

No. 12, 1927.]

## ACT

To extend the area of the borough of Durban ; to relieve the South African Railways and Harbours Administration from the payment of certain rates and taxes in respect of property within the said borough ; to provide for the vesting in the Town Council of the borough of Durban of certain roads within that borough ; to regulate the issues of trading licences within the said Administration's harbour jurisdiction at Durban ; and to ratify and confirm an agreement made between the said Administration and the Town Council of the borough of Durban.

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. (1) The boundaries of the Borough of Durban, (hereinafter called the "Borough"), as defined in the Proclamation of the Lieutenant Governor of the 24th June, 1854, which are hereby declared to have been further extended as from the first day of June, 1894, in terms of the Agreement between the Town Council and the Natal Harbour Board, made in pursuance of section four of Law 42 of 1888 (Natal) and referred to in paragraph (a) of section two of the Durban Bay Embankment Act, 1895 (Natal), are hereby further extended so that portion of the southern boundary of the said Borough is such as is described in paragraph 1 of the First Schedule to this Act and includes the several areas described in paragraphs 2 and 3 of the said Schedule. The areas affected by this subsection and referred to in the said Schedule are hereinafter referred to as the "extension area" and are indicated on the plan numbered (S.G.O. Sub. Vol. 699 fol. 97) (hereinafter referred to as the "extension plan") and filed in the office of the Surveyor-General of Natal: Provided that the provisions of this Act and of the Agreement referred to in section five shall not apply to the area indicated on the extension plan by the letters L.M.N.O. or any part or parts of such area except only as and when and to the extent to which such area or such part or parts shall hereafter be reclaimed under the provisions of the Durban Harbour Works Construction Act, 1917, or any amendment thereof.

(2) Section one hundred and twenty-six of Law 19 of 1872 (Natal) shall cease to apply in respect of such portions of the said lands as are described in the third paragraph of the said Schedule.

2. Notwithstanding anything contained in the Government Property Rating Act, 1910 (Natal) or in any other law, the Town Council of the Borough of Durban (hereinafter called the "Council") shall not be empowered to levy any rate or charge upon or in respect of—

- (a) any property situated within the extension area which is occupied or controlled by the Railways and Harbours Administration (hereinafter called the "Administration"), for or in connection with any work or business carried on under the Railways and Harbours Regulation, Control and Management Act, 1916, or any amendment thereof;
- (b) any property of the Administration together with any alteration thereto or improvement thereon, which is situated in the Borough outside the extension area which was taken over by the Administration from the Government of Natal and was at the time of such taking over exempted under any law from the payment of rates or taxes to the Council, whether or not such property is occupied, or any business is conducted therein, by the Administration;

Extension  
of limits of  
Borough  
of Durban.

Restriction  
of rating  
Administra-  
tion's  
property in  
extended  
area.

- (c) any store or shed, the property of the Administration, wherever situated within the Borough, and notwithstanding that storage, demurrage or other charges are recoverable or received by the Administration in respect of goods deposited, or of business being carried on therein: Provided that where rent is paid to the Administration in respect of any such store or shed, the property may be made subject to rate or charge by the Council; and
- (d) buildings, including compounds and barracks for Indians and natives and stables, the property of the Administration wherever situated within the Borough, on which rates were not at the commencement of this Act levied by the Council.

Vesting of certain roads within extended area in the Durban Corporation.

3. From time to time as land within the extension area has been reclaimed and levelled up to the final level fixed by the Administration and the new roads and thoroughfares thereon have been properly hardened, kerbed and channelled by the Administration in accordance with the Council's standards for roads carrying a similar class of traffic, the Administration may notify the Council thereof in writing whereupon such roads and thoroughfares on the said area as are contiguous to rateable property shall vest in the Council free of cost.

Regulation of issue of licences in harbour area.

4. Whenever in the exercise of any power conferred by the Railways and Harbours Regulation, Control and Management Act, 1916, the Administration imposes any licence duty, fee or charge within the area of the Administration's jurisdiction at the port or harbour of Durban, no licence duty or fee, save a licence for the carrying on of any business of selling or hawking, shall be imposed by the Council in respect of the matter made subject to licence, duty, fee or charge by the Administration, and in so far as any by-law or regulation of the Council is in conflict with this section it shall be deemed to be repealed.

Ratification of agreement between Administration and Council.

5. (1) Save where otherwise provided in this Act the Agreement made between the Minister of Railways and Harbours, of the one part, and the Mayor, Councillors and Burgesses of the Borough of Durban, of the other part, a copy whereof is set out in the Second Schedule to this Act, is hereby ratified and confirmed: Provided that the Council and the Administration may agree upon a modified scheme of drainage to that set out in the said agreement so as to cause a minimum amount of inconvenience to the Administration's works existing at the commencement of the Act and to its proposed lay out of sites, sidings and other works contemplated at that time having due regard to the estimated original cost to the Council of the scheme and to the Council's requirements as to the disposal of storm-water over and across the reclaimed area.

(2) The Administration, out of moneys to be voted by Parliament, shall make all such payments due or which may become due by it in terms of the said Agreement.

(3) The Administration and the Council respectively may, notwithstanding anything contained in any law, do all such things as may be necessary to carry out their undertakings as specified in the said Agreement.

Short title.

6. This Act may be cited as the Durban Borough (Extension of Area) Act, 1927.

#### First Schedule.

The line following the bay edge of the Victoria Embankment, from a point where the northern boundary of Rutherford Street, if produced, would cut the bay edge of the Victoria Embankment to the beacon marked P.1 at the southern end of Russel Street, then along the southern boundary line of Lot B.1 around the bay edge of the Fishing Jetty (X Y Z) to the Congella Wharf, then along the water line of that wharf and along the line of extension authorized to the limit thereof (Beacon D.1), and thence in a straight line to the southernmost beacon of Lot A.3, known as Galliers Beacon No. U.3, on the Umbilo River, the area embodied thereby being as coloured red on the plan registered in the Surveyor-General's Office, Pietermaritzburg, Sub. Vol. 699, folio 97.

#### Point and Addington Lands.

The land bounded by the northern boundary of Rutherford Street from the western boundary of Shepstone Street to where the northern

boundary of Rutherford Street, if produced, would cut the bay edge of the Victoria Embankment, thence by the water line of the wharves to the North Pier, thence by the water line of the North Pier to the Low Water Mark on the Indian Ocean, thence by that Water Mark to a point at which the southern boundary of Bell Street, if produced, would cut the said Low Water Mark, thence by the southern boundary of Bell Street produced from the said Low Water Mark to the eastern boundary of the land known as Addington and portion of the Point granted to the Mayor, Council and Burgesses of Durban, thence by the eastern, southern and western boundaries of those lands to where the western boundary line of Shepstone Street intersects the northern boundary line of Rutherford Street, also the area known as Lots 1, 2, N.G.R. of 3, N.G.R. of 4, N.G.R. of 5, N.G.R. of 6, all of Block E, Scott Street, and Lots 4, 5, 6, 7 and 8 all of Block E, Shepstone Street, and Lot N.G.R. of Addington; all as coloured green on the plan registered in the Surveyor-General's Office, Pietermaritzburg, Sub. Vol. 699, folio 97, in so far as the area is not already included in the said Borough.

*Ordinance Land, Durban.*

The following portions of Ordinance Land, Durban, all as coloured blue on the plan registered in the Surveyor-General's Office, Pietermaritzburg, Sub. Vol. 699, folio 97, in so far as they are not or may not be already included in the said Borough:—

Remainder of A of Ordinance Land, Durban, with the exception of the portion occupied by the Gaol.

Subdivision D of B of A of Ordinance Land, Durban.

„	D 1 of B of A of	„	„	„
„	1 of B of A of	„	„	„
„	H of B of A of	„	„	„
„	F of B of A of	„	„	„
„	L of B of A of	„	„	„
„	A of B of A of	„	„	„
„	S.A.R. of B of A of	„	„	„
„	S.A.R. of A of Reserve of Ordinance Land, Durban,			
„	S.A.R. of B of Ordinance Land, Durban,			

**Second Schedule.**

AGREEMENT MADE AND ENTERED INTO by and between the MINISTER OF RAILWAYS AND HARBOURS of the Union of South Africa and as such representing the GOVERNMENT of the UNION in its Department of Railways and Harbours (hereinafter referred to as the "ADMINISTRATION") of the one part, and the MAYOR, COUNCILLORS AND BURGESSES OF THE BOROUGH OF DURBAN (hereinafter referred to as the "CORPORATION") of the other part,

WHEREBY IT IS AGREED AS FOLLOWS:—

*First.*—The boundary of the Borough of Durban shall be extended as follows to include all lands between the existing Borough Boundary and the Bay of Natal coloured pink on the plan signed by the parties as forming part of this Agreement to be filed with the Surveyor-General (hereinafter referred to as "the Durban Borough Extension Plan"), viz., along the sea edge of the Victoria Embankment from the commencement at Cato Creek to its termination at Albert Park Russell Street thence to the wharf at Congella and along its sea-edge to the point where the wharf extension authorized by Act 34 of 1917 commences; thence along the line of extension so authorized to the limit thereof; and then in a straight line to the beacon indicating the Borough Boundary on the north bank of the Umbilo River, known as "Galliers Beacon."

*Second.*—The said Borough Boundary shall also be extended as follows:—

- (a) To include the area coloured green on the Durban Borough Extension Plan from a point at the west end of Bay Terrace to embrace the wharves, jetties and the like near thereto, then along the sea edge of the existing wharves, following their line to a point close to the North Pier, then to Low Water Mark of the Indian Ocean, then along Low Water Mark of the Indian Ocean to a point opposite Bell Street and then at right angles thereto until the existing boundary is reached.
- (b) To include so far as competent or necessary all the lands originally reserved for the Imperial War Department, coloured green on the Durban Borough Extension Plan.

*Third.*—The Corporation's power to levy rates upon the Administration's property within the areas included in Clauses 1 and 2 shall not apply to any lands or buildings occupied or controlled by the Administration in connection with any of the works or businesses authorized by Act 22 of 1916; nor shall the Corporation levy rates upon the Administration's properties elsewhere in the Borough that have been taken over from the Natal Government and were at the time of taking over exempted from payment of rates and taxes by statute irrespective of the occupation or business conducted therein by the Administration under Act 22 of 1916, and no stores or sheds belonging to the Administration shall be rateable by reason of any storage or demurrage charges or other ordinary charges (not being rent), being from time to time imposed or paid or recoverable in respect of goods deposited in such stores or sheds or in connection with the business being carried on therein nor shall any rates be levied upon or in respect of Indian and Native compounds and barracks, stables or buildings of the Administration on which rates are not at present levied.

*Fourth.*—The Corporation shall put in and bear the entire cost of all stormwater drainage mains comprising culverts and canals that may in the opinion of the Corporation, be necessary in consequence of the new line of reclamation at Congella being placed further in Durban Bay, as sanctioned by the Durban Harbour Works Construction Act, 1917, and the culverts and canals necessary for the drainage within the new reclamation area shall be the alternative scheme recommended by the Borough Engineer in his report of the 28th December, 1921, providing for main culvert and three main outlet canals; but the plans of the said scheme shall be submitted for the Administration's approval. Should the Administration require, as it shall have the right to do, a more substantial main culvert or tributary culvert, at any spot within the new reclamation area where a railway or other heavy structure or traffic crosses such main culvert or tributary culvert, the Corporation shall, when requested in writing to do so be obliged at the cost of the Administration, to put in a more substantial main or tributary culvert for railway purposes, as it may specify, such request to be conveyed to the Corporation prior to the construction of the culvert concerned.

The Administration shall at its own cost construct over canals all road bridges required to complete the road system, which is to be constructed by the Administration as provided for in Clause 9 of this Agreement, and the width of each bridge thus constructed shall be not less than three-fourths of the width reserved for the road on either side of the canal: Provided that all such bridges, after construction by the Administration, and vesting in the Corporation in terms of Clause 9 shall be maintained at the expense of the Corporation.

Any bridges required solely for railway purposes over the said canals shall be constructed and maintained by the Administration at its own cost.

Should the Administration and the Corporation mutually agree that, for their joint use a further bridge or bridges other than those aforesaid, is or are necessary or advisable, the nature, extent and capacity of such bridge or bridges shall be determined by agreement between the parties, and in so far as the requirements of the Administration in connection with such bridge or bridges increase the cost of and incidental to the construction and erection thereof over and above the cost of and incidental to the construction and erection of a bridge or bridges which would be sufficient for Corporation purposes alone, the Administration shall pay such increase and the Corporation shall pay the balance of the cost. Such additional bridge or bridges shall on completion be maintained at the joint expense of the Administration and the Corporation.

The cost of connecting drains necessary to drain private or Administration or other Government properties to the main or tributary culverts in roads taken over by the Corporation shall be borne by the proprietors served by the said main or tributary culverts.

*Fifth.*—The Administration shall contribute towards the cost of the alternative scheme referred to in the preceding clause a sum of Seventy thousand pounds, sterling in addition to its obligation to do at its own expense, the further works, and pay for the strengthening and maintenance referred to in the said clause. The said sum of seventy thousand pounds (£70,000) sterling shall be paid quarterly as the work progresses upon a fixed basis that for every two pounds expended by the Corporation the Administration shall contribute one pound up to the limit of its liability. Such payments shall be made upon certificates of the Borough Engineer accompanied by particulars of the work and details of the cost thereof covering the period to which the certificate refers. The Administration shall be entitled to examine such particulars and details before making payment. The Borough Engineer shall supply the Administration from time to time with an estimate cost of the said work concerned for the purpose of the Administration's estimates for submission to Parliament.

*Sixth.*—Sub-sections (a) and (b) of Clause 13 of Part II of the Agreement between the Corporation and the Colonial Government of Natal, dated the fourteenth day of April, 1904, as annexed to Act 36 of 1904, shall be applicable, *mutatis mutandis*, to the whole of the reclaimed area.

*Seventh.*—The Corporation will not hinder or embarrass the Administration in the establishment of abattoirs on the Administration's new reclaimed lands at Congella: Provided that such abattoirs shall be subject to the Municipal Bye-Laws from time to time in force relating generally to buildings and to public health, and also subject to drainage and disposal, and/or treatment of sewerage and waste products being arranged by the lessees or owners of such abattoirs or slaughter houses to the satisfaction of the Corporation and provided also that the Corporation shall have the right of inspection, grading, condemnation and destruction of meat slaughtered or stored for local consumption and such meat shall be submitted for inspection at the Municipal Abattoir, and shall be subject to the charges current as if the slaughtering had taken place at the Municipal Abattoir.

*Eighth.*—It is recognised by the Corporation and the Administration that the wharves and lots on the Administration's reclaimed lands at Congella are mainly used and to be used for storage of timber and heavy goods and for manufacturing purposes and that the facilities provided in the leases that have been or may be granted by the Administration in respect of such lands, such as the use of railways or tramlines in the streets or transporters and mechanical appliances overhead, are essential to the progress of the industrial pursuits of the lessees in the Congella area and so add to the prosperity of the port and Borough of Durban. It is therefore agreed that the following conditions shall apply to the new reclamation area:—

(1) The Corporation shall not raise any objection or opposition against railway lines being constructed along the roads contiguous to rateable property within the said area so as to facilitate the transport or handling of traffic, and when the Corporation has

taken over any such roads it shall as far as possible, afford facilities to the Administration for the repairing, maintenance or relaying of such railway lines, and for that purpose the Administration may, after due notice to the Borough Engineer take up streets, or portion of streets, subject to the observance of proper precautions for the safety of the public, and the proper relaying of the said streets.

(II) The Administration shall be responsible for the repair, maintenance and relaying when necessary of the roadway lying between and extending eighteen inches on the outside of all railway lines, and of the rails of such lines as are laid on roads taken over by the Corporation, and shall have the right of entry upon and taking up the road for that purpose.

(III) The Corporation shall not raise any objection to transporters or other mechanical appliances being used within the said area notwithstanding the same may overhang the roads, but as the Corporation will have no control over same it shall not be liable for any of the consequences of their construction or working.

(IV) If the area be proclaimed by the Corporation as a brick area, such proclamation shall not be retrospective nor shall it affect rights under existing leases. All future leases granted by the Administration in respect of this area will provide that iron structures may be erected, but only so long as the area has not been proclaimed a brick area.

*Ninth.*—So soon as land within the new reclamation area has been reclaimed and levelled up to the final level fixed by the Administration, and the new roads and thoroughfares have been properly hardened, kerbed and channelled by the Administration in accordance with the Corporation's standards for roads carrying a similar class of traffic, and so soon thereafter as the Administration shall have notified the Corporation in writing that further lands at Congella have been reclaimed and levelled and are available for use, the roads contiguous to rateable property as laid out by the Administration on the new reclamation area shall vest in the Corporation, and thereupon the Corporation shall, upon the said reclaimed lands beyond its present jurisdiction, but within its new or increased jurisdiction—

- (a) subject to the provisions of the fourth clause hereof construct such conduits and extend existing stormwater drains for the purpose of taking off stormwater drainage as the Borough Engineer may deem requisite, and so soon as practicable provide proper sewerage at charges for the time being prevailing in Durban for sewerage connections, and pending the extensions of sewer mains provide sanitary services;
- (b) provide lighting and water for the said area on the usual terms for the time being operating in Durban.

*Tenth.*—When any roads have so vested in the Corporation it shall have and may exercise all its usual and customary powers, including the power to lay down tramways, but in the exercise of such powers the Corporation shall have due regard to the convenience of the Administration and of its lessees, and to the necessity for rail communication between the Administration's lines and the said lots or any of them and the wharf.

*Eleventh.*—The indemnity and undertaking given by the Administration to the Corporation in respect of reclaimed lands at Congella, as per agreement of the twenty-third day of October, 1917, are hereby withdrawn and cancelled.

*Twelfth.*—No licences other than trading licences shall be levied or claimed by the Corporation within the Administration's Harbour jurisdiction (including the Congella reclaimed lands) that may duplicate or conflict with the licences or charges imposed by Harbour Regulations published under Act 22 of 1916.

*Thirteenth.*—The Administration will take the necessary steps for the passing of an Act of the Union Parliament authorizing, confirming and giving full effect to this agreement, and the extensions, powers, authorities and obligations therein contained, it being understood that this Agreement is entered into subject to the passing of such Act. The Corporation shall give all the assistance in its power as regards such steps as aforesaid provided that the draft Bill shall first be submitted to it before being published or introduced into the House of Assembly.

GIVEN under the hands of the said parties at the places and on the dates respectively set opposite to their signatures.

SIGNED by CHARL WYNAND MALAN in his capacity as Minister of Railways and Harbours and as such representing the Administration at Pretoria on this tenth day of October 1924.

*As Witnesses—*

1. (Signed) C. M. HOFFE. (Signed) C. W. MALAN.
2. (Signed) W. GARNER.

SIGNED by THOMAS MANSFIELD WADLEY in his capacity as Mayor of the Borough of Durban, and as such duly authorized to act herein on behalf of the Corporation at Durban on this nineteenth day of August 1924.

*As Witnesses—*

1. (Signed) A. O. JONES. (Signed) T. M. WADLEY.  
Town Clerk. Mayor.
2. (Signed) J. GOLDSMITH THOMPSON.