

New Zealand.



ANALYSIS

<p>Title.</p> <p style="text-align: center;">PART I. PRELIMINARY.</p> <p>1. Short Title. 2. Division of Act. 3. Interpretation.</p> <p style="text-align: center;">PART II. FINANCIAL ASSISTANCE IN THE BUILDING OF HOUSES.</p> <p>4. Council may lend moneys for erection of houses. 5. Agreements between Council and financial institutions. 6. Conditions to be fulfilled before advance. 7. Limit of advance. 8. Corporation may guarantee mortgages. 9. Provisions of guarantee. 10. Conditions to be fulfilled before guarantee. 11. Limit of guaranteed mortgages. 12. Limit of total guaranteees.</p>	<p>13. Financial institution may advance moneys under Act. 14. Council may raise special loan. 15. Provisions relating to mortgages. 16. Validity of documents and resolutions. 17. Mortgages with premium in lieu of interest. 18. Insurance against losses arising out of mortgages.</p> <p style="text-align: center;">PART III. IMPROVEMENT OF EXISTING HOUSING CONDITIONS.</p> <p>19. Council may make by-laws. 20. Provisions of Health Act to apply. 21. Courts for adjoining premises.</p> <p style="text-align: center;">PART IV. FINANCIAL ASSISTANCE FOR RECON- DITIONING EXISTING DWELLING- HOUSES.</p> <p>22. Power for Council to advance money for reconditioning dwellinghouses.</p>
--	--

1942, No. 4—*Local and Personal*

Title.

AN ACT to promote House-building and to improve
Housing Conditions in the City of Auckland.

[13th July, 1942]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the Auckland City Short Title.
Housing Act, 1942.

2. This Act is divided into the following parts:— Division of Act.

PART I—Preliminary.

PART II—Financial Assistance in the Building of
Houses.

PART III—Improvement of Existing Housing
Conditions.

PART IV—Financial Assistance for Reconditioning
Existing Dwellinghouses.

3. In this Act, if not inconsistent with the context,— Interpretation.

“ Building Society ” means a society formed
under or subject to the Building Societies Act,
1908:

“ By-laws ” means the by-laws of the Auckland
City Council:

“ City ” means the City of Auckland:

“ Corporation ” means the Corporation of the
Mayor, Councillors, and Citizens of the City
of Auckland:

“ Council ” means the Auckland City Council:

“ Estimated value ” means the value as estimated
in a valuation made on behalf of the Council:

“ Financial institution ” means any building
society or any company or body corporate
(whether incorporated in New Zealand or
elsewhere) empowered to lend money on mort-
gage of land, and includes the State Advances
Corporation of New Zealand and every other
State or Government lending institution in
New Zealand:

“ Owner ” means the person for the time being entitled to receive the rent of the land or premises in connection with which the word is used or who would be entitled to receive the same if the land or premises were let at a rent.

PART II.

FINANCIAL ASSISTANCE IN THE BUILDING OF HOUSES.

Council may lend moneys for erection of houses.

4. Where any person approved by the Council is desirous of erecting a house upon land in the city and applies to a financial institution for an advance by way of first mortgage upon the security of such land and proposed house the Council may, out of loan-moneys raised as hereinafter provided, pay to the financial institution such sum, not exceeding the limit hereinafter provided, as it may think fit conditionally on that sum, together with the moneys to be advanced by the financial institution, being secured upon the land and proposed house by a first mortgage executed by such person in favour of the financial institution and containing such terms and provisions as the Council may approve.

Agreements between Council and financial institutions.

5. The Council and the financial institution may from time to time enter into such agreements in writing as they think fit in regard to the application and appropriation as between the Corporation on the one hand and the financial institution on the other hand, of all payments made and sums recovered under any mortgage or mortgages as aforesaid and in regard to all such other matters concerning any such mortgage or mortgages as the Council and such financial institution may deem expedient. Every such agreement may from time to time be varied by agreement in writing between the Council and the financial institution.

Conditions to be fulfilled before advance.

6. Before exercising in any case the power conferred on it by section four hereof, the Council shall be satisfied—

(a) That the applicant for the loan has provided or is able to provide towards the cost of the land and proposed house not less than one-tenth of the total estimated value of the land and of the proposed house when erected thereon:

- (b) That the moneys to be advanced by the financial institution on first mortgage as aforesaid out of its own moneys (and not including the moneys to be paid by the Council to the financial institution under section four hereof) amount to not less than two-thirds of the total estimated value of the land and of the proposed house when erected thereon:
- (c) That the total principal-moneys to be secured by the mortgage do not (after deduction therefrom of the moneys payable to the insurance fund as hereinafter provided) exceed nine-tenths of the total estimated value of the land and of the proposed house when erected thereon.

7. The principal-moneys secured by any mortgage securing moneys advanced pursuant to an application to which section four hereof relates shall not exceed the sum of one thousand five hundred and fifteen pounds, and the amount to be paid by the Council to any financial institution for the purposes of being advanced by the financial institution upon the security of any such mortgage shall not exceed one-fourth of the total principal-moneys secured by that mortgage.

Limit of advance.

8. Where any person approved by the Council is desirous of erecting a house upon land in the city and applies to a financial institution for an advance by way of first mortgage upon the security of the land and proposed house the Council may, in the name of and on behalf of the Corporation, by deed or other instrument, guarantee to that financial institution repayment of any portion, not exceeding the limit hereinafter provided, of the moneys which such financial institution may so advance to that person.

Corporation may guarantee mortgages.

9. Every such guarantee shall contain such provisions as the Council and the financial institution may agree upon in regard to the application and appropriation, as between the portion of the moneys guaranteed by the Corporation and the other moneys secured by the mortgage, of all payments made and sums recovered under the mortgage and in regard to all such other matters concerning the mortgage or the guarantee as the Council and the financial institution may deem

Provisions of guarantee.

expedient. Every such guarantee may from time to time be varied by deed or other instrument executed by the Council in the name of and on behalf of the Corporation and by the financial institution.

Conditions to be fulfilled before guarantee.

10. Before exercising in any case the power conferred on it by section eight hereof the Council shall be satisfied—

- (a) That the applicant for a loan has provided or is able to provide towards the cost of the land and proposed house not less than one-tenth of the total estimated value of the land and of the proposed house when erected thereon:
- (b) That the moneys to be advanced by such financial institution on first mortgage as aforesaid amount to not less than two-thirds of the total estimated value of the land and of the proposed house when erected thereon, but do not (after deduction therefrom of the moneys payable to the insurance fund as hereinafter provided) exceed nine-tenths of such total estimated value.

Limit of guaranteed mortgages.

11. The principal-moneys secured by any mortgage securing moneys advanced pursuant to an application to which section eight hereof relates shall not exceed the sum of one thousand five hundred and fifteen pounds, and the portion of such moneys, repayment of which is guaranteed by the Corporation, shall not exceed one-third of the total principal-moneys secured by such mortgage.

Limit of total guarantees.

12. The Council shall not execute any guarantee under the powers conferred by section eight hereof if the liability to be assumed by the Corporation under such guarantee, together with the total liability originally assumed by the Corporation under all guarantees previously executed by the Council under the powers conferred by section eight hereof and under which the Corporation is or may be still liable, would exceed in the aggregate the sum of fifty thousand pounds.

Financial institution may advance moneys under Act.

13. Notwithstanding any rule or law or any statutory or other provision to the contrary, any financial institution may advance moneys by way of mortgage on the terms and conditions prescribed in this Part of this Act to an amount which does not

(after deduction therefrom of the moneys payable to the insurance fund as hereinafter provided) exceed nine-tenths of the total estimated value of the land and of the proposed house when erected thereon.

14. For the purposes of providing funds out of which the Council may make advances under section four hereof and out of which the Corporation may pay any amounts payable by it in respect of any guarantee executed pursuant to section eight hereof or payable by it pursuant to any of the provisions of the next succeeding section, the Council may from time to time raise money, not exceeding in the aggregate fifty thousand pounds, under the Local Bodies' Loans Act, 1926, by way of special loan by special order and without taking the steps prescribed in sections nine to thirteen of that Act, but the failure of the Council to raise such moneys, or the insufficiency of any of such moneys if raised, shall not in any way prejudice or affect the rights, powers, or remedies of any financial institution against the Corporation under any document purporting to be executed in pursuance of any of the provisions of this Part of this Act.

Council may raise special loan.

15. The following provisions shall apply to all mortgages to which the provisions of this Part of this Act relate:—

Provisions relating to mortgages.

- (a) Every such mortgage shall be for a period of not more than thirty years:
- (b) Every such mortgage shall contain a covenant by the mortgagor that on any transfer or agreement for sale of the property encumbered by such mortgage he will reduce the principal-moneys then secured by such mortgage to such sum as is the equivalent of seven-tenths of the principal-moneys originally secured by such mortgage, or to such less extent as the Council and the financial institution may approve in the circumstances of the particular case:
- (c) Any person, firm, or company may join in or guarantee any of the covenants on the part of the mortgagor contained or implied in any such mortgage:

- (d) Collateral security may be taken by the financial institution and, in particular, collateral security may be taken over any policy of life insurance, whether such policy be on the life of the mortgagor or on the life of any other person:
- (e) If default is made under any such mortgage the Council shall while such default continues have the right, if it so desires, to call upon the financial institution to transfer the mortgage to the Corporation:
- (f) If default is made under any such mortgage and such default continues for a period of not less than three months, the financial institution may call upon the Council to elect whether or not it desires to call upon the financial institution to transfer the mortgage to the Corporation, and the Council shall make such election within two months of being called upon so to do:
- (g) Where the Council, pursuant to paragraph (e) or paragraph (f) of this section, calls upon or elects to call upon the financial institution to transfer the mortgage to the Corporation—
- (i) The Corporation shall, within one month of the date upon which the Council calls upon or elects to call upon the financial institution to transfer the mortgage to the Corporation, pay to the financial institution all principal and other moneys secured by the mortgage, including all interest secured by the mortgage calculated down to the date of such payment, but excluding the outstanding balance of any principal-moneys paid or provided by the Council and any interest owing in respect thereof:

Provided that the Corporation (except in cases where the Council and the financial institution have previously otherwise agreed) shall not be liable to pay to the financial institution any interest which accrued due under the mortgage more than six months before the date upon which the Council called upon or elected to call upon the financial institution to transfer the mortgage to the Corporation:

(ii) The financial institution shall, on such payment being made by the Corporation, and on the Corporation paying all reasonable legal and other expenses incurred by the financial institution in so doing, transfer to the Corporation the mortgage and every guarantee thereof and security collateral therewith held by the financial institution:

- (h) If default be made under any such mortgage and such default shall continue for a period of not less than six months, the Council may (if the financial institution has not prior to the Council so doing called upon the Council under paragraph (f) of this section to make the election referred to in that paragraph) require the financial institution to apply (if it may lawfully do so) to the Registrar of the Supreme Court to conduct a sale of the mortgaged property under section one hundred and ten of the Land Transfer Act, 1915, but the Corporation shall pay to the financial institution all reasonable legal and other expenses incurred by the financial institution in and consequent upon the making of such application.

16. (1) Every agreement or guarantee entered into or purporting to be entered into by the Council in pursuance of the provisions of this Part of this Act shall be executed in the name of and under the seal of the Corporation, and every such agreement or guarantee shall, notwithstanding any non-compliance with any of the provisions of this Part of this Act, be valid and binding upon the Corporation according to its tenor, and the production of any such document shall in all Courts and for all purposes be conclusive evidence of the validity thereof.

Validity of documents and resolutions.

(2) Every resolution of the Council to advance moneys under section four hereof shall, notwithstanding any non-compliance with any of the provisions of this Part of this Act, be conclusive evidence of the authority of the Council to make such advance.

17. Where in any mortgage given under the provisions of this Act the mortgagor is charged with a premium in lieu of interest and such premium forms

Mortgages with premium in lieu of interest.

part of the principal sum secured by such mortgage, then for the purposes of this Act the following provisions shall apply:—

- (a) The amount of the principal sum secured by any such mortgage may exceed nine-tenths of the total estimated value of the land and of the proposed house when erected thereon, and may also exceed one thousand five hundred and fifteen pounds, but in each case only by an amount equal to the amount of premium which has been added to the cash advance in lieu of interest:
- (b) The amount which the Corporation may be required to pay to the financial institution concerned under the provisions of paragraph (g) of section fifteen hereof shall be determined by agreement between the Corporation and the financial institution at the time of the making of the advance.

Insurance
against losses
arising out of
mortgages.

18. To provide a fund for insuring the Corporation against losses arising out of mortgages to which section four or section eight of this Act relates, the Council may require the financial institution to deduct from the principal-moneys to be advanced to the mortgagor upon any such mortgage so much thereof as may be the equivalent of one-hundredth of the remainder of the principal-moneys after such deduction, and to pay the amount so deducted to the Corporation. Every such sum so deducted and paid to the Corporation shall for the purpose of the mortgage, and any agreement or guarantee relating thereto, be deemed to have been paid to the mortgagor, and all such sums so deducted and paid to the Corporation shall form part of a special fund to insure itself against losses arising out of the mortgages to which section four or section eight of this Act relates.

PART III.

IMPROVEMENT OF EXISTING HOUSING CONDITIONS.

Council
may make
by-laws.

19. (1) The Council may make by-laws prescribing minimum standards of fitness for dwellings, whether now existing or hereafter erected or used, in relation to construction, condition, equipment, alteration, repair, and use.

(2) Without prejudice to the generality of the last preceding subsection, the Council may make by-laws providing for any of the following matters:—

- (a) The drainage, sanitation, and general treatment of the site of any dwelling, the paving of courts, yards, and paths, and prevention of the use of unsuitable sites:
- (b) Minimum dimensions for rooms and other parts of dwellings:
- (c) The provision of rooms, offices, sanitary and domestic equipment and appliances, ventilation, heating, lighting, and other facilities, and the maintenance and repair thereof:
- (d) The number and sex of persons who may occupy or use any dwelling or any portion of a dwelling:
- (e) The use and occupation of dwellings, and the prevention of such use or occupation in any manner inconsistent with the provisions of the by-laws and the prevention of the use and occupation as dwellings of rooms, buildings, or structures which do not comply with the by-laws:
- (f) The inspection and registration of dwellings and buildings and places which might be used as dwellings:
- (g) The carrying-out of any work either by the owner or the Council which may seem to the Council necessary to make any dwelling comply with the provisions of the by-laws:
- (h) The provision and preservation of suitable open spaces around or near dwellings:
- (i) The prevention of overcrowding and of unhealthy or unsuitable conditions in or about dwellings.

20. Where the Council is satisfied that any dwelling does not comply with the requirements of the by-laws and should not continue to be used or occupied as a dwelling, then and in such case the provisions of sections forty to fifty-three of the Health Act, 1920, shall apply, *mutatis mutandis*, as if the Council had received a certificate by the Medical Officer of Health

Provisions of
Health Act
to apply.

in respect of that dwelling as provided in section forty or section forty-seven of the said Act, as the case may be.

Courts for adjoining premises.

21. (1) Where the owners of any parcel or parcels of land desire that any part or parts thereof shall be available or used as a courtyard or open space for two or more separately-owned dwellings, and the Council is satisfied that it is desirable that that land should be so available or used, the Council may require the owners of the land and of the dwellings concerned and all the persons having any interest therein—

(a) To grant such easements or rights as may in the opinion of the Council be necessary to ensure the retention of the land for the purposes intended:

(b) To include in the documents containing such grants suitable provisions to enable the Council to require the due performance and observance of the provisions thereof.

(2) If the document containing the grant of any such easement or right as is mentioned in paragraph (a) of the last preceding subsection would have been registrable under the provisions of the Land Transfer Act, 1915, if the provisions mentioned in paragraph (b) of that subsection had not been included therein, the Council may require the registration of the document under that Act and, notwithstanding anything in that Act or in any rule of law to the contrary, the document may be registered accordingly in the same manner as if those provisions had not been included therein.

PART IV.

FINANCIAL ASSISTANCE FOR RECONDITIONING EXISTING DWELLINGHOUSES.

22. (1) If the owner of any dwellinghouse who has been directed by the Council to carry out works for the reconstruction, enlargement, repair, or improvement thereof, or to do any work thereto to make such dwellinghouse comply with the standards of fitness prescribed by the by-laws, applies to the Council for

Power for Council to advance money for reconditioning dwelling-houses.

assistance for any such purpose, and the Council is satisfied that the dwellinghouse will comply with such standards only after such works are carried out to such dwellinghouse, and that the locality in which the dwellinghouse is situated is in regard to housing accommodation, and in relation to the permitted uses of buildings and land with respect to the provisions of the city's town-planning scheme, such as to make it desirable that the work should be carried out, and if the owner of such property and the mortgagees thereof are unable, in the opinion of the Council, to provide the moneys necessary to carry out such work, the Council may advance to the owner the whole or any part of such sum as may be necessary to defray the cost of the work and any expenses incidental thereto.

(2) Before the works are commenced full particulars of the works and plans and specifications thereof shall be submitted to the Council for its approval, and before any advance is made the Council shall satisfy itself that the works in respect to which the advance is to be made have been carried out in a satisfactory and efficient manner and in compliance with the Council's directions.

(3) The Council and the owner may agree that the amount of any advance shall be repayable in one sum at a fixed time with interest at a rate to be fixed by the Council at the time when the advance is made, or by instalments extending over a number of years, with interest at a rate to be fixed as aforesaid. Such agreement may contain any incidental provisions and may provide for the earlier repayment of instalments, or any of them, on terms to be mentioned in the agreement:

Provided that where an agreement makes no provision as aforesaid for early payment of instalments the Council shall accept the whole of the unpaid instalments at any time when the same is tendered, and for the purpose of any such tender interest shall be calculated and paid only up to and including the day of such tender.

(4) Such agreement may, where the moneys are repayable in one amount, contain provisions for securing the repayment thereof, and where the moneys

are repayable by instalments each such instalment shall, for all purposes, be deemed to be a rate subject nevertheless to the following conditions:—

(a) The owner for the time being of the premises in question shall in all cases be deemed the person primarily liable for payment:

(b) A separate rate-book shall be kept by the Collector of Rates to the Council, in which particulars of such instalments (distinguishing capital and interest) and of the lands in respect whereof they are payable, and of the dates for payment thereof, and all the names of persons paying the same shall be entered; and such book shall be *prima facie* evidence of the correctness of its contents.

(5) Interest-moneys on any advances shall be applied in or towards payment of the interest or other annual charges in respect of the special loan aforesaid.

(6) The total amount advanced with respect to any property under this section shall not exceed one-quarter of the total estimated value of the land and of the dwellinghouse when the works in respect of which the advance is made have been carried out.

(7) For the purpose of providing funds out of which advances as aforesaid may be made the Council may borrow moneys by way of special loan, not exceeding in the aggregate two hundred thousand pounds, under the Local Bodies Loans' Act, 1926, by special loan, and without taking the steps prescribed in sections nine to thirteen of that Act.

(8) All moneys payable to the Council by the owner of any property in respect of any such advances shall be a charge on that property. Every such charge shall, save as hereinafter provided, have priority over all existing or subsequent mortgages, charges, or encumbrances howsoever created. Notwithstanding anything to the contrary in any other Act, if any property subject to a charge created by this section is also subject to a charge created by that other Act, the charges shall rank equally with each other unless by virtue of that other Act the charge created thereby would be deferred to the charge created by this section.