

Mr. Mackley

MASTERTON BOROUGH HOUSING

[LOCAL BILL]

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A BILL INTITULED

AN ACT to promote House-building and to improve Title.
Housing Conditions in the Borough of Masterton,
and to confer on the Masterton Borough Council
5 Additional Powers in relation to Housing.

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 Masterton Borough Housing Act, 1945.	
Interpretation.	2. In this Act, if not inconsistent with the context,—	
	“Borough” means the Borough of Masterton:	
	“Corporation” means the corporation of the Mayor, Councillors, and Burgesses of the Borough of Masterton:	5
	“Council” means the Masterton Borough Council:	
	“Estimated value” means the value as estimated in a valuation made on behalf of the Council:	10
	“Financial institution” means any building society under the Building Societies Act, 1908, 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:	15
	“House” means any house, or part of a house, occupied as a separate dwelling, and includes outbuildings, paths, and fences appurtenant to such a house.	20
Council may promote erection of houses by contributions towards loans.	3. Where any person approved by the Council desires to erect 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 of the fee-simple of such land executed by such person in favour of the financial institution, and containing such terms and provisions as the Council may approve.	25 30 35
Agreements between Council and financial institutions as to application of mortgage repayments, &c.	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	40

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
5 the Council and the financial institution.

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

Conditions on which contributions may be made.

10 (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 the proposed house when erected thereon:

15 (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
20 the total estimated value of the land and the proposed house when erected thereon:

25 (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 the proposed house when erected thereon.

30 6. The total principal-moneys secured by any such mortgage *as aforesaid* 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 pursuant to section *three* hereof shall not exceed one-fourth of the total principal-moneys secured
35 by that mortgage.

Limits of advances and of Council's contributions.

40 7. Where any person approved by the Council desires to erect 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
45 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 advance to that person.

Council may guarantee mortgages.

Provisions of
guarantee.

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

Conditions on
which
guarantee
may be made.

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 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 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.

Limits of
principal-
moneys, and
of guarantees.

10. The total principal-moneys secured by any mortgage in respect of which a guarantee is given by the Council pursuant to section *seven* hereof 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 that mortgage.

Limit of
total liability
under current
guarantees.

11. The Council shall not execute any deed or instrument of guarantee pursuant to section *seven* 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 deeds and instruments of guarantee previously executed by the Council pursuant to that section and still in force,
 5 would exceed in the aggregate the sum of twenty thousand pounds.

New

10 **11A.** (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,
 15 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 making the advance under the replacement mortgage repayment of the moneys so advanced, or of any portion of those moneys.

Council may guarantee certain replacement mortgages.

20 (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
 25 by the original mortgage at the time of its repayment.

30 (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.

40 **12.** 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

Powers of financial institutions to advance moneys under Act.

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

Council may borrow for purposes of Act.

13. For the purpose of providing funds out of which the Council may make advances under section *three* hereof, and out of which the ~~Corporation~~ Council may satisfy its obligations under any guarantee given pursuant to section *seven* hereof ~~and out of which the Corporation may pay any moneys or section~~ *eleven* 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 twenty thousand pounds, under the Local Bodies' Loans Act, 1926, by way of special loan, by special order, and without taking ~~any of~~ 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 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 documents purporting to be executed in pursuance of any of the provisions of this Act.

Provisions as to mortgages.

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

- (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 in writing approve in the circumstances of the particular case:
- (c) Any person, firm, or corporation may join in or guarantee any of the covenants on the part of the mortgagor contained or implied in any such mortgage:

- 5 (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 of any other person:
- 10 (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.
- 15 (f) If default is made under any such mortgage, and such default continues for a period of three months or longer, 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:
- 20 (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—
- 25 (i) The Council shall, within one month after 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
- 35 owing or accruing in respect thereof:
- 40 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 acerued 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 every security collateral therewith, held by the financial institution: 5

(h) If default is made under any such mortgage, and such default continues for a period of six months or longer, the Council may (if the financial institution has not already 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. 10 15 20

Execution and proof of documents and resolutions.

15. (1) Every agreement, and every deed or instrument of guarantee, entered into, or purporting to be entered into, by the Council in pursuance of the provisions of this Act shall be executed in the name, and under the seal, of the Corporation, and every such agreement, deed, or instrument 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. 25 30 35

(2) Every resolution of the Council to advance moneys under section *three* hereof 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. 40

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

Mortgages securing premium in lieu of interest.

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10
15 (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 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 the premium which has been added to the cash advance in lieu of interest:

20 (b) The amount which the Corporation may be required to pay to the financial institution concerned under the provisions of paragraph (g) of section *fourteen* hereof shall be determined by agreement between the Corporation and the financial institution at the time of the making of the advance.

25 17. To provide a fund for insuring the Corporation against losses arising out of mortgages to which the provisions of this Act relate 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 to the Council the amount so deducted. 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 the mortgages to which the foregoing provisions of this Act relate.

Insurance against losses arising out of mortgages.

Power for Council to lease lands for housing purposes, and to grant right of purchase.

18. (1) The Council may lease to any person, on the terms set out in section one hundred and fifty-eight of the Municipal Corporations Act, 1933, any lands which it has power to lease under that Act or any other Act, and which are not public reserves, and on which no buildings are erected; and the provisions of section one hundred and fifty-nine of the Municipal Corporations Act, 1933, shall not apply to such leasing. 5

(2) Every such leasing shall be subject to the conditions following:— 10

(a) The lease shall provide that the lessee shall, within two years after the commencement of the lease, erect one or more houses on the land:

(b) The annual rental throughout the term of a terminating lease, and throughout the first term of a renewable lease, shall be not less than four per centum of the estimated value of the land without improvements thereon: 15

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and, throughout every renewal term, shall be not less than four per centum of the estimated value of the land without improvements as at the commencement of such renewal term:

New 25

(bb) The rentals for the renewal terms 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 the land according to the Government valuation roll for the time being in force: 30

(c) Any such leasing *lease* may confer on the lessee the right at any time to purchase the fee-simple of the land included therein at a price equal to twenty-five times the annual rental payable under the lease at the time of the election by the lessee to purchase. Every such purchase shall be completed within six months after the date of such election: 35

(d) On any such election by a lessee to purchase during the subsistence of any mortgage under this Act affecting the leasehold interest of the lessee in the land concerned, the lessee shall, on the completion of the purchase, 40 45

5 either fully pay off and satisfy such mortgage,
 or execute, in favour of the same mortgagee,
 a new mortgage of the fee-simple of the land,
 securing the moneys still remaining owing
 under the mortgage of the leasehold interest,
 and containing the same covenants terms and
 provisions (*mutatis mutandis*) as are con-
 10 tained in such last-mentioned mortgage; and
 all guarantees and agreements entered into
 pursuant to this Act between the Corporation
 or the Council and the financial institution
 concerned in relation to such mortgage of
 leasehold interest shall (*mutatis mutandis*)
 15 enure in respect of, and apply to, such new
 mortgage in lieu of such mortgage of leasehold
 interest.

19. (1) The provisions of sections *three to seven-*
teen (both numbers inclusive) of this Act, *mutatis*
mutandis, shall apply to applications for advances, as
 20 in sections *three and seven* of this Act mentioned, on
 the security of first mortgage of the leasehold interest
 in land leased by the Council pursuant to the *last*
preceding section, and of a house proposed to be
 erected on such land:

The provisions
 of this Act
 to extend,
mutatis
mutandis,
 to advances on
 mortgage of
 leases made
 under this
 Act.

25 Provided that every reference in those sections to
 the cost, or the estimated value, of the land and the
 house proposed to be erected thereon, shall be deemed
 to be a reference to the cost, or the estimated
 value (as the case may be) of the proposed house
 30 alone; ~~and provided, further,~~

Provided also that every mortgage given under this
 Act of such a leasehold interest as aforesaid shall be
 for a period expiring at least twelve months before the
 expiration of the term of such leasehold interest (in
 35 the case of a terminating lease), or at least twelve
 months before the expiration of the first term (in the
 case of a renewable lease).

(2) Subject to the provisions of the *last preceding*
 subsection, the provisions of section *twelve* of this Act
 40 shall extend to authorize any financial institution to
 advance moneys, as in that section authorized, upon the
 security of mortgage of leasehold interests created
 pursuant to section eighteen of this Act.