

1913.  
NEW ZEALAND.

# HUTT ROAD

(REPORT OF COMMISSIONER *RE* ALLOCATION OF COST OF CONSTRUCTING).

*Presented to both Houses of Parliament by Leave.*

Public Works Department, Wellington, New Zealand, 19th June, 1913.  
Memorandum for the Hon. the Minister of Railways, Wellington.

## Re *Hutt Road*.

IN pursuance of the direction contained in your Warrant of the 8th July, 1912, I have now the honour to submit for your information the following report on the allocation of the cost of constructing the new Hutt Road among the local authorities mentioned in the Hutt Railway and Road Improvement Amendment Act, 1911.

The inquiry was commenced on the 30th September, 1912, and continued on the 1st, 2nd, 5th, 6th, and 7th May, 1913, and the parties were represented as under:—

Wellington City Council	..	..	Mr. O'Shea.
Petone Borough	..	..	Messrs. T. F. Martin and R. C. Kirk.
Lower Hutt Borough	..	..	Mr. Blair.
Hutt County	..	..	Mr. Brandon.
Onslow Borough	..	..	Mr. Wilford, M.P.
Makara County	..	..	Mr. Luckie.
Johnsonville Town Board	..	..	Mr. Jerusalem.
Upper Hutt	..	..	Mr. D. M. Findlay.
Eastbourne Borough	..	..	Mr. Organ.
Miramar Borough	..	..	Messrs. M. Myers and R. V. S. Meredith.
Railway Department	..	..	At first by Mr. Ostler, afterwards by Mr. Macassay.

## PRELIMINARY REMARKS.

In order to understand this report some reference must be made to the recent history of the case. This is shown in the Hon. Mr. Millar's speech on the Hutt Railway and Road Improvement Amendment Bill, 1911 (*Hansard*, 1st September, 1911, pages 204–240); and it is illuminative inasmuch as it discloses how the new road came to be made, and why it was made at so much greater cost than was originally proposed.

In 1887 the question of straightening the Hutt Railway first came before the Government, when a request was made that money should be provided for this purpose. In the years 1894, 1896, and 1898 Messrs. Duthie and Newman again brought up the subject. On the 17th July, 1899, a public meeting of the inhabitants of Petone and the Hutt Valley was held at Petone, when a resolution was passed urging the Government to straighten and duplicate the Hutt Railway between Wellington and Petone, and also urging that the road should be reconstructed when the railway-line was being straightened. A deputation subsequently waited on the Prime Minister on the 28th July, 1899, and asked that this should be done.

On the 5th May, 1900, the Wellington Chamber of Commerce wrote to the Minister of Railways urging him to reduce the curves on the railway, and suggesting that the carrying-out of this work would afford an opportunity to widen the road.

In September, 1900, Mr. Field, M.P., asked the Government to undertake the work, and pointed out that it was impossible for the local bodies within whose districts the road was situated to do it.

On the 17th September, 1900, a conference of local bodies and district members of Parliament was held at the Wellington Chamber of Commerce, when resolutions were carried requesting the Government to widen the road from Wellington to Petone to not less than 40 ft., and to arrange for the apportionment of a reasonable share of the net cost of such work among the local bodies concerned in the traffic on the road. The resolutions of this conference were signed, *inter alia*, by the Mayors of Wellington, Petone, and Onslow, the Chairmen of the Hutt County Council and the Johnsonville Town Board. I mention this because, as these persons represented all the local bodies then in existence which were interested in the road, it follows that, at this time, all were in agreement that the Government should undertake the work and apportion the cost of a 40 ft. road.

Nothing seems to have been done at once in pursuance of this request; but at the instance of the Borough of Onslow the Government appointed Mr. Haselden, S.M., on the 7th December, 1901, to be a Commissioner to apportion the cost of maintaining the portion of the road which runs through that borough. He reported on the 19th March, 1902, that in his opinion the cost of maintaining this portion of the road should be borne in certain proportions to be hereinafter mentioned, and effect was given to his report by a Governor's Warrant dated the 13th May, 1902. The Wellington City Council subsequently refused to pay its quota, and litigation followed, and it was ultimately decided by the Supreme Court that as the road was technically a street, and as the statute only referred to a road, the Warrant was *ultra vires* and inoperative.

To remedy this difficulty, and to enable Mr. Haselden's report to be given effect to, the Hutt Road Act, 1903, was passed, fixing the proportions to be paid by the parties, as arranged by him, as follows: Wellington City and Petone Borough, seven twenty-fourths each; and Onslow Borough and Lower Hutt Borough, five twenty-fourths each. It is necessary to remember in this connection that this apportionment related only to the part of the road (100 chains) in the Borough of Onslow.

Later in the same session of 1903 the Hutt Railway and Road Improvement Act was passed. This Act abolished the apportionment, and empowered the Minister of Railways to construct the road, and then to have the cost of same reapportioned among the Wellington City, Onslow, Petone, and Lower Hutt Boroughs, and the Hutt County Council.

After the Hutt Railway and Road Improvement Act, 1903, was passed, and the road had been assured, a conference of delegates from the local authorities was held, and among other things they suggested to the Government,—

- (a.) That the road should be formed 100 ft. wide, and that it should contain a roadway 50 ft., cycle-track 15 ft., heavy-traffic track 25 ft., and footpath 10 ft. wide, the cycle-track to be in the middle of the road:
- (b.) That the water-tables, footpath, cycle-track, roadways, and land be raised to such a level above high-water mark that proper drainage shall be assured:
- (c.) That the gradients of the road be in no case flatter than 1 in 200, so as to give efficient drainage along the water-tables.

These proposals were a very great departure from the original proposal for a road 40 ft. wide, and it is apparently due to the requests of this conference that such an expensive road was afterwards constructed. The Railway Department did not, however, do all that was requested. It made the road 60 ft. wide and the footpath and cycle-track 20 ft. wide, total 80 ft.; and it would appear that the enormous quantity of 523,000 yards of earth, spawls, and metal used in the actual formation of the road was to some extent at least required to meet the wishes of the conference. This part of the work alone cost nearly £82,500.

After the Act of 1903 was passed, Makara County and the Boroughs of Eastbourne and Miramar and the Upper Hutt Town Board were constituted and separated from the Hutt County, and the Hutt Railway and Road Improvement Amendment Act, 1911, provided that all these bodies, together with the Johnsonville Town Board, should contribute to the cost of the road.

It was pleaded before me that none of the original local bodies had the remotest conception that the road would cost anything approaching to what it has cost, or they would never have agreed to the provisions of the Act of 1903. I believe that these statements are absolutely true.

No evidence was given to me to show to what extent the delegates to the conference of 1903 represented the wishes of their local bodies, nor whether all the local bodies were represented at such conference, but it is clear that if the local bodies authorized or allowed their delegates to make the extravagant demands they did, they ought not now to be surprised that the work has been very costly.

The apportionment in this case presents very great and unusual difficulties. The amount involved is very large, and the apportionment will therefore be exceedingly burdensome and distasteful to all the local authorities. The statute lays down no definite basis of apportionment, and the result of the inquiry demonstrated that it is impossible to make any apportionment that can be demonstrated mathematically or proved by the ordinary rules of evidence. In addition to this, there are no less than ten parties to the inquiry, all of whom are in the position of defendants, and who were represented by able and well-known lawyers.

As there was no party in the position of plaintiff, I called the parties together on the 30th September, 1912, and with their concurrence ordered a tally of traffic to be taken by the Railway Department. This tally was taken at various places on the road for a period of three weeks, night and day. The results were afterwards carefully compiled by the Railway Department, and taking each item of traffic as of equal value, and reducing all traffic that used only part of the road to a proportionate use of the whole road, it appeared that the ratio of traffic for each district was as follows, which for the purpose of this report I call Result No. 1:—

Wellington .. .. .	43.55 per cent. of total traffic.
Petone .. .. .	15.25 ..
Lower Hutt .. .. .	12.87 ..
Hutt County .. .. .	7.42 ..
Onslow Borough .. .. .	4.47 ..
Makara County .. .. .	11.71 ..
Johnsonville .. .. .	2.84 ..
Miramar .. .. .	0.13 ..
Upper Hutt .. .. .	1.48 ..
Eastbourne .. .. .	0.28 ..

There being no statement of claim for the parties to answer, I adopted this result as showing *prima facie* what such claim might be, and I called upon the parties to show cause why the cost of the road should not be apportioned in that way accordingly, but I clearly stated that if any party was dissatisfied with these results it was open for such party to examine the tally-sheets and compile a summary therefrom, and also that I had not adopted these results as final.

When the parties appeared before me on the 1st May, 1913, the case was argued from this standpoint.

I will deal first with the legal questions which were raised at the inquiry, then I will consider the case against each district separately, but in considering the case against Wellington I will deal with all the main contentions that were raised in the case. Finally I will summarize my conclusions.

#### LEGAL QUESTIONS.

When the case was resumed on the 1st May, 1913, counsel for Onslow asked me to state a case for the opinion of the Supreme Court on the following points, before proceeding further:—

- (1.) Whether I had any jurisdiction whatever to act as Commissioner.
- (2.) If so, what procedure should be adopted in arriving at a basis for contribution.
- (3.) Whether I had a right to apportion the contribution on—
  - (a.) A capital-value basis;
  - (b.) A population basis;
  - (c.) A traffic-user basis.
- (4.) Whether in considering the proportion of the traffic and the basis of apportionment, traffic should be debited to the place of origin or to the place of destination.
- (5.) Whether in assessing the proportion payable by the Onslow Borough the value of the land gained by the Crown by the making of the road should be taken into consideration.

This proposition was supported by the counsel for Makara County and the Upper Hutt Town Board. It was contended by counsel for Onslow that I had no jurisdiction, but neither he nor any of the others gave any reasons whatever for such contention. As I believed that I had power to proceed, and as no *prima facie* reasons were given to show want of jurisdiction, I declined to stay proceedings; but promised that I would reserve the question as to the special case until after the evidence had been taken.

I have carefully considered the matter and have come to the conclusion that it would be a useless waste of time and money to state a special case. My reasons are—

- (a.) I have only power to state a case where there is a *dispute on a point of law* (see section 10, Commissioners' Powers Act, 1908), and a mere assertion by defendants that I have no jurisdiction, without their giving evidence or argument to support such assertion, is not a dispute within the meaning of the statute.
- (b.) The only ground, so far as I can see, on which it could be successfully contended that I have no jurisdiction arises from the fact that the Mackenzie Government tendered its resignation on the 6th July, 1912, and the Warrant of my appointment is signed by Mr. Myers, Minister of Railways, on the 8th July, 1912. It might therefore be held that he had then vacated office and that the appointment was bad; but the facts are that the Governor did not accept the resignation of the Mackenzie Government until the 10th July (see *Gazette*, 11th July, 1912). The Mackenzie Government, according to law and precedent, retained office until their resignation was accepted, and my appointment, made two days before then, is therefore valid. Even if it were held to be invalid, the fact that you, as Minister of Railways, personally directed me to proceed with the inquiry is alone sufficient to give jurisdiction.

As regards the other points upon which it was suggested I should state a special case, these are all questions of instruction or procedure, and there is direct authority for assuming that the Supreme Court will not give a Commissioner any such instructions. In the special case *re* Waipawa, Waipukurau, and Dannevirke cases (New Zealand Law Reports, xxvii, page 863), stated by me, the statute was silent as to the principles upon which the Commissioner should act in making the apportionment. In that case it will be seen that the Court decided that it would not lay down any legal rule for the guidance of a Commissioner in making such an apportionment, and that the matter is in the entire discretion of the Commissioner, who must proceed according to the principles of natural justice.

A direction of the Court would no doubt be most helpful in this difficult case, but, for reasons given above, I conclude that the Court would be unable to give any other directions than was given in the Waipawa case—viz., that I must proceed according to the principles of natural justice, and it is on these principles that I have endeavoured to base my award.

With reference to the question as to whether in assessing the proportion payable by Onslow I should consider the value of the land gained by the Crown by the making of the road, this question refers mainly to an area of flat land at Kaiwarra taken for railway purposes, and for which Onslow will lose the rates it could have collected therefrom if it had not been taken. I am of opinion that this has nothing to do with the question of apportioning the cost of the road.

Counsel for Petone also urged that I should credit any district with any part of the road closed in its district and sold, but it appears to me that this is a matter for adjustment in arriving at the cost of the road to the various parties, with which I have nothing to do.

A point was raised during the inquiry by counsel for Wellington that I am bound by the decision of Mr. Haselden, S.M., and that as the parties ultimately adopted his apportionment and allowed it to be embodied in the Hutt Road Act, 1903, the case is governed by the principle *Stare decisis* and is virtually *res judicata*.

This contention will not stand investigation. I have carefully read Mr. Haselden's report, which, by the way, deals with only about a third of the road. He entirely absolved the Hutt County from liability, because at that time the Hutt County controlled nearly all the rest of the road and had to maintain it for the benefit of traffic from Wellington, Lower Hutt, and Petone. He took into consideration the fact that Onslow had by law to maintain the part of the road which was the subject of the inquiry, but none of these facts are true at the present time; and he limited his apportionment to four cities or boroughs only—Wellington, Petone, Lower Hutt, and Onslow. The present law requires that the cost shall be borne by ten local bodies, including the adjacent counties, so that Mr. Haselden's apportionment cannot be adopted. Even if it be held that I must be guided as regards Wellington and Petone by his report I find that the nature of the traffic has changed. In the tallies of traffic taken for the purposes of that inquiry no mention is made of motor-cars, which were then almost unknown. Now they are very numerous, especially from Wellington.

The population of Wellington as disclosed by Mr. Haselden's report was 43,638, and the capital value was £7,372,342. The figures are now 64,372 and £18,228,584 respectively, and most of the other districts except the Hutt County show similar disparity.

The conditions now are therefore totally different from what they were when Mr. Haselden's report was made.

Mr. Haselden does not attempt to explain the basis on which he made his apportionment, neither does he argue the case to a definite conclusion. He gives a simple award, after considering the facts as they appeared to him at the time. He does not say what those facts were, and as I do not know, and with all respect to him, I cannot therefore be bound by his decision, but I have not departed therefrom in any case without full consideration.

#### CONSIDERATION OF THE CASE IN RESPECT TO EACH PARTY.

##### *Wellington.*

Wellington objects to contribute 43.55 per cent. of the cost, as disclosed by Result No. 1. It objects, among other things, to the assessment being made on the traffic valuation or rateable basis. Its counsel contends that the assessment cannot be determined by a numerical ratio. He also contends "that the Commissioner is in the position of a Judge without a jury, and must inform himself as to the law, and then act as a jury, and in so doing he must take note of every factor and weigh these matters accurately and clearly. He must pay full regard to previous decisions and carefully consider the basis of existing legislation." With much of this I am in full accord, and I will say at once that in my opinion the apportionment cannot be made on the basis of ratio traffic alone, but the law in a case like this evidently requires me to consider traffic as an important factor.

The general law on the subject is to be found in section 109 of the Public Works Act, 1908. This section, in its original form in the Public Works Amendment Act, 1900, was intended to meet the case of the Hutt Road, and Mr. Haselden's report is based upon it.

Section 109 of the Public Works Act, 1908, requires a local body to contribute if the road affords access to its district *and the road is largely used by or for the purpose of traffic* to or from such district. This section also applies the provisions of section 119 of the Act to the construction of a road. The last-mentioned section implies that a local body must contribute if the work is of advantage and benefit to the whole or a considerable portion of its inhabitants, and it is just and equitable that it should so contribute. This is the general law, and there are no other enactments that conflict with this. If, therefore, this apportionment were being made under the general law, I should be required to ascertain, first of all, the use of the road by traffic; secondly, I should be required to find out whether or not it gave access to the district to be charged; thirdly, whether the road benefited or was likely to be of advantage and benefit to a considerable portion of the district to be charged; and, lastly, whether it is just and equitable that the charge should be made.

The Hutt Railway and Road Improvement Act, 1903, and its amendments lays down no basis or form of procedure. It simply provides for the appointment of a Commissioner to make the apportionment. In so doing, it evidently assumes that the Commissioner will follow the principles of the general law. Even if the act of 1903 does not imply this, then the direction of the Supreme Court in the case already quoted of the Waipawa, Waipukurau, and Dannevirke Counties is in point. Under that decision the Commissioner must proceed according to the principles of natural justice, and it is difficult to see how the principles of natural justice can be better applied to this case, save and except in the manner set forth in the general law above referred to.

I shall therefore consider, first of all, the use made of the road for the purposes of traffic to and from Wellington; then I will consider the other equities.

The summary of the tally of traffic taken by the Railway Department (Result No. 1) shows that, counting each item of traffic separately, there were 26,505 items that affected the districts who are required to contribute, and the proportionate use on this basis is stated in Result No. 1 already given. Some of the parties, however, contended that a proportion based on these lines was unfair, inasmuch as it does not discriminate between heavy and light traffic, and that a bicycle or a sheep counts thereunder as much as a wagon or a motor-car, and that, as the road was built for heavy traffic, that sort of traffic should be a much greater debit to the district from which it comes, or to which it goes, than does a bicycle or any other light traffic. I have therefore, for the sake of comparison, reduced the whole traffic to the equivalent of "heavy traffic." In doing so, I have followed the figures supplied to the parties at the inquiry, and I have also reduced such traffic to an equivalent use of the whole road, where such traffic used only part of the road.

I do not suppose my formula for reducing light to heavy traffic will escape criticism. It is a subject on which few people will agree. I trust, however, that the following will be accepted as not unreasonable. This formula is based on the definition of "heavy traffic" in section 139, Public Works Act, 1908, which is  $1\frac{1}{2}$  tons to a pair of wheels. This, of course, means a dray  $1\frac{1}{2}$  tons or a wagon or lorry 3 tons. I consider that a wagon or lorry is equal to two drays. A dray is usually equal to three light traps or carts. A light cart or trap usually can carry four people, and it is therefore equal to four bicycles. A motor-car may not be as heavy as a loaded wagon. It is often heavier than a dray, but as it has no horses, I conclude that its effect on the road when going at speed is equal to a dray. I therefore assess it as equal to a dray. I assess ten cattle or thirty sheep as equal to a lorry.

As already stated, the results of the tally of traffic shows that during the time it was taken 26,503 items of traffic used the road or parts of it. This number is equal to a use of the whole road of 12,364 items of traffic, and it is on this basis that the proportions of traffic in Result No. 1 are founded.

On exactly the same basis, and following exactly the same methods, but reducing all the traffic to an equality of heavy traffic in accordance with the above formula, I find that the 26,503 items of traffic are equal to the traffic of 3,575 lorries or wagons for the whole road, and the result as between the parties on this basis, which for the purpose of this report I shall call Result No. 2, is—

Wellington	..	..	..	..	1,693.04 = 47.36 per cent.
Petone	..	..	..	..	484.12 = 13.54 ..
Lower Hutt	..	..	..	..	474.73 = 13.27 ..
Hutt County	..	..	..	..	301.86 = 8.44 ..
Onslow	..	..	..	..	108.26 = 3.03 ..
Makara	..	..	..	..	355.50 = 9.95 ..
Johnsonville	..	..	..	..	80.36 = 2.25 ..
Miramar	..	..	..	..	9.56 = 0.27 ..
Upper Hutt	..	..	..	..	55.58 = 1.56 ..
Eastbourne	..	..	..	..	12.00 = 0.33 ..
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					3,575.01 100 ..

Some of the parties contended that the true method of arriving at a ratio of traffic as showing its benefit to the various districts was to take the place of origin of the traffic. An attempt was made in taking the tally of traffic to ascertain the place of residence of the owners, but the return was not quite complete, owing to difficulties which the tally clerks experienced in obtaining the information. So far as it goes, it went to show that, not including bicycles, 17,467 vehicles, of which the owners are known, used the whole or parts of the road. The use of the road on this basis, which for the purpose of this report I shall call Result No. 3, was—

Wellington	..	..	..	..	7,640 = 43.74 per cent.
Petone	..	..	..	..	2,239 = 12.94 ..
Lower Hutt	..	..	..	..	1,368 = 7.84 ..
Hutt County	..	..	..	..	565 = 3.23 ..
Onslow	..	..	..	..	2,228 = 12.75 ..
Makara	..	..	..	..	2,425 = 13.90 ..
Johnsonville	..	..	..	..	860 = 4.92 ..
Miramar	..	..	..	..	30 = 0.17 ..
Upper Hutt	..	..	..	..	58 = 0.32 ..
Eastbourne	..	..	..	..	34 = 0.19 ..
					<hr/>
					17,467 100 ..

This result is somewhat remarkable in so far as Wellington is concerned. It is almost the same as Result No. 1, and it is not very far removed from Result No. 2, and it is very close to the ratio of traffic for Wellington, as shown in Mr. Haselden's report, thus:—

Result No. 1	..	..	..	= 43.55 per cent.
Result No. 2	..	..	..	= 47.36 ..
Result No. 3	..	..	..	= 43.74 ..
Mr. Haselden's report	..	..	..	= 44.3 ..

This clearly demonstrates the fact that at least 44 per cent. of the total traffic, or 47 per cent. of the heavy traffic, using the road either comes from or goes to Wellington.

Counsel for Wellington pleaded that the traffic was not a true basis for apportionment. He contended that the test was the economic dependence of each district on the road. By "economic dependence" he appeared to mean the dependence of a district for its very life on the existence of the road: thus parts of Makara and Hutt County and Onslow Borough would suffer severely if the road did not exist, but he contended that Wellington would not suffer proportionately, as it has two railways as arteries for traffic. This contention is open to serious doubt, because the other districts are also served by railways. He also contended that the economic dependence was in the following order of dependency, viz. :—

- (1.) Makara and Hutt Counties, Onslow, and Johnsonville.
- (2.) Petone and Lower Hutt Boroughs, and Upper Hutt Town Board.
- (3.) Wellington City, Miramar Borough, and Eastbourne.

Under this argument it will be seen that the assumption is that the Hutt Road is three times more valuable to the districts mentioned in No. 1 than it is to those in No. 3, or twice as valuable to those in No. 2 as to those in No. 3, or only two-thirds as valuable to those in No. 2 as to those in No. 1. This contention is, I think, on the face of it, unreasonable.

There were some other contentions raised by the counsel for Wellington, which I will deal with later on.

Only one witness—viz., the City Engineer—was produced to support the Wellington case, and he tried with great ability and ingenuity to do so. He contended that as the request for improvement of this road came from outside bodies, they should bear the greater part of this cost, and that as Wellington was a receiving and distributing depot, and as much of the goods that came along the Hutt Road went direct to the wharves, this traffic did not benefit the city, and should not be debited to it. He contended also that the contiguity and the area of land benefited by the road should be considered. He proceeded to show that the apportionment should be decided by factors: that is to say, he based his scheme of apportionment on acreage of land benefited. He assumed that the factor of 3 represented extreme benefit, and lesser factors for lesser benefits. He propounded the following scheme, viz. :—

District.	Area benefited.	Represented by Factor of	Giving Assumed Value of	Shows Apportionment of Cost.
	Acres.		£	Per Cent.
Wellington .. .. .	1,200	3	3,000	24·90
" .. .. .	8,300	$\frac{1}{2}$	4,150	
Onslow .. .. .	1,000	3	3,000	12·52
" .. .. .	1,000	1	1,000	
Petone .. .. .	1,060	3	3,180	10·22
Lower Hutt .. .. .	3,255	1	3,255	10·44
Eastbourne .. .. .	1,380	$\frac{1}{3}$	460	1·50
Miramar .. .. .	2,250	$\frac{1}{3}$	750	2·41
Hutt County .. .. .	309,210	$\frac{1}{40}$	7,500	24·10
Makara .. .. .	64,640	$\frac{1}{20}$	3,230	10·38
Johnsonville .. .. .	1,140	$\frac{1}{2}$	570	1·83
Upper Hutt .. .. .	1,280	$\frac{1}{3}$	430	1·40

The difficulty in making an apportionment on any such basis as this is that the allocation of factors in this way is purely arbitrary and guesswork, and no two people would be likely to value the factors alike. He could not prove why he fixed these factors other than it was his opinion that these factors should be chosen. No other evidence was given in proof of this system of apportionment, and none of the other parties supported it. It is admittedly based on area and contiguity, and not on use and benefit as required by the general law, though of course he must have considered use and benefit in allocating his factors. The results which he arrives at are extraordinary. Thus a proposal to charge the Hutt County with almost the same proportion as Wellington is evidently quite unjust. His evidence is, however, useful, as it impliedly admits that Wellington should at least pay 25 per cent. It is also remarkably that with the exception of Wellington and Hutt County, the other results are not very far different from Results Nos. 1 and 2, disclosed by the traffic, and to that extent the City Engineer's evidence supports the evidence of these results.

As regards the contention that some of the heavy traffic goes direct to the wharves, and does not benefit the city, this I think is true. These wharves are vested in a wealthy Harbour Board, and it was contended that that Board ought to have been a party to contribute. This

has not been done, and as a good deal of the heavy traffic comes by road direct to the wharves the City of Wellington gets no benefit therefrom, but gets its roads damaged thereby. I am of opinion that this should reduce the Wellington quota somewhat, and I have allowed a substantial reduction on this account.

It was contended also that trade from the outside districts uses the continuation of the Hutt Road in the city. In my opinion the city gets its *quid pro quo* for this, for every main avenue that brings traffic by easy means from outside districts to the city is a direct benefit to the city. Moreover, the city traffic uses the roads of the outside districts without toll or other charge.

It was contended by some of the other parties that rateable value, population, and revenue should be considered in making the apportionment. This was opposed by Wellington, and rightly so. In my opinion neither of these would form a fair basis. If either of them were taken, Wellington would be debited as follows: Rateable value, 72·86 per cent.; population, 72·79 per cent.; total receipts, 76·14 per cent.: and to use any of these as a basis of apportionment would be grossly unfair.

As regards the benefit of the Hutt Road to Wellington, this road is peculiar inasmuch as it is its one and only great artery for traffic, other than railway traffic. The traffic on the three or four roads to Makara, Karori, Johnsonville, &c., are not comparable with it. The Hutt Road is now largely used by Wellington for pleasure traffic by motor and cycle, and this will increase as motors get reduced in price and population increases.

The outside districts get little advantage from this class of traffic, and they claim that Wellington should pay for it. In addition to this, 14 chains of the road are actually in the city, and the city has been relieved of the cost of constructing this portion, and this must be a debit against the city in making the apportionment. (See my remarks against Onslow and Makara later on.) It is also a fact that the city water-mains traverse the whole road, and, although Wellington has a statutory right to place them there, it helps to show how very valuable the road is to Wellington. This road is also used by the City Corporation from time to time in carting heavy material to its waterworks at Wainuiomata.

If the road were a bridge joining Wellington to the other districts, the evidence given could justify an assessment of nearly 50 per cent. against Wellington. The road is a line somewhat analogous to a bridge, but as other considerations come into this case that do not apply to a bridge, it is clear that so great an assessment cannot be made. The City Solicitor claims that Wellington should not pay more than 20 per cent., but his own witness admits that about 25 per cent. is payable, and, moreover, under Mr. Haselden's apportionment, which was afterwards accepted by the city, it would have had to pay 29·16 per cent. for part of the road, while the use of the whole road reduced to the equality of heavy traffic shows that Wellington's share is 47·36 per cent. of the whole.

The foregoing facts show that Wellington has failed to prove that its interests in the road are as small as it contends; and, after considering all the equities to the contrary pleaded before me, and after allowing for these and for the fact that some of the heavy traffic debited to Wellington goes to the wharves and is no direct benefit to Wellington, I am of opinion that if, say, about 10 per cent. is deducted from the results of heavy traffic to cover all these things, thus leaving, say, 38 per cent., this would be a just proportion for Wellington to pay, and after most carefully considering all the facts of this difficult case I am unable to see that equity can be satisfied with any less contribution.

#### *Petone.*

In this case the use of the road by or for the purpose of Petone is shown in—

Result No. 1	..	..	..	..	15·25 per cent.
Result No. 2	..	..	..	..	13·54 „
Result No. 3	..	..	..	..	12·94 „
Mr. Haselden's report	..	..	..	..	16·6 „

Petone pleads that its main road, which is a continuation of the Hutt Road, is used by traffic from all the other districts, and this should be taken in mitigation of the amount it would otherwise have to pay. Some slight reduction should, I think, be allowed for this, but it must be remembered that much of its traffic uses the Wellington streets. It also pleads that much of the heavy traffic from Petone comes from the freezing-works, which is largely a Wellington company, and that this should be considered in reduction. The industry is, however, a Petone industry, and as such Petone must shoulder its own burden, and should



levy such rates on the property, or levy such license fees on the vehicles that use the road, as will recoup itself and make this company pay a fair share of the burden of the borough. No proof was given that the bulk of the shareholders in the Freezing Company resided in Wellington.

Much of the argument of the two learned counsel who represented Petone was directed towards showing what some of the other districts ought to pay, and it appeared to me that this was done for fear I should follow Mr. Haselden's apportionment, which was seven twenty-fourths or about 29 per cent. of the cost against Petone. I have tried to ascertain why he assessed Petone at such a high rate, but cannot find the reason. The traffic returns certainly did not support it, and I can only assume that he considered that Petone was specially dependent upon the road, and that there was a great future development before it.

The evidence before me did not disclose any special dependency, but it showed that the road is largely used by it, and for this reason the road must be of considerable benefit to it. I think, also, that there is something to be said as to the future development of Petone, and the benefit of the road in connection with the same. I am of opinion that both by its position and by the fact of its large area of flat ground, Petone will ultimately become the main manufacturing centre for the Wellington District, and that there will be a dense population extending to the Lower Hutt. It has a water-frontage which may be made better use of as time goes on than it is at present. It has several large industries, and another one is about to start, and any day may see some cheap mechanical traction invented that will successfully compete on the road against the railway and thus benefit these industries. The opening of the new Hutt Bridge will divert traffic through Petone that now goes by way of Lower Hutt, and I am of opinion that as this advance takes place, the Hutt Road will be of much more use proportionately to Petone than to any other district. For these reasons, and allowing something off for the use of its main road, but adding something from the fact that 3 chains of the road are in Petone Borough, it appears to be just that Petone should pay a larger contribution than is indicated by the results of the tally of traffic, and after full consideration I assess this contribution at 18 per cent.

#### *Lower Hutt.*

The use of the road for the purposes of this district is shown by—

Result No. 1	..	..	..	..	12.87 per cent.
Result No. 2	..	..	..	..	13.27 „
Result No. 3	..	..	..	..	7.84 „
Mr. Haselden's report	..	..	..	..	17.06 „

He assessed the borough at five twenty-fourths or 20.8 per cent. In this case also, I think, he must have taken into account the fact of the future development of the borough. In my opinion this will take place as Petone develops, but not at first to the same extent. For this reason, and as the quota of heavy traffic concerning this district is only 13.27 per cent., and after most carefully considering the matter, I assess the Lower Hutt at 14 per cent.

#### *Hutt County.*

In this case the use of the road for the purposes of the county is shown in—

Result No. 1 as	..	..	..	..	7.42 per cent.
Result No. 2 as	..	..	..	..	8.44 „
Result No. 3 as	..	..	..	..	3.23 „
Mr. Haselden's report	..	..	..	..	20.05 „

But this latter was before Onslow Borough and Makara County were separated from the Hutt County.

It is clear that the Hutt County does not derive anything like so much benefit from the road as do some of the other districts. The part of the county at all likely to use this road lies several miles away from it. This county is mostly rough and broken, and is hardly of a character to carry a great population or be of much value, and I do not think that traffic from the county will increase in the same proportion as in other districts. Taking all facts into consideration, I think that about 8 per cent. would be a fair assessment.

Counsel for the Hutt County propounded a scheme of apportionment based on the mean results of the total of traffic valuation and population for each district, and, to evade the difficulty which is obvious under such an apportionment by which Wellington would be severely

dealt with, he doubled the results in cases where he contended that the outside districts would increase largely in the future. This method of doubling values is, however, purely arbitrary, and not, in my opinion, based either on the provision of the general law or on any ascertained facts, and I cannot therefore recommend that this scheme be adopted.

*Onslow Borough.*

The results in this case are—

Result No. 1	..	..	..	..	4.47 per cent.
Result No. 2	..	..	..	..	3.03 „
Result No. 3	..	..	..	..	12.75 „

This last result differs from the others, because the two former are reduced to a comparative use of the whole road, whereas the last represents total ownership, without reference to the use of the road.

The ratio of traffic shown in Results Nos. 1 and 2 in this case do not indicate a just apportionment, because the road forms the main street in the Borough of Onslow. In other words, this portion of the road amounts to about 24 per cent. of the whole road which is the subject of the present claim.

According to Mr. Haselden's report, Onslow was required to contribute five twenty-fourths or 20.8 per cent. of the cost. This very high assessment was evidently imposed because the borough was by law required to keep this part of the road at its own cost, and it was only because it could under the Public Works Act get some assistance from outside districts that this burden was to some extent lifted from its shoulders.

The same thing is, in a measure, true to-day, only that some other authority is now charged with the construction of the road, and later on another body will be entrusted with its maintenance, but this ought not equitably to relieve the Borough of Onslow of its just quota of liability to contribute. The Borough of Onslow has therefore a duty to contribute to the road as being its main thoroughfare, quite apart from the question as to how much its traffic uses the other parts of the road.

If this were a simple case the measure of contribution would be the difference between the total cost of the road, sufficient to carry Onslow traffic, and the extra expense caused by having to make a road sufficiently strong and wide to carry traffic from outside districts as well. Mr. Haselden assessed this at 20.8 per cent. This is equal to 5 per cent. for the whole road.

The cost of the road in Onslow alone has been approximately nearly £24,000. This has only benefited Onslow to a small extent; but if the local bodies are to pay for constructing the road, it does not appear to be at all unreasonable that Onslow should pay something additional towards this cost as well as something for its use of the other parts of the road, and which use Result No. 2 shows is equal to about 3 per cent. for heavy traffic. Taking these facts into consideration, I conclude that it ought to pay 6 per cent. of the cost.

*Makara County.*

The traffic on the road which concerns Makara County is shown to be—

Result No. 1	..	..	..	..	11.71 per cent.
Result No. 2	..	..	..	..	9.95 „
Result No. 3	..	..	..	..	13.90 „

This shows a very considerable use of the road for the purpose of traffic to and from Makara County. The County contends, however, that the road is of very little use to its inhabitants, and that its main use, so far as Makara is concerned, is in respect to traffic to and from the Meat Export Company and the Wellington City Corporation abattoirs at Ngahauranga, and also from the quarry in Ngahauranga Gorge, in all of which industries Makara derives very little profit and small rates. It contends also that the abattoirs are an industry carried on by the Wellington City Council, and that the traffic to and from these abattoirs should be debited to the city.

In so far as the question of small rates and little use is concerned, Onslow must bear its own burden in the same way as Petone and other places have to do theirs; but as regards traffic to and from the abattoirs there appears to be some slight equity in favour of Onslow and as against Wellington City.

There is one very strong equity against Makara, inasmuch as 3 miles 26 chains 28 links of the road are wholly within the county. The County pleads that the reconstruction of this

part of the road has not benefited the adjacent land at all, as it is precipitous and steep. This I think is true, but no evidence was given to show that the reconstruction of the road had increased values in any other district, save and except perhaps to a slight extent at Kaiwarra. The fact also remains that it was the legal duty of the Makara County to keep the road in proper order for traffic, and that as the result of the statute has been to relieve the county of its full burden, it ought in equity to the other bodies bear its fair share of the same, and this share cannot be determined by the quota only of traffic in respect to which its people derive benefit. In this respect Makara and Onslow are on a different footing from the rest of the districts.

The approximate cost of constructing the 266 chains of the road in Makara County is somewhat over £60,000, and the share of this sum properly chargeable to Makara in any ordinary case would be the cost of a road reasonably sufficient for its own traffic. What that cost would be is now almost impossible to estimate. The county would probably say that the old road was good enough for its traffic. The fact is that Parliament has ordered that a new road should be made, and that Makara should contribute thereto; and, this being so, and judging by its use of the new road as disclosed by the tallies of traffic, and taking all other equities into consideration, and after allowing a fair reduction for the abattoir traffic, I am of opinion that Makara ought justly to bear 12 per cent. of the cost.

#### *Johnsonville Town Board.*

The use of the road for the purposes of Johnsonville as shown by the tallies of traffic is as under:—

Result No. 1	...	..	..	..	2.84 per cent.
Result No. 2	..	..	..	..	2.25 "
Result No. 3	..	..	..	..	4.92 "

The first two results relate to a comparative use of the whole road; the last one for the most part refers to a partial use of the road—viz., from Ngahauranga to Wellington. If the 4.92 per cent. is reduced to a comparative use of the whole road, it gives the result of about 2.03 per cent. for the whole road.

It is clear from the other evidence that Johnsonville does not use the road very largely, and that the reconstruction of the road has not benefited the town appreciably.

It was proved that the tally of traffic was slightly incorrect in so far as Johnsonville is concerned, and, taking all these and other facts into consideration, and allowing for expansion when the Ngahauranga Gorge Road is improved, and comparing it with the Upper Hutt Town Board, I am of opinion that if it paid 2 per cent. of the cost it would be fair.

#### *Miramar.*

Very little traffic from this district uses the road, and it is manifest from its geographical position that the road never can be of much advantage to Miramar. The traffic in which Miramar is interested was—

Result No. 1	..	..	..	..	0.13 per cent.
Result No. 2	..	..	..	..	0.27 "
Result No. 3	..	..	..	..	0.17 "

This would only support an apportionment of, say, 0.20 per cent., or say, in round numbers,  $\frac{1}{5}$  per cent.; and this I consider is the limit of its interest.

#### *Upper Hutt Town Board.*

The evidence in this case did not prove any great use of the road by or for the purposes of the Board. The results of the tallies of the traffic are—

Result No. 1	..	..	..	..	1.48 per cent.
Result No. 2	..	..	..	..	1.50 "
Result No. 3	..	..	..	..	0.32 "

From these results it appears that very few of the vehicles using the road are owned in the Upper Hutt, but it is clear that its use for heavy traffic is equal to  $1\frac{1}{2}$  per cent. of the whole. It is true that some slight errors were made in the tallies which would reduce this somewhat; and, this being so, the facts, in my opinion, prove that it ought to pay  $1\frac{1}{4}$  per cent. of the cost.

Eastbourne.

The results of the tallies of traffic in this case shew a very small use. They are—

Result No. 1	..	..	..	..	0.28 per cent.
Result No. 2	..	..	..	..	0.33 „
Result No. 3	..	..	..	..	0.19 „

This will not support a large contribution. I think, however, that something should be allowed for expansion. Eastbourne will be closer by road to the Hutt Road now that the new Hutt Bridge will be opened, and this will induce traffic to it. Counsel for Eastbourne pleaded that the main connection between it and Wellington was by steamer, and this is true. At the same time I am of opinion that with the great increase in motor vehicles which is evidently coming, the Borough of Eastbourne will be brought into much closer touch with Wellington than is now the case, for ten or fifteen miles is nothing for a modern motor-car. I consider, therefore, that it is fair that Eastbourne should bear  $\frac{1}{2}$  per cent. of the cost.

CONCLUSION.

For reasons already given I hereby report that in my opinion the evidence shows that the cost of forming and constructing the new Hutt Road ought to be borne in the following proportions:—

Wellington City	..	..	..	..	38 per cent. of the cost.
Petone Borough	..	..	..	..	18 „ „
Lower Hutt Borough	..	..	..	..	14 „ „
Makara County	..	..	..	..	12 „ „
Hutt County	..	..	..	..	8 „ „
Onslow Borough	..	..	..	..	6 „ „
Johnsonville Town Board	..	..	..	..	2 „ „
Upper Hutt Town Board	..	..	..	..	1 $\frac{1}{4}$ „ „
Eastbourne Borough	..	..	..	..	$\frac{1}{2}$ „ „
Miramar Borough	..	..	..	..	$\frac{1}{4}$ „ „

100

The effect of this apportionment or any other apportionment will, if adopted, be very severely felt by all the local bodies, for in addition to their share of the future cost of maintaining the road, they will also have to contribute annually the following amounts as interest and sinking fund (at 5 per cent.) on the cost of the road, assuming that it has cost about £100,000 as is alleged by the Railway Department, viz. :—

Wellington City	..	..	..	..	..	£ 1,900 a year.
Petone Borough	..	..	..	..	..	900 „
Lower Hutt Borough	..	..	..	..	..	700 „
Makara County	..	..	..	..	..	600 „
Hutt County	..	..	..	..	..	400 „
Onslow Borough	..	..	..	..	..	300 „
Johnsonville Town Board	..	..	..	..	..	100 „
Upper Hutt Town Board	..	..	..	..	..	62 10s. a year.
Eastbourne Borough	..	..	..	..	..	25 „
Miramar Borough	..	..	..	..	..	12 10s. „

£5,000

The parties contend that this is a colonial work, and they asked me to bring the above facts before your notice, in the hope that under the peculiar circumstances connected with this case the Government would see its way to reduce the claim against the local bodies to £25,000. I have done so, but, as this is a question of policy, it is not fitting that I should express any opinion thereon.

I have, &c.,  
W. S. SHORT, Commissioner.

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