

New Zealand



ANALYSIS

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1945, No. 1—*Local and Personal*

AN ACT to confer Further and Additional Powers on Title.
the Balclutha Borough Council in relation to Housing.

[1st September, 1945

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

Short Title.

1. This Act may be cited as the Balclutha Housing Act, 1945.

Interpretation.

2. In this Act, if not inconsistent with the context,—
 “ Building society ” means a society formed under or subject to the Building Societies Act, 1908:

“ Borough ” means the Borough of Balclutha:

“ Borough Valuer ” means the officer of the Council for the time being acting as Borough Valuer:

“ Corporation ” means the Corporation of the Mayor, Councillors, and Burgesses of the Borough of Balclutha:

“ Council ” means the Balclutha Borough 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 mortgage of land, and includes the State Advances Corporation of New Zealand and every other State or Government lending institution in New Zealand:

“ House ” means any house, or part of a house, occupied as a separate dwelling, and includes outbuildings, paths, and fences:

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

3. Where any person approved by the Council is desirous of erecting a house upon land in the borough 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

Council empowered to financially assist approved persons by contributing out of loan-moneys to the amount to be advanced by financial institutions.

such person in favour of the financial institution and containing such terms and provisions as the Council may approve.

4. 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.

Council and financial institutions may enter into agreements in reference to payments in respect of advances.

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

Requirements by Council before exercising power to give financial assistance.

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

6. The principal moneys secured by any mortgage securing moneys advanced pursuant to an application to which section three hereof relates shall not exceed the sum of one thousand five hundred and fifteen

Limit to amount which may be advanced.

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 principal moneys secured by that mortgage.

Council may guarantee to financial institutions advances to approved persons.

7. Where any person approved by the Council is desirous of erecting a house upon land in the borough 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 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.

Council and financial institution may agree upon terms of guarantee and same may be varied at any time.

8. 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 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 guarantee as the Council and the financial institution may deem 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.

Requirements of Council prior to exercising powers contained in section 7.

9. Before exercising in any case the power conferred on it by section seven 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.

10. The principal moneys secured by any mortgage securing moneys advanced pursuant to an application to which section seven 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:

Amount to be guaranteed limited to one-third of amount to be secured by mortgage.

Provided that in any case where the moneys secured by the mortgage include moneys by way of premiums payable by the mortgagor and no interest is payable by the mortgagor, the total principal moneys secured by the mortgage may exceed the sum of one thousand five hundred and fifteen pounds by an amount not exceeding the amount of the premiums aforesaid.

11. The Council shall not execute any guarantee under the powers conferred by this Act 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 this Act and under which the Corporation is or may be still liable, would exceed in the aggregate the sum of ten thousand pounds.

Liability of Council under total guarantees limited to £10,000.

12. (1) Subject to the provisions of subsection two of this section, where, in respect of any advance by way of first mortgage (in this section referred to as the original mortgage) granted under this Act to any person, the Council has, at the time of the giving of the original mortgage, entered into any guarantee under section seven of this Act, and that person, for the purpose of repaying all moneys then secured by the original mortgage, applies to a financial institution for an advance by way of first mortgage (in this section referred to as the replacement mortgage) upon the security over which the original mortgage was given, the principal moneys secured by the replacement mortgage to be free of interest, but to include moneys by way of premiums payable by the mortgagor, the Council may guarantee to the financial institution

Council may guarantee certain replacement mortgages.

making the advance under the replacement mortgage repayment of the moneys so advanced, or of any portion of those moneys.

(2) The principal moneys (exclusive of the moneys payable by way of premiums as aforesaid) secured by any replacement mortgage guaranteed by the Council under subsection one of this section shall not exceed the sum of one thousand five hundred and fifteen pounds, and the Council shall not guarantee in respect of the replacement mortgage repayment of any moneys in excess of the amount of the principal moneys secured by the original mortgage at the time of its repayment.

(3) Subject to the foregoing provisions of this section, the provisions of sections seven to ten of this Act shall apply with respect to every guarantee given under this section.

13. Notwithstanding any rule of 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 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 purpose of providing funds out of which the Council may make advances under section three hereof and out of which the Council may pay any amounts payable by it in respect of any guarantee executed pursuant to section seven or section twelve hereof or payable by it pursuant to the provisions of the next succeeding section, the Council may from time to time raise money, not exceeding in the aggregate ten 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

Extending
lending-powers
of financial
institutions.

Council
authorized to
borrow up to
£10,000 for
purpose of
Act.

institution against the Corporation under any document purporting to be executed in pursuance of any of the provisions of this Act.

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

Provisions which apply to all mortgages to which the Act relates.

- (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 to do so:

(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 Council 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 down to the date of such payment):

Provided that the Council (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 Council, and on the Council 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 is made under any such mortgage and such default continues 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 Council 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. Every agreement or guarantee entered into or purporting to be entered into by the Council in pursuance of any of the provisions 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 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.

All documents executed by Council to be under seal of Corporation.

17. Every resolution of the Council to advance moneys under section three of this Act shall, notwithstanding any non-compliance with any of the provisions of this Act, be conclusive evidence of the authority of the Council to make such advance.

Resolution to make advance conclusive evidence of authority.

18. To provide a fund for insuring the Corporation against losses arising out of mortgages to which section three or section seven 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 Council. Every such sum so deducted and paid to the Council 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 Council shall form part of a special fund to be invested and held by the Council as a fund to insure the Corporation against losses arising out of mortgages to which section three or section seven of this Act relates.

Provision for creation of Reserve Fund.

19. (1) The Council may lease to any person any land, other than public reserves, on which no buildings are erected which it has power to lease under the Municipal Corporations Act, 1933, or any other Act, on the terms set out in section one hundred and fifty-eight of the Municipal Corporations Act, 1933, but the

Power to lease lands other than public reserves for housing purposes.

provisions of section one hundred and fifty-nine of that Act shall not apply to any such lease if there is a covenant therein that the lessee will erect one or more dwellinghouses on the land not later than two years after the commencement of the lease.

(2) The rental for the terms of any terminating lease, or for the first term of any renewable lease, shall be not less than four pounds per centum of the unimproved value of the land to be fixed by the Borough Valuer and approved by the Council.

(3) The rentals for renewal terms of any such lease shall be fixed by valuation as provided in the said section one hundred and fifty-eight, but shall in no case be less than four pounds per centum of the unimproved value of such land according to the Government valuation roll for the time being in force.

(4) Every such lease may contain a provision whereby the lessee shall have the right at any time to purchase the fee-simple of the land comprised therein at a price equal to twenty-five times the annual rental payable under the lease at the time of the tenant's election to purchase. Every such purchase shall be completed within six months of the date of the election.

(5) Notwithstanding any rule of law or any statutory or other provision to the contrary, any financial institution may advance by way of mortgage to any person, on the security of any such lease, any sum not exceeding ninety per centum of the value of any house erected on the land so leased.

Powers of Council in regard to making advances for the renovation or enlargement of buildings.

20. (1) If the owner of any house or building in the Borough applies to the Council for assistance for the purpose of carrying out works for the reconstruction, enlargement, repair, or improvement thereof, and the Council is of opinion that only after the works are carried out the house or building would be in all respects fit for habitation as a house, and that the area in which the house or building is situated is in regard to housing accommodation 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, with the consent in writing of the mortgagees, 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 of which the advance is to be made have been carried out in a satisfactory and efficient manner.

(3) For the purposes of this section "owner", in respect of any property, means the person for the time being entitled to receive the rack-rent thereof, or who would be so entitled if the same were let to a tenant at a rack-rent.

(4) 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 fixed as aforesaid. Such agreement may contain any incidental provisions and may provide for the earlier payment 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.

(5) 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.

(6) The capital moneys advanced by the Council under this section may, when repaid, be advanced to other owners for the purposes aforesaid and subject thereto all such capital moneys shall be applied in or towards the repayment of any special loan raised as hereinafter mentioned, either by payment into the sinking fund in addition to the annual sinking fund payments required, if any, or in such other manner as the Council, with the sanction of the Audit Office, determines.

(7) 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.

(8) 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 one thousand pounds under the Local Bodies' Loans Act, 1926, by special order, and without taking the steps prescribed in sections nine to thirteen of that Act.

(9) 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.