

1928.

NEW ZEALAND

BOROUGH OF OTAKI

(REPORT OF COMMISSION OF INQUIRY *RE*).

Presented to both Houses of the General Assembly by Leave.

COMMISSION.

APPOINTING A COMMISSION TO INQUIRE INTO AND REPORT ON CERTAIN MATTERS AFFECTING THE BOROUGH OF OTAKI AND LANDS ADJACENT THERETO.

CHARLES FERGUSSON, Governor-General.

To all to whom these presents shall come, and to ROBERT MACKENZIE WATSON, Esquire, of Feilding, Stipendiary Magistrate; WILLIAM THOMAS STRAND, Esquire, of Lower Hutt, Farmer; and WALTER NASH, Esquire, of Wellington, Secretary: Greeting.

WHEREAS representations have been made to the Government that certain lands presently included in the Borough of Otaki ought to be excluded therefrom, and also that certain lands adjoining the said borough (including lands formerly part of the said borough) ought to be included in the said borough, and also that the area comprised in the said borough is as a whole not suitable for municipal control:

And whereas complaints have been made to the Government as to the amount of rates levied by the Council of the said borough on the lands within the said borough, and as to the amount of special rates levied by the said Council on lands which, after becoming liable for such special rates, have subsequently been excluded from the said borough:

And whereas representations have been made that the amount of rates levied by the said Council on such lands within the borough as are used solely for farming purposes is excessive, having regard to the benefits received or likely to be received by those lands from the works carried out or proposed to be carried out by the Council of the said borough:

And whereas it is expedient that inquiry should be made into the working of the existing laws relating to the severance and addition of areas of land from and to boroughs, and relating to the continuing liability for special rates of lands severed from boroughs, and the levying of special rates on lands so severed from and added to boroughs and relating to the incidence of rates on lands in boroughs, having regard to the purposes for which such lands are used and occupied and to the purposes for which such lands are applied so far as the said existing laws affect the Borough of Otaki, and into the working of the existing laws relating to municipal control as applied to the local conditions of the area now comprised in the Borough of Otaki:

And whereas a requisition under section twenty-two of the Health Act, 1920, was issued by the Board of Health on the fifteenth day of June, one thousand nine hundred and twenty-six, requiring the Otaki Borough Council to provide within its district certain sanitary works therein particularized, and the terms of the said requisition have not yet been complied with, and it has been represented to the Government that compliance with the said requisition would produce hardship, and it is expedient that inquiry should be made into the working of the existing laws relating to such requisitions so far as they affect the Borough of Otaki :

And whereas legislation has been proposed to make special provision in respect of the several foregoing matters for the Borough of Otaki :

Now, therefore, I, General Sir Charles Fergusson, Baronet, Governor-General of the Dominion of New Zealand, in pursuance and exercise of the powers and authorities vested in me by the Commissions of Inquiry Act, 1908, and of all other powers and authorities enabling me in this behalf, and acting by and with the advice and consent of the Executive Council of the said Dominion, and for the purposes herein set forth, do hereby appoint you, the said

ROBERT MACKENZIE WATSON,
WILLIAM THOMAS STRAND, and
WALTER NASH,

to be a Commission to inquire into and report upon the following matters :—

- (1) Whether the area now comprising the Borough of Otaki is suitable for municipal control, or whether it is desirable that the borough be abolished.
- (2) If it desirable that the borough be abolished, what provision should be made for the future control of the area now comprising the borough.
- (3) If it is not desirable that the borough be abolished, whether any alteration of boundaries thereof ought to be made either by the exclusion of lands from, or the inclusion of lands in, the borough.
- (4) Whether either in respect of any alteration of the boundaries of the said borough heretofore made or in respect of any steps recommended by the Commission under the foregoing paragraphs hereof it is desirable that the financial adjustments provided for by section 145 of the Municipal Corporations Act, 1920, should be made, or whether in view thereof it is desirable that other adjustments of a special nature should by reason of the circumstances of the case be made, and, if so, what adjustments should be made.
- (5) Whether it is desirable that the borough be divided into wards.
- (6) Whether the aforesaid requisition of the Board of Health should be given effect to, and, if so, what steps should be taken in order that such requisition may be given effect to.
- (7) Whether, and to what extent, having regard to the purpose or purposes for which any lands in the borough are used, it is desirable that for the purpose of the levying of rates by the Borough Council, either for its own purposes or as a contributory local authority under any Act, such lands be valued on a special basis other than the basis of valuation thereof under the Valuation of Land Act, 1925.
- (8) If it is considered advisable that any lands in the borough be valued for rating purposes on a special basis as aforesaid, then to what extent, if any, it is desirable that such lands be excluded from the rating-area in respect of any future loans secured by a special rate over rateable property within the borough.
- (9) To what extent, if any, it is desirable that lands that will not, or are not likely to, receive any benefit from the expenditure of loan-moneys should be excluded from the rating-area in respect of any future loans secured by a special rate over rateable property within the borough.

- (10) Whether it is practicable or desirable in any way to vary, by means of a system of differential rating, or by any other means, the incidence of rates and the relative amount of rates (whether general, special, or any other kind) that are or may hereafter be assessable in respect of any lands in the borough, or any lands that have been or will be excluded therefrom.
- (11) What restrictions, if any, should be placed upon the power of the Borough Council to amend under section 23 of the Local Bodies' Loans Act, 1926, any special rate either in respect of lands within the borough or in respect of lands which have been or may be excluded from the borough but so as to remain liable for any special rate.
- (12) Whether, notwithstanding the provisions of the Rating Act, 1925, as to the adoption of any particular system of rating in any district, it is desirable that any system of rating other than that now in force in the borough should be in force therein, and, if so, what system and by what means it should be adopted.
- (13) In the event of your reporting under the last preceding paragraph hereof that a system of rating other than that now in force in the borough should be adopted, what provision, if any, should be made for the future altering of the system so to be adopted.
- (14) Such other matters affecting or incidental to the Borough of Otaki, and the administration thereof by the Otaki Borough Council, as may come under your notice in the course of your inquiries and as you may think it necessary and desirable to consider.

And with the like advice and consent I do further appoint you, the said

ROBERT MACKENZIE WATSON,

to be the Chairman of the said Commission :

And you are hereby authorized to conduct any inquiry under these presents at such times and places as you deem expedient, with power to adjourn from time to time and place to place as you think fit, and to call before you and examine on oath or otherwise such persons as you think capable of affording you information as to the matters aforesaid, and to call for and examine all such books, papers, writings, documents, and records as you deem likely to afford you the fullest information on any such matters :

And, using all due diligence, you are required to report to me, under your hands and seals, not later than the twenty-first day of May, one thousand nine hundred and twenty-eight :

And you are hereby strictly charged and directed that you shall not at any time publish or otherwise disclose, save to me in pursuance of these presents or by my direction, the contents or purport of any report so made or to be made by you :

And it is hereby declared that this Commission shall continue in full force and virtue although the inquiry be not regularly continued from time to time or from place to place by adjournment :

And, lastly, it is hereby further declared that these presents are issued under and subject to the provisions of the Commissions of Inquiry Act, 1908.

Given under the hand of His Excellency the Governor-General of the Dominion of New Zealand, and issued under the Seal of that Dominion, this 5th day of March, 1928.

[L.S.]

A. D. McLEOD,
Minister in Charge of Valuation.

Approved in Council.

C. A. JEFFERY,
Acting Clerk of the Executive Council.

CHARLES FERGUSSON, Governor-General.

To all to whom these presents shall come, and to ROBERT MACKENZIE WATSON, Esquire, of Feilding, Stipendiary Magistrate; WILLIAM THOMAS STRAND, Esquire, of Lower Hutt, Farmer; and WALTER NASH, Esquire, of Wellington, Secretary: Greeting.

WHEREAS by a Warrant dated the fifth day of March, one thousand nine hundred and twenty-eight, you the said Robert Mackenzie Watson, William Thomas Strand, and Walter Nash were appointed to be a Commission under the Commissions of Inquiry Act, 1908, for the purposes in the said Warrant duly set forth:

And whereas by the said Warrant you were required to report to me not later than the twenty-first day of May, one thousand nine hundred and twenty-eight:

And whereas it is expedient that the said period shall be extended as hereinafter provided:

Now, therefore, I, General Sir Charles Fergusson, Baronet, Governor-General of the Dominion of New Zealand, in pursuance and exercise of the powers and authorities vested in me by the said Commissions of Inquiry Act, 1908, and of all other powers and authorities enabling me in this behalf, and acting by and with the advice and consent of the Executive Council of the said Dominion, do hereby extend the period within which you shall report to me as by the said Warrant provided to the twenty-first day of June, one thousand nine hundred and twenty-eight:

And in further pursuance and exercise of the powers and authorities vested in me by the said Act, and with the like advice and consent, I do hereby confirm the said Commission except as altered by these presents.

Given under the hand of His Excellency the Governor-General of the Dominion of New Zealand, and issued under the Seal of that Dominion, this 28th day of April, 1928.

[L.S.]

A. D. McLEOD,
Minister in Charge of Valuation.

Approved in Council.

F. D. THOMSON,
Clerk of the Executive Council.

REPORT.

To His Excellency General Sir Charles Fergusson, Baronet, G.C.M.G., K.C.B., D.S.O., M.V.O., Governor-General of the Dominion of New Zealand.

MAY IT PLEASE YOUR EXCELLENCY,—

The Commission intrusted to your Commissioners directed them to inquire and report upon the following matters:—

- (1) Whether the area now comprising the Borough of Otaki is suitable for municipal control, or whether it is desirable that the borough be abolished.
- (2) If it is desirable that the borough be abolished, what provision should be made for the future control of the area now comprising the borough.
- (3) If it is not desirable that the borough be abolished, whether any alteration of boundaries thereof ought to be made, either by the exclusion of lands from, or the inclusion of lands in, the borough.

- (4) Whether either in respect of any alteration of the boundaries of the said borough heretofore made or in respect of any steps recommended by the Commission under the foregoing paragraphs hereof, it is desirable that the financial adjustments provided for by section 145 of the Municipal Corporations Act, 1920, should be made, or whether in view thereof it is desirable that other adjustments of a special nature should by reason of the circumstances of the case be made, and, if so, what adjustments should be made.
- (5) Whether it is desirable that the borough be divided into wards.
- (6) Whether a requisition under section 22 of the Health Act, 1920, issued by the Board of Health on the 15th day of June, 1926, requiring the Borough Council to provide within its district certain sanitary works therein specified should be given effect to; and, if so, what steps should be taken in order that such requisition may be given effect to.
- (7) Whether, and to what extent, having regard to the purpose or purposes for which any lands in the borough are used, it is desirable that for the purpose of the levying of rates by the Borough Council, either for its own purposes or as a contributory local authority under any Act, such lands be valued on a special basis other than the basis of valuation thereof under the Valuation of Land Act, 1925.
- (8) If it is considered advisable that any lands in the borough be valued for rating purposes on a special basis as aforesaid, then to what extent, if any, it is desirable that such lands be excluded from the rating-area in respect of any future loans secured by a special rate over rateable property within the borough.
- (9) To what extent, if any, it is desirable that lands that will not, or are not likely to, receive any benefit from the expenditure of loan-moneys should be excluded from the rating-area in respect of any future loans secured by a special rate over rateable property within the borough.
- (10) Whether it is practicable or desirable in any way to vary, by means of a system of differential rating, or by any other means, the incidence of rates and the relative amount of rates (whether general, special, or any other kind) that are or may hereafter be assessable in respect of any lands in the borough, or any lands that have been or will be excluded therefrom.
- (11) What restrictions, if any, should be placed upon the power of the Borough Council to amend under section 23 of the Local Bodies' Loans Act, 1926, any special rate either in respect of lands within the borough or in respect of lands which have been or may be excluded from the borough but so as to remain liable for any special rate.
- (12) Whether, notwithstanding the provisions of the Rating Act, 1925, as to the adoption of any particular system of rating in any district, it is desirable that any system of rating other than that now in force in the borough should be in force therein, and, if so, what system and by what means it should be adopted.
- (13) In the event of the Commissioners reporting under the last preceding paragraph hereof that a system of rating other than that now in force in the borough should be adopted, what provision, if any, should be made for the future altering of the system so to be adopted.
- (14) Such other matters affecting or incidental to the Borough of Otaki, and the administration thereof by the Otaki Borough Council, as might come under the notice of the Commissioners in the course of their inquiries and as they might think it necessary and desirable to consider.

The Commission, dated the 5th March, 1928, required the Commissioners to report their opinion on the foregoing matters not later than the 21st day of May, 1928. Your Excellency's further Warrant, dated the 28th April, 1928, extended such period to the 21st June, 1928.

Your Commissioners duly advertised the sitting of the Commission in newspapers published in the City of Wellington (two), and in the Boroughs of Otaki and Levin, and cited parties as follows :—

- (1) The Otaki Borough Council.
- (2) The Horowhenua County Council.
- (3) The Porirua College Trust Board.
- (4) The Valuer-General.
- (5) The Under-Secretary for Lands.
- (6) The Director-General of Health.
- (7) W. Thomson, A. J. Fogden, J. L. Buick, A. Bolton, and Tews Brothers, leaseholders of lands which were, by Orders in Council, dated respectively 2nd August, 1926, and 22nd March, 1927, and hereinafter referred to, declared to be excluded from the Borough of Otaki and included in the County of Horowhenua.
- (8) L. H. Newport, C. H. Williams, A. Dixon, L. A. W. Edwards, and E. Ahern, freeholders of lands which were, by Order in Council dated 22nd March, 1927, declared to be excluded from the Borough of Otaki.
- (9) Edward Harry Letts and Robert Bruce Anderson, petitioners for exclusion from the Borough of Otaki.
- (10) Frederick Kilmister, Isabel Kilmister, Constance Olivia Tipler, Ida Louise Tipler, and Frederick George Letts, also petitioners for exclusion from the Borough of Otaki.

The Commission assembled at Otaki on Monday, 7th May, 1928, and commenced its sitting at the Courthouse, Otaki, on the morning of the following day. Mr. G. P. Shepherd, instructed by the Native Minister, and all the parties cited (except the Under-Secretary for Lands) appeared, either in person or by representatives, before the Commissioners. Mr. C. F. Atmore appeared as counsel for the Otaki Borough Council, and Mr. Martin Luckie for the persons named in groups (7) to (10) above, inclusive, with the exception of Mr. C. H. Williams, who appeared independently. The Horowhenua County Council was represented by Mr. G. A. Monk, Chairman, and Mr. F. H. Hudson, County Clerk; the Valuer-General, Mr. T. Brook, attended the sittings of the Commission, and the Health Department was represented by Dr. R. A. Shore, Medical Officer of Health, Wellington.

Mr. F. M. Martin, as counsel for the Porirua College Trust Board, addressed the Commission in Wellington.

The Commissioners held eight public sittings in Otaki and two in Wellington, and took evidence at considerable length. They also at various times visited the vicinity of the whole of the area now or formerly comprising the Borough of Otaki, and obtained extensive evidence and information from numerous Government Departments in the City of Wellington. The Commissioners further carefully perused all available reports in connection with the Borough of Otaki, and particularly those having reference to the inclusion and exclusion of lands in and from the Otaki Borough.

Enclosed herewith (Schedule A) are full notes of the evidence (with appendices and exhibits) and of addresses taken by the Commissioners at the public sittings of the Commission.

In the years 1907 (*vide New Zealand Gazette*, 1907, p. 1195) and 1910 (*vide New Zealand Gazette*, 1910, p. 4297) petitions were lodged praying for the constitution of a borough at Otaki. Neither petition was acceded to.

In the year 1912 an area comprising the Town of Otaki and some adjoining land (*vide Exhibit I*, and *New Zealand Gazette* 1912, p. 2731) was constituted a town district, and it became a town district apart from the County of Horowhenua in 1914 (*vide New Zealand Gazette*, 1914, p. 1149). On 4th March, 1919, the ratepayers of the Otaki Town District adopted, by 132 votes to 44, the system of rating on the unimproved value (*vide New Zealand Gazette*, 1919, p. 840).

In the year 1920, on a further petition to constitute a borough (*vide New Zealand Gazette*, 1920, p. 2396), a Commission was appointed which recommended the formation of a borough comprising the then Otaki Town District and portion of the adjoining county of Horowhenua. Certain objections were received and considered by the Commission, but there does not appear to have been any considerable active opposition to the proposal from persons whose lands were recommended to be included in the borough area. On 12th January, 1921, a poll was taken on the proposal to constitute a borough within the area fixed by the Commission. The valid votes cast were 291 for the proposal and 117 against it. The Borough of Otaki was constituted on 1st March, 1921 (*vide Exhibit I*, and *New Zealand Gazette*, 1921, p. 568).

It will be clear from a perusal of the evidence that in the very year the borough was constituted, the Borough Council embarked by way of special loans upon costly and ill-conceived schemes for waterworks and sewerage, far in excess of the borough's requirements. The special-rating area for each of these loans is the whole borough as originally constituted, and the special rates have been made and levied on all lands within the borough in proportion to their unimproved values.

The apparent ease with which large sums of money were borrowed by the Borough Council for schemes which were not fully investigated by it demonstrates the necessity for the exercise in such cases of the powers which were later conferred by the Local Government Loans Board Act, 1926, on the Local Government Loans Board.

The water-supply was obtained from the upper reaches of the Waitohu Stream, and can readily be availed of by every part of the borough. While this water is of great utility in the business and residential areas of the borough, and especially in the seaside areas during the summer months, it is of comparatively little use to many of the occupiers of farm lands, particularly those which have been excluded from the borough.

The great, and to some extent useless, cost and the present pathetic position, of the sewerage scheme will be more fully considered in connection with the Board of Health requisition referred to in paragraph (6) of Your Excellency's Commission. It is sufficient here to state that the scheme was designed to serve only a limited portion of the borough—mainly the central portion, and it was never intended to bring the sewerage west of the business sections terminating, roughly, at the rear of the post-office.

It is therefore clear that a special-rating area should have been set up, including only such properties as could be served by the works for which the loan was raised.

It would appear also that, by the creation of a special area comprising the whole borough, ratepayers outside the area to be served are denied a right of objection to inclusion in the special-rating area, their only remedy being to vote against the whole proposal—a remedy which is not an effective one.

Your Commissioners recommend that the foregoing remarks and the position of these special loans of the Borough of Otaki should be brought to the notice of the Local Government Loans Board constituted under the Local Government Loans Board Act, 1926, for that Board's consideration.

If the sewerage scheme is to be completed, the moneys to be raised should be a charge only upon the lands within the area to be served.

In July, 1925, two petitions were lodged praying for the exclusion of certain freehold and leasehold lands from the borough and their inclusion in the County of Horowhenua. The Borough Council lodged objection to the proposed exclusions, and Commissions of Inquiry were appointed to report on the matter. The Commissions, by a joint report of 15th December, 1925, above referred to, recommended the exclusion of an area of 223 acres and 8 perches, being portions of Sections 1, 2, and 3, Waitohu Survey District, which area was, prior to the formation of the borough, in the Horowhenua County, and did not form part of the town district. Effect was given to the recommendations by Order in Council dated 2nd August, 1926 (*vide New Zealand Gazette*, 1926, p. 2405, and Exhibit I).

In the year 1926 two further petitions were presented praying for exclusion, principally of the lands the subject of the two petitions referred to in the foregoing paragraph, and the Commissions appointed to report on these further petitions recommended, by their report dated 1st December, 1926, the further exclusion of certain of these lands, whereby the remaining lands in the borough would be divided into two portions—namely, the area largely business and residential, from the post-office eastward, and the beach residential area along the sea-coast; Tasman Road, forming a link between such two portions, to remain vested in the borough. Orders in Council dated 22nd March, 1927, giving effect to these recommendations as and from 1st April, 1927, were duly gazetted (*vide New Zealand Gazette*, 1927, p. 940, and Exhibit I).

Doubtless the persons the exclusion of whose lands from the borough was effected in manner aforesaid anticipated relief in the amount of rates to be paid by them. They did not, however, receive it to the extent anticipated, for the Borough Council, in purported exercise of section 23 of the Local Bodies' Loans Act, 1926, increased the special rates levied on the excluded properties as securities for loans. The alleged necessity for the increase was the failure of certain owners or occupiers in the borough, notably Natives, to pay their rates.

There appears to have been no legal impediment to the action of the Borough Council in increasing these rates—at all events, until an adjustment of assets and liabilities was made pursuant to section 145 of the Municipal Corporations Act, 1920, and the regulations under that Act (*New Zealand Gazette*, 1921, p. 2243).

There seems to be no legal provision compelling the local authorities to make an adjustment, or, indeed, for Your Excellency to do so, except upon the written application of any of the local authorities directly affected, and your Commissioners therefore respectfully suggest the amendment of the regulations by omitting from paragraph 52 thereof the words “upon the written application of any of the local authorities directly affected by such constitution or alteration,” and adding, after the words “the Governor-General may,” the words “if he thinks fit.”

In the month of July, 1927, a petition was received from E. H. Letts and R. B. Anderson, and in the month of August, 1927, a further petition from certain adjoining owners—F. Kilmister, I. Kilmister, C. O. Tipler, I. L. Tipler, and F. G. Letts—in each case praying for exclusion of their lands from the borough. Notices respecting these alterations were duly gazetted (*vide New Zealand Gazette*, 1927, p. 2837), and formal objections to the exclusions prayed for were received from the Otaki Borough Council and from the Horowhenua County Council.

In the month of September, 1927, the Otaki Borough Council, through its solicitors, Messrs. Harper, Atmore, and Thomson, forwarded a petition, pursuant to section 133 of the Municipal Corporations Act, 1920, praying for the reinclusion in the borough of all the lands previously excluded therefrom.

Your Commissioners, after very full consideration of the evidence, and the reports of all previous Commissions in reference to the question of what lands should or should not be included in the borough, are of the opinion that, having regard to the statutory test of suitability for municipal control (which is, in the opinion of your Commissioners, the proper test), and subject to the recommendations hereinafter contained in reference to adjustment of the incidence of rating and classification, the area defined and described in the schedule to the Order in Council of 1st March, 1921 (*New Zealand Gazette*, 1921, p. 568, and *vide* Exhibit I) should be the area of the borough, and accordingly that any land excluded from the borough since its constitution in 1921 should be reincluded therein.

Your Commissioners make this recommendation for the following reasons:—

(a) It seems to the Commissioners that the railway on the east, the River-bank Road and the old course of the Otaki River on the south, the high-water mark of the sea on the west, and the Waitohu Stream, the Old Coach-road, and the boundary (unaltered since the constitution of the borough) between the Old Coach-road and the railway on the north are the confines of the area best suited for the control as a municipality of what is now, and it would seem must for at any rate some years to come remain, with the exception of a small and fairly compact business area, a sparsely inhabited borough.

(b) The Commissioners are unable to recommend that the division of the borough into two sectors linked together by borough roads carrying omnibus service, light, and water (*vide* Exhibit I) is in the nature of things productive of convenience or equity in municipal control.

(c) In the opinion of the Commissioners, the principal feature of the statutory requirement is not the nature of the use made of the land in question, but whether such land can or cannot be more conveniently and equitably controlled by a borough by reason of its situation and the services which are or can be afforded the occupiers by a borough. The whole of the area referred to in paragraph (a) above derives its services from the borough, and must continue so to do so long as the borough exists, notwithstanding that part of such area may be excluded from the borough and included in the county.

(d) The principal cause of the desire for exclusion was and is the inordinate burden placed, after the constitution of the borough, on farm lands for rates in respect of special loans for water, of which the farming section of the community receives little benefit, and sewerage, in respect of which that section does not now receive any benefit and in the future is unlikely to receive any direct return or benefit. A further cause is the fear of increasingly excessive borough rates in the future.

(e) It will be seen from the notes of evidence taken (Exhibit A, pp. 40, 51) that requests from further owners than those above referred to for exclusion of lands from the borough were made to the Commission. These persons have not petitioned in the manner provided by section 132 of the Municipal Corporations Act, 1920. Your Commissioners consider that these requests, as well as the two petitions received in July and August, 1927, and now under consideration, indicate a growing desire and endeavour on the part of landowners or occupiers in Otaki to be out of the borough and the heavy rating on the borough areas. As the Commissioners have indicated, they consider exclusion on these grounds basically wrong, the statutory and proper test being whether the lands are suitable for control by a municipality, and not whether the owners should be permitted, on the ground of hardship, to leave the borough and thereby escape a certain amount of the heavy rating which is the direct result of the borough's past extravagance. The result of such a course being permitted would be to increase the difficulties of the borough, as its area, its ratepayers, and its source of revenue are from time to time decreased.

While your Commissioners consider that local government as a borough is the form of local government best suited to the requirements of the whole of the original borough area, they are also of opinion that careful and conservative control of the borough's finances is necessary for some years to come. Moreover, although your Commissioners are of opinion that the area of the original borough, which is the security for all its loans, should be preserved, they recognize the undoubted hardship which has been caused to certain classes of owners in the borough arising out of expenditure on the borough's sewerage and waterworks. Mr. Luckie, on behalf of the leaseholders, freeholders, and petitioners for exclusion abovementioned, repeatedly stressed this hardship, and Mr. Atmore, for the Borough Council, very properly admitted its patent existence. It is not disputed that had the cost of the sewerage-works been placed upon the special-rating area to be benefited thereby, and had the payment for water been assessed more in proportion to the service rendered, the ratepayers referred to would have escaped considerable rating in respect of interest and sinking fund on these important loans. In that event also the demand for exclusion would probably not have arisen.

It follows, therefore, that if some form of adjustment of the incidence of rating can be made, the broad effect of which will be to secure an adequate measure of relief to the owners of farm lands now or formerly in the borough, justice will be done to those persons without application of the undesirable remedy of exclusion from the borough.

It will be obvious that any such scheme of adjustment requires to be approached with care, and can only be concluded after computations which involve great detail, and which, if perfection of application is to be obtained, should extend to every assessment in the borough.

Moreover, before proceeding to examine or recommend a scheme of adjustment of the incidence of rating, it is necessary to explain and desirable if possible to dispose of two matters—viz., (a) Native rates, (b) sewerage-works—which have materially complicated the issue.

(a) *Native Rates*.—The difficulties of the borough have been increased by the non-payment of Native rates. Native properties comprise roughly one-sixth in rateable value of the lands at present in the borough, and should therefore, under the present system of rating, contribute approximately one-sixth of the total rates levied. The amount collected from the Natives during the past five years was approximately one-fifth of their full contribution. The sum of £3,444 5s. 5d. is accepted by the Borough Council, and by Mr. G. P. Shepherd for the Native Department, as the total sum outstanding in respect of all unpaid Native rates as at 31st March, 1928, including the 10-per-cent. penalty imposed during the period of the existence of the borough and the Town Board.

After considerable discussion, in which the Commissioners participated, the Borough Council, by resolution dated 24th May, 1928, recorded its willingness “to accept a cash payment equal to 25 per cent. of the total Native rates of £3,444 5s. 5d. owing as at 31st March, 1928, plus all costs incurred by the Council to date in connection with liens and applications, in full settlement of all Native rates owing up to 31/3/28, provided the Native Department proceeds with a scheme to vest all Native land not occupied by the owners in the Maori Land Board, with wide powers of administration and alienation, the revenue to be applied in payment of all future rates. Rates collected between now and date of concluded agreement to be retained by the Council and deducted from £3,444 5s. 5d., and the 25 per cent. assessed on the net balance outstanding as at date of concluded agreement.”

Your Commissioners generally approve of the scheme of settlement embodied in the foregoing resolution. It is well known that the question of payment of Native rates is one which has given concern to a considerable number of local bodies in the North Island of New Zealand, and in certain cases settlements have been arrived at with a degree of equity to the local bodies, accompanied by some recognition of the extraordinary position which Native lands have in the past occupied in regard to rating. Your Commissioners are informed by the Native Department that the counties of Kawhia, Waitomo, Bay of Islands, Taumarunui, and Whangarei, and the Kaikohe Town Board, have settled for outstanding rates on a basis not exceeding 25 per cent. The following table shows the position of unpaid Native rates in the case of Otaki :—

Otaki Town Board—							£	s.	d.
1/4/13—31/3/20 ..	..	..	..	..	..	..	436	15	4
1920–21 ..	..	..	..	..	..	..	94	7	5
Otaki Borough Council—									
1921–22 ..	..	..	..	..	..	..	135	0	10
1922–23 ..	..	..	..	..	..	..	129	12	10
1923–24 ..	..	..	..	..	..	..	171	3	4
1924–25 ..	..	..	..	..	..	..	293	1	10
1925–26 ..	..	..	..	..	..	..	452	12	5
1926–27 ..	..	..	..	..	..	..	627	8	4
1927–28 ..	..	..	..	..	..	..	869	16	2
							3,209	18	6
Add 10 per cent., penalty for overdue rates ..							234	6	11
							£3,444	5	5
Twenty-five per cent. of this amount ..							£861	1	4

It will be noted that the above computation includes all Native rates prior to 1924–25, and therefore statute-barred unless protected by liens or judgments.

The Commissioners therefore recommend, subject as appears in the next succeeding paragraph, a cash payment to the Otaki Borough Council by the Government of £861 1s. 4d., or 25 per cent. of all Native rates outstanding as on 31st March, 1928, calculated on the basis set out in the above table.

Inasmuch also as the sum of £120 11s. 8d., costs and disbursements, has been incurred by the Borough Council to date incidental to Native-rate liens, the Commissioners are of opinion that some allowance ought to be made in this respect, and recommend accordingly. Any payments made pursuant to the recommendations contained in this present paragraph should be in full satisfaction of all claims and demands whatsoever by the Borough in respect of rates owing by or outstanding from Natives on Native lands as on 31st March, 1928.

Your Commissioners recommend that, should the Otaki Borough Council collect any rates between 31st March, 1928, and the date of a concluded agreement between the Government and the borough, the borough should be permitted to retain the amounts so collected, which should in that event be deducted from the total sum of £3,444 5s. 5d. referred to above, and payment be made, as set forth in the foregoing paragraph, of 25 per cent. of the net balance outstanding, plus such amount of costs and disbursements in respect of liens as may be further allowed in that behalf.

Your Commissioners also recommend that all Native lands in the borough not occupied by the owners be vested in the Ikaroa District Maori Land Board for administration, with powers of sale by public auction or private contract, leasing, accepting surrender of leases, and licensing, and power to apply the proceeds, in the first place, in payment of outgoings, including rates, subject to such exemption from rating as Your Excellency in Council may think fit to order pursuant to the provisions of section 104 of the Rating Act, 1925.

If legislation is required to give effect to the foregoing recommendations, your Commissioners advise such legislation.

(b) *Sewerage-works*.—The difficulties of the borough have been further increased by the unsatisfactory state of the sewerage-works undertaken by it, and by the Borough's noncompliance with the Board of Health's requisition referred to in Your Excellency's Commission.

On 21st December, 1921, the Otaki Borough Council obtained authority by vote of the ratepayers to borrow the sum of £14,000 for sewerage, which they proceeded to do by special loan secured by a rate over the whole area of the borough. This loan was procured from the Public Service Superannuation Board, for whom the Public Trustee acted as agent, in 1923. It appears from the evidence (Schedule A, pp. 85, 117) that a procuration fee of $\frac{1}{2}$ per cent. was paid by the borough in respect of this loan, and from a letter dated 5th June, 1928, from the Public Trustee (Schedule B) that such payment by the borough was in direct contravention of the conditions of the loan. The first sewerage scheme was submitted by Mr. F. G. Davies, then acting as Town Clerk and Treasurer as well as Engineer, and the Council decided to adopt it. Considerable amounts were thereupon expended for material. The Council then appears to have had doubts as to the soundness of the scheme, and they consulted Messrs. Jickell and Gilmour, engineers, Palmerston North, who prepared a new scheme, which provided for a much larger population than that submitted by Mr. Davies. In 1924 the Otaki Borough proceeded to put into operation the scheme as prepared by Messrs. Jickell and Gilmour. On 24th February, 1925, the Town Clerk wrote to the Health Department stating that, owing to unforeseen difficulties, it had been found impossible to complete the scheme within the original estimate. By this time £11,500 of the £14,000 loan had been expended. The history and the present position of the scheme are set out in the opening of Mr. C. F. Atmore (Schedule A, p. 28) and in the evidence of Dr. R. A. Shore (Schedule A, p. 15). It will be noted that some £3,000 was absolutely wasted in the Te Rauparaha Street section of the work, that the scheme is at present incomplete, and that it has never been in any measure operative.

At the request of the Commissioners, Mr. A. G. Bush, Engineer to the Lower Hutt Borough, inspected portions of the drains laid in sections other than the Te Rauparaha Street section, which had previously been condemned by Mr. J. Hannah, Public Works Engineer (*vide* Schedule A, p. 15, and Appendix D). Mr. Bush's report is attached (Schedule C).

Following on Mr. Bush's report, the Commissioners have no hesitation in recommending that full effect should be given to the requisition of the Board of Health for the completion of a sewerage system in the more thickly populated area

of the borough. ¶ The Commissioners further recommend that, should the borough refuse or neglect to carry out such requisition, the Board of Health should invoke the powers as to completion of the work and recovery of the cost set forth in section 143 of the Health Act, 1920, or any other statutory authority in that behalf.

Your Commissioners have given full consideration to the incidence of rating within the existing area of the borough and the areas excluded from the borough since its original constitution, and they are of opinion—(1) That, as hereinbefore stated, a special area should have been created for the purpose of rating in such area to meet charges in respect of loans in connection with the borough's sewerage scheme; (2) that the general and water rates payable by occupiers of lands exclusively used for primary production purposes are excessive to such an extent as to place undue hardship on such occupiers.

Your Commissioners therefore recommend that, in order to secure an adequate measure of relief, in respect of loans in connection with the borough's sewerage scheme, to the owners of farm lands now or formerly in the borough, the following adjustment of the incidence of rating should be made, subject to the classification hereinafter set forth:—

(a) The cost of completing a modified sewerage scheme in accordance with the requirements of the Board of Health should, subject to the said classification, be met by a special rate on the area to be served by such completed scheme.

(b) After deducting the proceeds of the special rate referred to in paragraph (c) hereof, the balance required to meet the charges for interest and sinking fund in respect of the loan raised in connection with the original sewerage scheme shall, subject to the said classification, be met by a special rate on the area proposed to be served by such scheme. (Attached hereto (Schedule D) is a blue-print of the original sewerage scheme, supplied to the Commission by Mr. A. Wilson, Town Clerk of the borough.)

(c) A special sewerage rate of $\frac{1}{4}$ d. in the £1 be made and levied, subject to the said classification, on the unimproved value of all rateable lands within the area of the borough, including therein the lands now excluded but recommended herein for inclusion. As the operation of a sewerage scheme will indirectly benefit the whole of the lands of the borough, your Commissioners are of opinion, notwithstanding the fact that a special-rating area should have been set up, that a small proportion of the cost of the sewerage scheme should be a charge on all the lands of the borough.

Your Commissioners attach a table (Schedule E) showing the rates which would be levied on the farm lands within the original borough area on values prior to certain special valuations of farm lands recently made, together with comparative tables showing the rates which would be paid under other circumstances, and an estimate of rates which will be payable under the scheme now recommended by your Commissioners. This table, your Commissioners submit, shows the necessity for the relief which they recommend should be given to the occupiers of farm lands within the original borough area. To quote an example in connection with the water rates only, the charge for water on the farm property occupied by A. J. Fogden, and originally valued at £3,570, equalled £53 6s. The area of this property is $49\frac{1}{2}$ acres. A water rate of £53 6s. on a farm property of $49\frac{1}{2}$ acres is, in the opinion of your Commissioners, excessive.

Your Commissioners are, however, of opinion that the whole of the original borough lands should, subject to the said classification, be rated on the unimproved value for water purposes, provided that the incidence is also adjusted in some proportion to service. They therefore recommend that the charges for water maintenance and loans should be met by a flat rate of £2 per annum for the land included in each assessment appearing in the district valuation roll for the time being in respect of the original borough area; or in any case where there is on the land included in such assessment more than one building usually occupied as a dwelling or business premises, then a flat rate of £2 per annum for every such building; and, your Commissioners being of opinion that the availability of an adequate supply of water is of benefit to the whole of the borough, they further recommend that the balance of the sum required to meet these charges should, subject to the said classification, be raised by such rate as is necessary for this purpose on the unimproved value of all rateable property in the original borough area.

In order to secure the measure of relief which your Commissioners consider necessary and advisable, they have divided into the three following classes the whole of the lands in the original Borough area :

Class A: Building-land—*i.e.*, land suitable for building purposes and having a frontage to a road or street.

Class B: Potential building-land—*i.e.*, land having a potential building-value, and other than the land included in Class A.

Class C: Farm Land—*i.e.*, land used for farm purposes and not suitable for building purposes.

The whole of the borough rates—*viz.*, general rates, street-lighting rate, Hospital Board rate, antecedent-liability loan rate, bridges and culverts loan rate, as well as the special rates in respect of sewerage and water, and the special rates over special areas—should, in the opinion of your Commissioners, be levied in the proportions set out in the following scale—Class A, $\frac{1}{2}\frac{0}{5}\frac{0}{5}$; Class B, $\frac{2}{2}\frac{8}{5}\frac{5}{5}$; Class C, $\frac{7}{2}\frac{0}{5}\frac{5}{5}$; which is to say that for every £100 levied on land in Class A £85 shall be levied on land of equal unimproved value in Class B and £70 on land of equal unimproved value in Class C.

Your Commissioners have inspected the whole of the lands within the original borough area, and have classified them in accordance with the foregoing recommendations. A plan is attached (Schedule F) showing full details of such classification.

Your Commissioners recommend that a classification list shall be prepared from the rate-book of the borough by the Town Clerk in accordance with the plan (Schedule F) for signature by the Commissioners; that thereafter the Borough Council should cause to be given public notice of such classification and of the place where the list may be inspected during office hours for a period of twenty-one days; that any owner or occupier who thinks himself aggrieved by such classification should have the right to appeal against the same, on the ground that the land owned or occupied by him has not been fairly classified according to the classes hereinbefore defined by your Commissioners, in such manner and to such person or persons as may be determined by Your Excellency; and that the Borough Council may in like manner and to like person or persons appeal on the ground that any land has not been fairly classified according to the said classes.

Such legislation as is necessary to give effect to the foregoing recommendation is also recommended by your Commissioners. Any such legislation should contain provisions—

- (a) That the adjustment of the incidence of rating and classification hereinbefore recommended shall not in any way affect the security of the lender;
- (b) That any reclassification hereunder, either generally or for any special purpose, shall be carried out as and when necessary by such person or persons and in such manner as Your Excellency may from time to time determine;
- (c) That, in reference to classification, the maximum rate prescribed by the Municipal Corporations Act, 1920, shall not be deemed to be exceeded if the proceeds from the rates levied would not exceed the proceeds derivable from the maximum rate on a uniform scale levied on all the rateable property in the borough, notwithstanding that the rate actually levied on the lands comprised in any class may exceed the prescribed maximum rate.

Reverting to the particular references to your Commissioners—

- (1) “Whether the area now comprising the Borough of Otaki is suitable for municipal control, or whether it is desirable that the borough be abolished.”

For the reasons above stated, your Commissioners consider that the area now comprising the Borough of Otaki (together with all lands formerly in the borough and now excluded therefrom) is suitable for municipal control. The population of Otaki and its area are not in contravention of statutory requirement (*vide* section 3, Municipal Corporations Act, 1920), and the population of the borough is steadily,

if slowly, increasing (*vide* Schedule G). The locality offers considerable climatic, seaside, and soil attractions, and is within easy distance of the City of Wellington. Your Commissioners refer to the practical evidence of the Chairman of the Horowhenua County Council (Schedule A, p. 125) on this question. Your Commissioners do not consider it desirable that the borough should be abolished.

- (2) “If it is desirable that the borough be abolished, what provision should be made for the future control of the area now comprising the borough.”

Your Commissioners do not consider it desirable that the borough should be abolished, and therefore no further answer to this question is necessary.

- (3) “If it is not desirable that the borough be abolished, whether any alteration of boundaries thereof ought to be made either by the exclusion of lands from, or the inclusion of lands in, the borough.”

Your Commissioners recommend that an alteration of the boundaries of the borough ought to be made by the inclusion of the whole of the lands described in the Schedules to the three Orders in Council hereinbefore referred to, excluding lands from the borough (*vide New Zealand Gazette*, 1926, p. 2405, and 1927, p. 940 (2)). Your Commissioners do not recommend the exclusion of the lands the subject-matter of the two petitions respectively hereinbefore stated to have been received in the months of July and August, 1927, or of any other lands, from the borough.

- (4) “Whether either in respect of any alteration of the boundaries of the said borough heretofore made or in respect of any steps recommended by the Commission under the foregoing paragraphs hereof it is desirable that the financial adjustments provided for by section 145 of the Municipal Corporations Act, 1920, should be made, or whether in view thereof it is desirable that other adjustments of a special nature should by reason of the circumstances of the case be made, and, if so, what adjustments should be made.”

As your Commissioners recommend the inclusion in the borough of all lands excluded therefrom since the constitution thereof, and as no financial adjustments provided for by section 145 of the Municipal Corporations Act, 1920, have been made in respect of any lands excluded from the borough, your Commissioners do not consider that it is necessary that any adjustments of a special nature should be made. They consider, however, that if the Otaki Borough Council and the Horowhenua County Council find that any adjustments are necessary or advisable in respect of the periods of exclusion, those local authorities should use their legal powers to make such adjustments.

- (5) “Whether it is desirable that the borough be divided into wards.”

As the population of the borough is small, and as it appears to your Commissioners that the creation of wards would only increase differences in the various parts of the Borough, your Commissioners do not consider it desirable that the borough be divided into wards.

- (6) “Whether the aforesaid requisition of the Board of Health should be given effect to, and, if so, what steps should be taken in order that such requisition may be given effect to.”

This question has already been fully dealt with. Your Commissioners recommend that the requisition of the Board of Health should be given effect to, and that in the event of refusal or neglect by the borough to give effect to such requisition the provisions of section 143 of the Health Act, 1920, or of any other statutory authority in that behalf should be invoked.

- (7) “Whether, and to what extent, having regard to the purpose or purposes for which any lands in the borough are used, it is desirable that for the purpose of the levying of rates by the Borough Council, either for its own purposes or as a contributory local authority under any Act, such lands be valued on a special basis other than the basis of valuation thereof under the Valuation of Land Act, 1925.”

Your Commissioners are of opinion that there should be only one basis of valuation of lands in the Borough of Otaki; and they are further of opinion that, subject to the adjustment of the incidence of rating and the classification herein-

before recommended by your Commissioners, the system of rating in Otaki Borough should not be altered. They therefore do not recommend that the lands in the borough should be valued on a special basis other than the basis of valuation thereof under the Valuation of Land Act, 1925.

- (8) “If it is considered advisable that any lands in the borough be valued for rating purposes on a special basis as aforesaid, then to what extent, if any, it is desirable that such lands be excluded from the rating-area in respect of any future loans secured by a special rate over rateable property within the borough.”

Although it is not considered advisable by your Commissioners that any lands in the borough should be valued for rating purposes on a special basis, nevertheless your Commissioners consider it desirable that lands in the borough which will not be benefited or served by special works should be excluded from the rating-area in respect of loans and charges in connection with such works, which loans and charges should be secured by special rate over such rateable property within the borough as will be benefited or served thereby.

- (9) “To what extent, if any, it is desirable that lands that will not, or are not likely to, receive any benefit from the expenditure of loan-moneys should be excluded from the rating-area in respect of any future loans secured by a special rate over rateable property within the borough.”

The answer to this question is substantially to be found in the answer to the preceding reference (8). Your Commissioners consider it desirable that lands that will not, or are not likely to, receive any benefit from the expenditure of loan-moneys should be excluded from the rating-area in respect of any future loans secured by special rate, which should be levied over such rateable property within the borough as is benefited or served by the works to provide for which such loans are raised.

- (10) “Whether it is practicable or desirable in any way to vary, by means of a system of differential rating, or by any other means, the incidence of rates and the relative amount of rates (whether general, special, or any other kind) that are or may hereafter be assessable in respect of any lands in the borough, or any lands that have been or will be excluded therefrom.”

Your Commissioners recommend that it is practicable and desirable, by means of the adjustment of the incidence of rating and the classification hereinbefore recommended by your Commissioners, to vary the incidence of rates and the relative amount of rates (whether general, special, or any other kind) that are now assessable in respect of borough lands, including the lands which have been excluded therefrom, and your Commissioners do not consider that any lands should be excluded from the borough in future. They consider also that the method of adjustment and classification hereinbefore recommended should be employed, if applicable, in the case of rates that may hereafter be assessable in respect of any lands in the borough.

- (11) “What restrictions, if any, should be placed upon the power of the Borough Council to amend, under section 23 of the Local Bodies’ Loans Act, 1926, any special rate either in respect of lands within the borough or in respect of lands which have been or may be excluded from the borough but so as to remain liable for any special rate.”

While your Commissioners are of opinion, and recommend, that special rates in respect of lands which are excluded from a borough should not be increased between the time of exclusion and the making of any financial adjustment under section 145 of the Municipal Corporations Act, 1920, and, if legislation is necessary to give effect to such recommendation, advise such legislation accordingly, your Commissioners do not consider that there should be any curtailment of the power of the Otaki Borough Council to increase special rates in respect of lands within the borough. As to lands which have been in the past excluded from the borough and subjected to an increase of special rates, your Commissioners have no recommendation to make, as they consider, in the special case of these lands, such increase was apparently

legal and justifiable, and in view of the fact that your Commissioners recommend the reinclusion of these lands within the borough. As has been stated, your Commissioners do not consider that any lands should be excluded from the borough in future.

- (12) “Whether, notwithstanding the provisions of the Rating Act, 1925, as to the adoption of any particular system of rating in any district, it is desirable that any system of rating other than that now in force in the borough should be in force therein, and, if so, what system and by what means it should be adopted.”

Your Commissioners do not consider that it is desirable that any system of rating other than that now in force in the Borough of Otaki should be in force therein, but they do consider that there should be an adjustment of the incidence of rating and classification as hereinbefore recommended under the system of rating now in force. The fact that there is grazing and agricultural land in the borough, and no prospect of extension of building-land into the area occupied by such grazing and agricultural land, necessitates the adjustment and classification hereinbefore recommended by your Commissioners.

- (13) “In the event of your reporting under the last preceding paragraph hereof that a system of rating other than that now in force in the borough should be adopted, what provision, if any, should be made for the future altering of the system so to be adopted.”

As your Commissioners do not recommend that any alteration in the system of rating now in force in the borough should be made, no further provision is necessary, or should be made, for the future altering of the system.

- (14) “Such other matters affecting or incidental to the Borough of Otaki, and the administration thereof by the Otaki Borough Council, as may come under your notice in the course of your inquiries and as you may think it necessary and desirable to consider.”

Your Commissioners finally desire to point out that, while certain features of the adjustment of the incidence of rating and classification set out in this report may be found upon investigation to be applicable and necessary in the case of other boroughs in the Dominion, they consider that the adjustment and classification adopted by this report is essential in the case of the Borough of Otaki.

Your Commissioners further enclose (Schedule H) originals of four letters, and documents therein referred to, from persons having an interest in the inquiry and resident in the Boroughs of Thames, Woodville, and Foxton, and the Town District of Havelock North.

Your Commissioners have the honour to return herewith the Commission with which Your Excellency was pleased to favour them, together with all documents and plans forwarded to them in connection with such Commission. They also enclose newspaper advertisements of the Commission.

And this our report, which has been unanimously adopted, we have the honour respectfully to submit for the consideration of Your Excellency in obedience to the Commission addressed to us.

Given under our hands and seals this sixteenth day of June, nineteen hundred and twenty-eight.

[L.S.] R. M. WATSON, Chairman.

[L.S.] W. T. STRAND } Members.

[L.S.] W. NASH

NOTE.—With the exception of Schedule F above, it has been deemed unnecessary to print the various papers referred to in the report. These papers may, if desired, be inspected at the Department of Internal Affairs, Government Buildings, Wellington.

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