeds five years;
- (iii) any person who, on payment of a fee of Sh. 20, has registered his name with the authority as desirous of receiving a notice under this regulation; and
- (iv) any interested local authority, district council, or other authority

to the like effect, but including also a statement that any such owner or registered person or interested local authority, district council, or other authority desiring to object to the approval of the scheme by the Governor in Council may, within twenty-one days from the date of the service of the notice, send any objections or representations in writing, with the grounds thereof, to the Commissioner for Local Government.

(3) A certified copy of the resolution and of each advertisement together with a certified copy of the draft scheme, shall be sent forthwith by the preparatory authority to the Commissioner for Local Government.

8. The preparatory authority shall take into consideration all objections and representations in writing received by them within the period specified by virtue of the powers conferred in paragraph (1) of regulation 7, and shall give full opportunity to any interested local authority, district council, or other authority, and to persons making such objections or representations, including persons representing architectural or archaeological societies, or otherwise interested in the amenities of the scheme, or their representatives to be heard in such manner as the circumstances of the case may require.

9. (1) The preparatory authority shall, within six months from the date of the resolution adopting the draft scheme, pass a resolution finally approving the scheme, with or without modifications, and directing that the scheme as approved by them, and the map to which the said scheme refers (hereinafter called "Map No. 3"), shall be sealed with the seal (if any) of the authority and submitted to the Commissioner for Local Government:

Notification of
owners and
others.

Objections.

Objections to
draft scheme.

Authority's
approval of
scheme.
Map No. 3.

Provided that if the map required by this section to be sealed is identical in all respects with the Draft Town Planning Scheme Map No. 2 prepared in accordance with regulation 5 hereof, the last-mentioned map, if the preparatory authority think fit, may, with the consent of the Commissioner for Local Government, be used for the purposes of this regulation, but if so used it shall be marked as Map No. 3 in addition to being marked as Draft Town Planning Scheme Map No. 2.

Submission of Map No. 3 to Commissioner for Local Government.

(2) The preparatory authority shall, as soon as may be thereafter, submit a sealed duplicate of the scheme and of Map No. 3 to the Commissioner for Local Government, together with the documents and information specified in the third schedule to these regulations, and shall send to the Commissioner for Local Government copies of all objections and representations in writing received by them which have not been withdrawn or met in the scheme, together with a statement of the authority's reasons for their inability to meet the same.

(3) A print of the scheme shall be sent by the preparatory authority to every interested local authority and district council.

Advertisement of Map No. 3.

10. (1) A preparatory authority who have submitted a scheme to the Commissioner for Local Government shall forthwith give notice thereof by advertisement, and shall include in the notice a statement that a print of the scheme submitted and of Map No. 3, or a certified copy thereof, together with the estimated totals of expenditure and receipts, will be open for inspection at a specified place or places, and that any objections or representations relating thereto may be sent in writing to the Commissioner for Local Government within a period of not less than twenty-one days from the date of the first advertisement.

(2) A certified copy of each advertisement shall be sent to the Commissioner for Local Government as soon as may be after the publication thereof.

Submission of scheme to Governor in Council.

11. When the preparatory authority have finally resolved to apply for the approval of a town planning scheme by the Governor in Council, they shall pass a resolution to that effect requesting the Governor in Council to approve of the scheme made by them.

12. If the Governor in Council proposes to make any modifications in, or to attach any conditions to the scheme submitted for his approval, and transmits to the preparatory authority a draft order for approving the scheme with such modifications and conditions:—

Draft order of approval.

(a) The preparatory authority shall, within twenty-one days after the receipt of the draft order, give notice by advertisement in some newspaper circulating in the area included in the scheme that the Governor in Council has caused a draft order to be prepared for approving the scheme, subject to modifications or conditions; that a copy of the draft order may be inspected and any explanations in regard thereto may be obtained, without payment of any fee, at a place which shall be specified in the notice, at all reasonable hours (to be specified in the said notice) on any week-day during the period of twenty-one days from the date of the notice; and that any objections or representations in regard to such modifications and conditions should be made in writing and addressed to the Commissioner for Local Government at his office within a period of thirty-days from the date of the advertisement.

Objections to draft order.

(b) Any objections or representations made to him under paragraph (a) hereof shall be sent by the Commissioner for Local Government to the preparatory authority for their observations, and these shall be submitted to him within such time as he shall prescribe.

(c) The preparatory authority shall furnish the Governor in Council, within a period of sixty days from the receipt of the draft order, with any objections or representations which they may desire to make in regard to the proposed modifications and conditions.

(d) The preparatory authority shall, immediately after publication of the advertisement prescribed under paragraph (a) of this regulation, furnish the Commissioner for Local Government with a copy thereof.

13. (1) The Governor in Council shall, after duly considering the scheme and the documents submitted in accordance with the provisions of the last preceding regulation, notify the preparatory authority of his intention to approve

Notification of intention to approve or disapprove scheme.

or disapprove the scheme, as the case may be, or to approve it with modifications, or to approve part of the scheme, leaving the remainder for further consideration.

Disapproval of scheme.

(2) When the Governor in Council notifies the preparatory authority that he disapproves the scheme, the preparatory authority shall, within such period as the Governor in Council may fix for the purpose, prepare and adopt by resolution another scheme, and the provisions of regulations 3 to 12 inclusive, and of this regulation shall, with the necessary modifications, apply to such further scheme.

Advertisement of intention to approve scheme.

14. (1) The preparatory authority shall, on receipt of a notification from the Governor in Council of his intention to approve a scheme with or without modifications, or to approve part of a scheme, leaving the remainder for further consideration, forthwith give notice thereof by advertisement and shall include in the notice a statement that a print of the scheme in the form in which the Governor in Council has notified his intention to approve it may be inspected at a specified place or places.

(2) The preparatory authority shall send to the Commissioner for Local Government certified copies of the said notice and of each advertisement.

Approval of scheme

15. (1) The Governor in Council shall take into consideration any objections or representations received by him and shall thereafter, by order, finally approve the scheme or part of the scheme, with or without modifications, and shall notify the preparatory authority accordingly.

(2) The preparatory authority shall, on receipt of the order of the Governor in Council under the preceding paragraph, forthwith give notice of the order by advertisement, and shall include in the notice a statement that a copy of the order of the Governor in Council may be inspected at a specified place or places.

(3) A certified copy of each advertisement shall be sent by the preparatory authority to the Governor in Council.

Progress reports

16. When the Governor in Council has approved a town planning scheme the executive authority shall furnish to the Commissioner for Local Government, progress reports from time to time on the carrying into effect of the scheme, at intervals of not more than twelve months, and shall furnish in addition such supplementary progress reports as the Commissioner for Local Government may at any time require.

17. (1) When a scheme has been finally approved by the Governor in Council the preparatory authority shall as soon as may be prepare a map or set of maps (hereinafter referred to as "the statutory map") illustrating the scheme in every detail as finally approved.

Preparation of statutory maps

(2) The said map or maps shall be on heavy linen-backed drawing paper and shall be appropriately entitled, and shall be certified correct in writing or printing thereon by the preparatory authority and shall be sealed with the common seal (if any) of the preparatory authority, and every erasure and/or alteration appearing to have been made thereon shall be referred to in a note and be described and certified correct thereon by the preparatory authority.

(3) The said map or maps shall be deposited in a safe place adequately protected against loss or damage or tampering whether by fire, water, theft, rats or any other cause.

Preservation of maps.

(4) The preparatory authority shall also prepare a certified copy or set of certified copies of the said map or maps on tracing linen which, when not required for use, shall be similarly deposited in a safe place.

(5) The preparatory authority shall also prepare two sets of white linen prints duly coloured in facsimile of the said map or maps, one of which sets of prints shall be deposited at the office of the Commissioner for Local Government, and the other shall be deposited with the Surveyor General.

Deposit of duplicates.

18. (1) When a town planning scheme which has been finally approved by the Governor in Council is varied, amplified, or revoked in whole or in part under section 5 of the Ordinance, such variations, amplifications or revocations shall, when finally approved, be added to the statutory map, unless for any reason it would be impracticable or disproportionately difficult so to add them; and every such variation, amplification or revocation shall be referred to in a descriptive note thereon and be duly certified correct by the preparatory authority, and every such certificate shall be sealed with the common seal (if any) of the preparatory authority.

Amendment of maps.

(2) Whenever for any reason it shall be impracticable or disproportionately difficult to add such variations, amplifications or revocations to the statutory map, the preparatory authority shall prepare a supplementary statutory map or maps, which shall be prepared and certified and sealed and

deposited and copied in all respects in accordance with the regulation governing the preparation and so forth of the statutory map; and in such case a note shall be added to the statutory map and be signed on behalf of the preparatory authority referring to the details varied amplified or revoked and to the supplementary statutory map whereon such details appear.

(3) In every case where any duly approved variation, amplification or revocation is made to an approved town planning scheme, the preparatory authority shall prepare a new certified copy or set of certified copies of the map or maps as so varied, amplified or revoked, on tracing linen, and two sets of white linen prints duly coloured in facsimile of the map or maps as varied, amplified or revoked; and the said certified copy on tracing linen and the said two sets of prints shall be deposited as required by the regulation governing the depositing of the original certified maps and prints.

Replacement of damaged maps

19. (1) Whenever a statutory map shall be lost or irremediably damaged, the preparatory authority shall forthwith prepare a new map to replace that lost or damaged, in all respects in accordance with the regulations governing the preparation and so forth of the original statutory map.

(2) Whenever a statutory map shall be damaged, but not irremediably so, it shall be repaired, and the repairs so made shall be referred to in a descriptive note thereon and duly certified by the preparatory authority.

(3) The remnants of a statutory map which has been partly destroyed and has been replaced by a new map shall be preserved by the preparatory authority.

Notices

20. (1) A notice required to be served in pursuance of these regulations shall be served—

- (a) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his duly authorized agent or attorney; or
- (b) by leaving it at the usual or last-known place of abode of such person as aforesaid; or
- (c) by post addressed to the usual or last-known place of abode of such person; or

(d) in the case of a notice required to be served on a local authority, district council or other authority or corporate body or company, by delivering it to their clerk or secretary, or leaving it at his office with some person employed there; or by post addressed to such clerk or secretary at his office:

Provided that if the name of any land is not known to, and after reasonable enquiry cannot be found by, the authority, then the notice may be served by leaving it, addressed to the owner, with some occupier of the land, or, if there be not an occupier, then by causing it to be put up on some conspicuous part of the land:

Provided also that any accidental omission to serve a notice required under these Regulations shall not render any proceedings thereunder invalid.

(2) Every notice served under this section shall be prepared in duplicate, one copy of which shall be preserved in the office of the authority, and be endorsed with a note describing the manner and date of service duly authenticated by the server.

21. Where, by these regulations, any scheme, communication, matter or thing has to be submitted to the Governor in Council it shall be submitted through the Commissioner for Local Government.

Communications to Governor in Council

22. Any person interested in or affected by any proposed scheme shall be entitled to make a copy of or extract from any map, plan or drawing required in pursuance of these regulations, free of charge: Provided always that if they can conveniently do so, the authority may furnish copies of or extracts from the said maps, plans or drawings.

Copies of maps.

23. Where the Governor in Council is satisfied that there is reasonable cause for excluding, either conditionally or unconditionally, for application in any particular case, any requirement of these regulations, or for varying any such requirement, he may by notice make the necessary exclusion or may make and give effect to the necessary variation.

Exclusion or variation of regulations.

24. Subject to the approval of the Commissioner for Local Government, the preparatory authority may, if they think fit, and subject to such conditions as they may impose, extend the time during which any suggestions, objections, or representations in writing may be sent to the authority under the provisions of sections 3 and 7 of these regulations.

Extension of time for objections

Repeal.

25. The Town Planning (Procedure) Regulations, 1928, are hereby repealed.

By Command of His Excellency the Governor in Council.
Nairobi,

This 14th day of December, 1931.

JUXON BARTON,
Clerk to the Executive Council.

FIRST SCHEDULE.

(SECTION 3).

Documents and particulars to be sent to the Commissioner for Local Government after the passing of a resolution deciding to prepare a town planning scheme.

- (1) Documents required under section 3 (4) of these regulations.
- (2) Copies of all suggestions received by the preparatory authority under section 3 (3).
- (3) Where the resolution extends to land not within the area of the preparatory authority passing the resolution, the reasons for the inclusion of the land outside the area of the preparatory authority.
- (4) Information as to the acreage, general character and development of the area, and details of all Crown land, privately owned land, land in the area of any local authority, district council or other authority, land already built upon or under development or not likely to be built upon or unsuitable for building development.
- (5) A statement giving the reasons for the preparation of a town planning scheme under the Ordinance, and any information available as to restrictive covenants, private rights or existing enactments which the scheme is required to modify.

SECOND SCHEDULE.

(SECTION 5).

Details required to be shown on the "Draft Town Planning Scheme."

Draft clauses of the scheme.

Existing roads, streets, lanes and other ways.

Public and private rights-of-way in so far as they may be known.

Existing railways, tramways, canals or other means of communication.

Existing public parks, gardens or open spaces.

Contour lines for the whole area; or, where this is impracticable, the natural lines of surface drainage, all high ground, low-lying ground, flat or swampy areas.

Land already built upon or in course of building development, with the lines of such development.

Land unsuitable for building.

Government land included in the scheme.

Wooded areas, important trees and notable landscape features.

Existing buildings, existing property boundaries and subdivisions of land within the area of the scheme.

Important buildings and features of archaeological interest.

Rivers, drains, quarries and sandpits.

The proposals of the preparatory authority for dealing with any of the matters which may be dealt with under section 4 of the Ordinance.

Directions of prevailing winds and true north; and the scale to which the drawings are made.

THIRD SCHEDULE.

(SECTION 9).

Documents and particulars to be sent to the Commissioner for Local Government in connexion with the submission of a town planning scheme for approval.

- (1) Documents required under section 9 (2).
- (2) Twelve copies of the letterpress of the scheme, and a certified copy of the resolution approving the scheme.
- (3) A list of the owners of all land included in the scheme showing by reference to numbers on the map or maps the portions of land belonging to each owner.
- (4) A list of all local orders, by-laws, rules, and regulations in force in the area, and copies of those which contain any provisions affecting or affected by the scheme, with references thereto.

- (5) A descriptive memorandum of the scheme with particulars of any proposed acquisition of land under the scheme; of works to be executed as part of the scheme; of any enactments or other provisions which it is proposed to suspend, with the reasons for the proposal; as to how the scheme is to be carried into effect; of the area, population, rateable value etc., of the districts concerned wherever a valuation roll for rating purposes has been made; and of the estimated cost of carrying out the scheme, distinguishing, so far as the cost is to be borne by (1) Government, (2) the executive authority, and (3) any local authority, district council or other authority.

Separate particulars shall be given under the following heads:—

Expenditure :—

- Purchase of land for open spaces.
- Purchase of land for other purposes (specifying them).
- Purchase of buildings.
- Demolition or alteration of buildings.
- Compensation in respect of property injuriously affected—
 - (1) by the making of the scheme;
 - (2) by the execution of the scheme.
- Construction or alteration of roads or ways.
- Cost of preparation of the scheme.
- Other purposes (specifying them).

Receipts.

- In respect of property increased in value—
 - (1) by the making of the scheme;
 - (2) by the execution of the scheme.
- From other sources (specifying them).



COLONY AND PROTECTORATE OF KENYA

MEMORANDUM
ON THE
Town Planning and Development
Ordinance, 1931

Memorandum on the Town Planning and
Development Ordinance, 1931

Memorandum on the Town Planning and Development Ordinance, 1931

The Town Planning and Development Ordinance, 1931, embodies certain new principles, and new applications of existing principles to which it is necessary to direct the careful attention of all bodies and individual officers engaged in any work falling under any of the provisions of this Ordinance.

1. PREPARATORY AUTHORITY.

In the case of municipalities constituted under the Local Government (Municipalities) Ordinance, 1928, the council or board, as the case may be, is the preparatory authority, and no special appointment is required. [Sect. 2 (1) def.]

In all other cases the preparatory authority requires to be specially appointed, and will be duly notified for each case in the Official Gazette.

2. RESOLUTION TO PREPARE OR ADOPT A SCHEME.

A preparatory authority cannot exercise any of the powers conferred by the Ordinance until it has passed a resolution deciding to prepare or adopt a scheme. [Sect. 5 (1) and Procedure Regulations, 1931; Reg. 3 (1).]

3. EFFECT OF RESOLUTION TO PREPARE OR ADOPT A SCHEME.

When a resolution to prepare or adopt a scheme has been passed with respect to any area defined in accordance with Procedure Regulations, 1931, Reg. 3 (2), every owner of any interest in any land or property [Sect. 2 (1) def.] is entitled to *claim compensation* in accordance with the provisions of the Ordinance [Sects. 8 (1), 9 (1) and 12].

These provisions admit liability for compensation for injurious affection on various grounds included in the expression "the making of a scheme" [Sect. 2 (1) def.]. This term includes all *sterilization of land* if a scheme is not approved within five years [Sect. 8 (1), both provisos] or if no scheme at all is finally approved [Sect. 8 (1) second proviso]. It also includes any *action taken to suspend works* already commenced [Sect. 9 (1)]. It also includes any *adverse effect on values* due to the scheme, and, in short, "anything authorized to be done in connexion with the preparation of a scheme or in anticipation of its provisions" [Sect. 2 (1) def.].

The principle here is that a preparatory authority must be given a fair opportunity to prepare a scheme, while the public and owners of property likely to be affected are for their part entitled to some guarantee that the authority is bona fide preparing a scheme when it exercises the drastic powers conferred by the Town Planning Ordinance, and is not merely seeking to exercise those powers without any real intention of bringing forth the fruits for which object alone such powers are conferred. The period of five years fixed in the second proviso to section 8 (1) is designed to furnish a fair opportunity for the authority to do its part. Failure on the part of an authority to bring forth the fruits within five years would leave it exposed to liability to pay full compensation for any and every injurious affection to any interest in any land or property anywhere (not only within the area of the scheme), which could be proved to be due to its acts in virtue of the resolution to prepare a scheme under this Ordinance, and which was not such as could have been inflicted without compensation under any other law or by-law [Sect. 12 (1)]. This is a most important point which must on no account be overlooked when deciding upon the area which is to form the subject of a resolution to prepare a scheme, and when deciding to take action under sections 8 (1) and 9 (1).

It means that a resolution to prepare a scheme must only be taken with bona fide intention to carry it out; and with due regard to the authority's ability to do so.

4. OBJECTS AND CONTENTS OF TOWN PLANNING SCHEMES.

Sections 3 and 4 of the Ordinance embrace the widest possible field. It is not necessary to make any detailed references in explanation. If there is at any time any doubt as to the legal justification for the inclusion of any matter or subject or class of subjects to be dealt with under a Town Planning Scheme, reference should be made to the by-law-making powers of local authorities as set forth in section 59 of the Local Government (Municipalities) Ordinance, 1926, or the rule-making powers of the Governor as set forth in section 35 of the Townships Ordinance, 1920, and also the first schedule of this Ordinance; remembering, with respect to the by-law and rule-making powers, the limitations imposed by the words "for the purposes of this Ordinance" [Sect. 4 (1)]. These limiting words refer to the objects of town planning schemes as limited by section 3 (1).

5. SPECIAL PROVISIONS TO BE INSERTED IN ALL SCHEMES.

There are two new requirements in section 7, which deal with this matter: (a) definition of the scope of the scheme, and (c) definition of the dates before which works to be executed as essential parts of the scheme must be completed. These are important matters. First, it is only fair that the public should understand the objects being aimed at in a scheme which cannot be executed by means of normal powers, as, e.g., slum clearance, boundary rectifications, street widening, housing, amenities, zoning, and so forth. Secondly, if a scheme includes the expenditure of money on execution of works, and such works are calculated to affect the already settled distribution of property values, it is essential that some limit be set to the period which might elapse before such works are completed. Works of this nature, affecting relative property values, may be the chief factor determining assessments for compensation or betterment due either to the making of a scheme [Sect. 8] or to the execution of a scheme [Sect. 10], or to both. It would not be possible for a valuer (nor for anybody else) to estimate the effects of such provisions of a scheme on the existing value of any land or property, unless the scheme at the same time gave some indication as to the prospects of completion of the works upon which the alteration of value depends.

6. COMPENSATION

While the grounds for claiming compensation under this Ordinance are very wide [Sects. 8 (1), 9 (1), 10 (1) and 11 (1) (i) and (ii)] it is important to bear in mind that the restrictions and limitations of those grounds are also considerable [Sect. 8 (1) first proviso, and Sect. 12]; and also that an authority is not irrevocably committed to the payment of any claim for compensation which succeeds against them in respect of an approved scheme if, on the award being given against them, they are able to alter the scheme so as to avoid it [Sect. 15].

The grounds for claims for compensation are five in number:—

- (i) Acts of the preparatory authority under powers conferred by this Ordinance in any case of the work of preparing a scheme being abandoned or not completed within five years. This has been considered under 3 above.
- (ii) Injurious affection due to the making of a scheme [Sects. 8 (1) and 9 (1) def.]. This covers all acts of the preparatory authority under powers conferred

by this Ordinance, and all injurious affect on the values of any interests in land or property which the scheme as finally enacted can be proved to have caused, subject always to the restrictions and limitations specified in section 12. Claims for compensation under this head are only valid if made "within the time (if any) limited by the scheme".

(iii) *Orders to suspend works* [Sect. 9]. The power to suspend works by order can only be exercised by an authority which has passed a resolution to prepare a scheme. The words "which they have decided to prepare" in section 9 (1) and "may by resolution decide to prepare" in section 5 (1) govern the exercise of this power. Naturally, however, such a power would not be exercised except as the cheaper of two alternatives, after very careful consideration and estimation and under the pressure of very strong reasons.

(iv) *Injurious affection due to the execution of a scheme* [Sect. 10 (1)]. It is important to observe that this Ordinance does not contemplate the giving of effect to any details of a scheme by means of the scheme itself receiving the force of law under section 5 (3). The acquisition of land required for roads, etc., under a scheme for pooling and redistribution of plots or holdings of land, and all other details of a town planning scheme made under this Ordinance, can only be carried into effect by the exercise of powers residing in, or conferred by the scheme upon, the executive authority or authorities appointed by the scheme for enforcing its observance, and for execution of any works to be executed under it [Sect. 7 (d)].

It is obvious that all the multitudinous details of a town planning scheme could not in any case be carried into effect simultaneously and within a short period of time. It is also clear that it would not be possible to determine in advance, so as to provide for it in the scheme, the precise order in which such details were to be carried out. The length of time which must elapse before any scheme is completed in execution, and the order in which its details will fall to be considered, are matters which must depend on a variety of factors the full effect of which cannot be forecasted. The execution, therefore, and

the choice of time and circumstances must be left to the executive authority, unless, of course, a time limit has, for good reason, been set by the scheme for execution of any particular detail or important works [Sect. 7 (c)].

It is not possible to estimate the ultimate injurious effect of such a scheme upon land or property. Wherever a scheme, by its zoning provisions, or otherwise, has an immediate effect upon values, irrespective of the time which may elapse before it is carried into effect, this injurious affection can be estimated and must be compensated forthwith under section 8 (1). But all other injurious affection remains to be assessed until the exercise by the executive authority of the powers causing it, or a decision to exercise those powers, [Sect. 10 (1)], brings the work of estimation into the realm of practical politics. If the powers are exercised early compensation will be payable early; if the powers are never exercised at all compensation will not be payable at all.

(v) *Loss incurred by injurious affection due to the revocation of a scheme or any part of a scheme.* [Sect. 11 (1) (i) and (ii)]. There are two distinct grounds upon which liabilities might attach to an authority under this provision of the Ordinance. First, expenditure or liabilities incurred by anybody for purposes of complying with a scheme are recoverable from the executive authority if the scheme or the material part of it is revoked; and secondly, compensation is obtainable in respect of any injurious affection attributable to the same cause.

7. **REPAYMENT.**

Wherever any land or property [Sect. 2 (1) def.] is increased in value (i) by the making a town planning scheme [Sect. 8 (2)], (ii) by the exercise by the executive authority of any power conferred by the scheme [Sect. 10 (2)], and (iii) by reason of the revocation of a scheme or any part of a scheme [Sect. 11 (1) (iii)], the executive authority is entitled to recover from the owner the whole amount of such increase, provided that the executive authority makes a claim for the purpose, in the case of (i) not less than three months and not more than twelve months after the date when notice of approval of the scheme is first published, in the case of (ii) not later than twelve months after the exercise of the power

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which gave rise to the claim, and in the case of (iii) within the time (if any) specified in the order of the Governor in Council revoking the scheme in whole or in part (not being less than three months after the date of the order).

With respect to (i), namely claims arising out of "the making of a scheme" [Sects. 2 (1) def. and 8' (2)] it is important to bear in mind that the Ordinance requires "that the map or maps illustrating the scheme shall indicate by means of distinctive colours or otherwise all areas of land in respect to which such claims appear likely to be made" [Sect. 8 (2) proviso]. Failure to comply with this requirement of the Ordinance would invalidate all claims made under section 8 (2) and might have most disastrous consequences.

It should be noted (i) that there is no obligation under the Ordinance, upon either a preparatory or executive authority, to make betterment claims, and (ii) that there is no obligation under the Ordinance upon a preparatory authority to bind the executive authority either one way or the other by provisions of the scheme, though it is, of course, at liberty to do so. It would, however, be very inadvisable for a preparatory authority, except for strong and exceptional reasons, to attempt to limit the discretion of the executive authority in this matter, since the smooth and successful execution of any scheme, without constant litigation, must, in a large measure, depend upon an unhampered and prudent exercise by the executive authority of its powers to make agreements with owners and others for the due execution or advancement of the scheme [Sect. 16]. This is the bargaining power without which the right of the authority to recover the whole amount of the assessable betterment due to a scheme would lose nearly all its force and value.

8. SPECIAL ASSESSMENT.

The power to apportion the cost or part of the cost of any works to be executed under a scheme, among the owners of the properties benefiting therefrom, to the exclusion of other properties within the scheme [Sect. 15 (1)], is limited by the provisions of section 17 of the Local Government (Rating) Ordinance, 1928, which allows to two-thirds (by valuation) of the owners the right to quash any such assessment [Sect. 15 (9)]. At first sight this might appear to nullify the power of special assessment, but in practice it should be found that the power of the executive authority to make agreements "in respect of betterment" [Sect. 16] is sufficient to restore the virtue of special assessments to a fair and equitable degree, which is as far as such a power should ever be exercised.

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9. POWER TO RETREAT FROM UNFORESEEN LIABILITIES.

It is not possible to foresee every liability or the full extent of some liabilities which a town planning scheme might conceal, especially in comprehensive schemes designed to embrace large areas and a variety of subjects. The number and range of the various interests in all the land and property, which any scheme may affect, cannot be fully explored and examined in detail within the time available for preparation. The greatest possible care must, of course, be exercised to avoid unforeseen commitments, but, even when this has been done, there must always remain the possibility that the scheme in execution will reveal details which, if the full extent of the liability had been known during the work of preparation, would not have been included, or would have been treated in a manner equally satisfactory and at smaller cost to the public purse. An executive authority is, therefore, empowered [Sect. 18] to retreat from an adverse award of compensation against them by giving notice, within one month from the date of the award, of their intention to withdraw or modify the provisions of the scheme which gave rise to the unforeseen liability.

Such a retreat, however, requires the preparation by the executive authority of a varying scheme to be approved by the Governor in Council [Sect. 18 (2)], and leaves the executive authority liable for the owner's costs of litigation.

In order that this right of reconsideration and retreat shall remain available to the executive authority for every award that may be given against them, the Ordinance provides [Sect. 18 (3)] that no award of compensation shall be enforceable until the one month during which the right can be exercised has elapsed, or, if notice of retreat has been given, pending the decision of the Governor in Council on the varying scheme.

10. OBLIGATION OF AUTHORITIES TO PREPARE OR ADOPT AND TO CARRY INTO EFFECT TOWN PLANNING SCHEMES UNDER THE ORDINANCE.

In any case where either a preparatory or executive authority fails, without sufficient reason, to prepare or adopt or carry into effect, a scheme under this Ordinance, when such a scheme ought to be made or adopted or enforced, as the case may be, the Governor in Council is empowered to compel such authority to take such action as the case appears to demand, and may, if need be, authorize the Commissioner for Local Government to act in the place and at the expense of the defaulting authority [Sect. 22].

11. **DEVELOPMENT OF CROWN LANDS FOR BUILDING PURPOSES OUTSIDE MUNICIPALITIES, OR TOWNSHIPS FOR WHICH PREPARATORY AUTHORITIES HAVE BEEN APPOINTED.**

In future no Crown lands may be alienated for any period exceeding one year for building purposes outside municipalities or townships for which preparatory authorities have been appointed, until either a town planning scheme or a development plan has been approved in respect of such land [Sect. 23 (1)].

The development plans contemplated in this provision are non-statutory plans approved by the Commissioner for Local Government, and may be varied with his approval from time to time according as circumstances may indicate to be necessary, in the light of accumulating data not usually available in the early stages of development, without which the rigidity of a statutory town planning scheme would be inappropriate and even dangerous.

12. **SUBDIVISION OF LANDS.**

In future no land in any municipality or township may be subdivided into lots except in accordance with (i) a town planning scheme approved under the Ordinance or (save with the express permission of the Commissioner for Local Government to be obtained in every case) (ii) a non-statutory development plan approved by the Commissioner for Local Government, of such a kind as to satisfy all the more important town planning requirements [Sect. 24 (1)]. That is to say, wherever there exists a town planning scheme approved under the Ordinance, the subdivision of land may proceed without hindrance or necessity for further approvals, in so far as such subdivision is in accordance with the provisions of the scheme. But where no statutory town planning scheme exists, subdivision of land must conform to a non-statutory development plan approved by the Commissioner for Local Government, unless his express permission to depart from such development plan is obtained. Such permission must be obtained separately for every case, and the scheme of subdivision must, subject to a right of appeal to the Governor in Council, conform to any conditions which the Commissioner for Local Government may impose in giving his permission. Where no town planning scheme and no non-statutory development plan exist, then no land in any municipality or township may be subdivided save with the express permission of the Com-

missioner for Local Government, to be obtained in every case, and upon such conditions as he may impose", subject to the right of appeal to the Governor in Council [Sect. 24 (3)].

13. **ADJUDICATION OF DISPUTES.**

All questions as to whether land or property is injuriously affected or increased in value and as to the amount and manner of payment must be determined by the Supreme Court, unless the parties agree on some other method of determination [Sects. 8 (3), 9 (3), 10 (4), 11 (2) and 14]. A town planning scheme may make provisions governing the determination of all other questions, as, e.g., that they shall be determined by arbitration under the Arbitration Ordinance, or that they shall be determined by a single arbitrator to be appointed by the Governor or by the Courts or by the Commissioner for Local Government, or by agreement between the parties, and so forth. [Sect. 28, and first schedule Sect. 22.] The Ordinance makes no provision for the system of an official arbitrator, which has very grave objections in practice.

14. **POOLING AND REDISTRIBUTION OF HOLDINGS OF LAND, AND READJUSTMENT OF BOUNDARIES, ETC.**

The Ordinance makes no provisions designed to restrict the complete freedom of a preparatory authority in the difficult tasks of drawing up schemes for voluntary or compulsory pooling of holdings of land and the readjustment of boundaries; nor does it require that the details of such work shall be undertaken by the preparatory authority itself in the scheme which it prepares. The preparatory authority is at liberty to provide only in the scheme that such work shall be done by the executive authority, and to formulate such rules and general principles to govern schemes of pooling and redistribution of holdings of land and the readjustment of boundaries by the executive authority as the preparatory authority may think proper.

The only matters with which the Ordinance deals in this connexion are [second schedule], (i) procedure for rectification and registration of titles consequent upon a scheme of pooling and so forth which is an integral part of an approved town planning scheme, and (ii) procedure for notification of owners, consideration of objections and approval or amendment or withdrawal of the pooling or readjustment scheme prepared by an executive authority under powers conferred in an approved town planning scheme.

15. PROCEDURE REGULATIONS.

The Town Planning (Procedure) Regulations, 1931, apply automatically wherever a preparatory authority under the Ordinance exists or has been appointed. No specific application is required, and the Procedure Regulations, 1928, are repealed.

Local Government Branch,

Secretariat,

December, 1931.
