

LOCAL GOVERNMENT
(AMENDMENT) ACT.

Act No. 10, 1937.

An Act to make certain provisions for and in George VI,
No. 10, 1937. relation to loans to county councils; to provide for the cancellation of the realignment of the north-eastern side of Roslyn-street between Darlinghurst-road and Roslyn-avenue; to validate certain matters; to amend the Local Government Act, 1919, the Sydney Corporation Act, 1932-1934, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 15th October, 1937.]

BE

No. 10, 1937.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title. 1. This Act may be cited as the "Local Government (Amendment) Act, 1937."

Division into Parts. 2. This Act is divided into Parts as follows:—

PART I—PRELIMINARY.

PART II—AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919.

PART III—AMENDMENTS OF SYDNEY CORPORATION ACT, 1932-1934.

PART IV.—PROVISIONS AS TO CERTAIN LOANS.

PART II.

AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919.

Construe tion. 3. (1) This Part shall be read and construed with the Local Government Act, 1919, as amended by subsequent Acts.

(2) The Local Government Act, 1919, as so amended, is in this Part referred to as the Principal Act.

Amendment of Act No. 41, 1919, s. 30. (Transactions with council which do not disqualify.) 4. The Principal Act is amended by inserting after subsection four of section thirty the following new subsection:—

(4A) (a) A person (being a member of an association) shall not be disqualified for a civic office by reason only of having a direct or indirect pecuniary

pecuniary interest in an agreement with the council as such member where such interest arises out of an agreement made or purporting to have been made by or on behalf of the association and is an interest in common with all the members of the association who are bound by the agreement.

(b) In this subsection "association" means a body of persons (incorporated or unincorporated) consisting of not less than ten members, the operations and activities of which—

- (i) are directed to social, religious, educational, literary, musical, scientific, agricultural, horticultural or other like purposes or to social welfare or to the welfare or recreation of its members; and
- (ii) are not conducted for private gain.

(c) Without prejudice to the generality of the foregoing provisions of this subsection, those provisions shall extend to and in respect of every person who, at the commencement of the Local Government (Amendment) Act, 1937, is the holder of a civic office, in the same manner and in all respects as if those provisions had come into operation at the date upon which such person became the holder of the civic office.

5. (1) (a) The Principal Act is further amended by inserting after section two hundred and ninety-nine the following new section:—

Further amendment of Act No. 41, 1919. New sec. 299A.

299A. The council may undertake the immunisation by methods approved by the Board of Health of persons voluntarily seeking immunisation against diphtheria or other infectious or contagious disease.

Immunisation against disease.

(b) Paragraph (a) of this subsection shall be deemed to have commenced on the first day of January, one thousand nine hundred and thirty-four.

(2) The Principal Act is further amended by inserting at the end of section six hundred and twenty-five the following new subsection:—

Further amendment of Act No. 41, 1919, s. 625.

(2) Any such book may be kept according to a loose-leaf system in the manner and subject to the conditions prescribed.

(Minute book.)

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Further
amendment
of Act No.
41, 1919,
s. 493A.
(Agree-
ment by
Treasurer.)

6. (1) The Principal Act is further amended—

- (a) by omitting from subsection one of section 493A the words “the sum specified in the recommendation” and by inserting in lieu thereof the words “the sum or respective sums specified in the recommendation, or the sum or sums ascertained from time to time upon such basis or upon such considerations as the Minister may recommend”;
- (b) by inserting at the end of the same subsection the words “The utilisation of the moneys of the electricity trading fund for the purpose of financing the construction of electricity works shall be deemed to be a borrowing by the council for the purposes of this section”;
- (c) by omitting from subsection two of the same section the words “by way of ordinary loan for any of the purposes mentioned in paragraph (g2) of subsection one of section one hundred and seventy-seven of this Act or by way of renewal loan for the purpose of repaying or renewing any such ordinary loan or any earlier renewal loan in respect thereof and of paying the expenses thereof.”

(2) Subsection one of this section shall be deemed to have commenced on the sixteenth day of December, one thousand nine hundred and thirty-five.

(3) The Principal Act is further amended by omitting from subsection three of section 493A the words “may be paid out of the Consolidated Revenue Fund without further appropriation than this Act” and by inserting in lieu thereof the words “shall be paid out of moneys provided by Parliament.”

Further
amendment of
Act No. 41,
1919.
Sec. 23.

(Representa-
tion in
wards in
municipalities.)

7. (1) The Principal Act is further amended by inserting at the end of subsection four of section twenty-three the following proviso:—

Provided that the same number of aldermen shall be elected for each of the wards into which a municipality is divided.

(2)

(2) The Principal Act is further amended by inserting at the end of subsection three of section seventy-three the following new paragraph:—

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Further amendment of Act No. 41, 1919.

On receipt of a petition signed by not less than one-fifth in number of the enrolled electors of an area to which the system of election according to the principles of proportional representation has either before or after the commencement of the Local Government (Amendment) Act, 1937, by proclamation been so applied, praying that a poll be taken on the question of revoking such proclamation, the council shall forthwith take such poll and shall certify the decision thereof to the Governor.

Sec. 73 (3).

(Proportional representation.)

Where the decision of the poll is in favour of such revocation, the Governor shall by a further proclamation revoke the proclamation applying such system to that area.

8. (1) The Principal Act is further amended—

Further amendment of Act No. 41, 1919.

(a) by inserting next after subsection four of section one hundred and seven the following new subsection:—

Sec. 107.

(The general fund.)

(5) (a) The division of any area into wards or ridings shall not be taken into account in applying the general fund to any purpose.

(b) The Governor may from time to time by proclamation declare that as from a date specified in the proclamation, paragraph (a) of this subsection shall not apply to or in respect of any area mentioned in the proclamation, and may revoke any such proclamation by a subsequent proclamation.

A proclamation under this paragraph shall have effect according to its tenor.

(b) by inserting next after subsection two of section two hundred and six the following new subsection:—

Sec. 206.

(Ward and riding accounts.)

(3) (a) The council shall not keep ward or riding accounts in respect of the general fund.

(b)

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(b) The Governor may from time to time by proclamation declare that as from a date specified in the proclamation, paragraph (a) of this subsection shall not apply to or in respect of the council of any area mentioned in the proclamation, and may revoke any such proclamation by a subsequent proclamation.

A proclamation under this paragraph shall have effect according to its tenor.

(2) This section shall commence upon the first day of January, one thousand nine hundred and thirty-eight.

Validation
of certain
rates.

9. (1) The water supply local rates made and levied by the council of the municipality of Cootamundra on the unimproved capital value of certain ratable land within the municipality of Cootamundra during the year one thousand nine hundred and thirty-three of eight pence in the pound, with a minimum rate of one pound fifteen shillings, and during the year one thousand nine hundred and thirty-four of eleven pence in the pound, with a minimum rate of two pounds, shall be deemed to have been rates and minimum rates respectively duly made and levied in accordance with the provisions of the Principal Act.

(2) The water supply local rates made and levied by the council of the municipality of Hillston on the unimproved capital value of certain ratable land within the municipality of Hillston during the year one thousand nine hundred and thirty-seven of seven and one-half pence in the pound, with minimum rates of fifteen shillings and three pounds, shall be deemed to have been rates and minimum rates respectively duly made and levied in accordance with the provisions of the Principal Act.

(3) The sewerage local rates made and levied by the council of the municipality of Taree on the unimproved capital value of certain ratable land within the municipality of Taree during the year one thousand nine hundred and thirty-seven of one and one-half pence in the pound, with minimum rates of ten shillings and two pounds five shillings, shall be deemed to have been rates and minimum rates respectively duly made and levied in accordance with the provisions of the Principal Act.

(4)

(4) The sewerage local rates made and levied by the council of the shire of Wingecarribee on the unimproved capital value of certain ratable land within the shire of Wingecarribee during the year one thousand nine hundred and thirty-seven of three and one-half pence in the pound, with minimum rates of one pound and one pound ten shillings, shall be deemed to have been rates and minimum rates respectively duly made and levied in accordance with the provisions of the Principal Act.

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10. (1) The Principal Act is further amended—

Further amendment of Act No. 41, 1919.

(a) by inserting in subsection one of section one hundred and twenty-one after the word "Minister" the words "or debt incurred or loan raised";

Sec. 121 (1). (Local rate.)

(b) (i) by inserting in subsection three of section three hundred and seventy-eight after the words "maintenance and management thereof" therein appearing the words "or for or towards repaying with interest any debt incurred or loan raised in respect thereof";

Sec. 378 (3). (Rates—certain works.)

(ii) by inserting at the end of the same subsection the following words:—

Rates levied under this subsection shall be local rates.

(2) (a) The Principal Act is further amended by inserting next after subsection (3A) of section three hundred and seventy-eight the following new short heading and subsection—

Further amendment of Act No. 41, 1919. Sec. 378. New subsec. 3B.

Rate for first year of operations.

(3B) Where during any year a council is charged under section three hundred and seventy-four or section three hundred and seventy-seven of this Act with the care and management of any water, sewerage, or drainage works or has completed the construction of any such works undertaken by it, the council may, under and in accordance with the provisions of this Part and of any ordinances, make and levy local rates in respect of any such work for the whole of the year commencing on the first day of January

January next preceding the date upon which the council is charged with the care and management of such works or has completed the construction of such works as the case may be.

Any land subject to any such rate shall be deemed to have become subject to the rate on the said first day of January; and any valuation of land necessary to be made for the purpose of making and levying any such rate shall be deemed to have come into force on the said first day of January.

(b) Paragraph (a) of this subsection shall be deemed to have commenced upon the first day of January, one thousand nine hundred and thirty-seven.

Certain
borrowing
powers.

11. (1) (a) The council of the shire of Tumberumba may borrow by way of ordinary loan any sum not exceeding the amount notified by the Governor under Part XIV of the Principal Act either before or after the commencement of this Act as the capital debt of that council for certain works of water supply for the town of Tumberumba, the construction of which by the Minister for Public Works was commenced under the said Part before the commencement of this Act.

(b) The council shall apply the sum so borrowed for the purpose of the repayment of the said capital debt.

(c) Any loan rate levied in respect of a loan raised under this subsection shall be levied only upon land which is subject to water supply local rates under Part XIV of the Principal Act in connection with the said works of water supply.

(2) (a) The council of the shire of Namoi may borrow by way of ordinary loan any sum not exceeding the amount notified by the Governor under Part XIV of the Principal Act either before or after the commencement of this Act as the capital debt of that council for certain works of water supply for the town of West Narrabri, the construction of which by the Minister for Public Works was commenced under the said Part before the commencement of this Act.

(b) The council shall apply the sum so borrowed for the purpose of the repayment of the said capital debt.

(c)

(c) Any loan rate levied in respect of a loan raised under this subsection shall be levied only upon land which is subject to water supply local rates under Part XIV of the Principal Act in connection with the said works of water supply.

(3) The provisions of the Principal Act relating to borrowing by a council by way of ordinary loan shall apply to and in respect of any borrowing by a council under this section.

(4) Without prejudice to the generality of subsection three of this section the provisions of section one hundred and ninety-seven of the Principal Act shall apply to and in respect of any advance made to a council under this section.

(5) The approval of the Governor of an ordinary loan raised under this section shall for the purposes of any security in respect of that loan be conclusive evidence that the council concerned is authorised to borrow the amount mentioned in the instrument of approval.

PART III.

AMENDMENTS OF SYDNEY CORPORATION ACT, 1932-1934.

12. The Sydney Corporation Act, 1932-1934, is amended—

(a) by inserting after section 76B the following new sections:—

76c. (1) (a) The council may, subject to such conditions as it may impose, grant permission to any person to construct, lay, suspend or otherwise place any rails, pipes, wires, cables, tunnels, poles or structures of any sort whatsoever upon, under or over any public way, and may make a charge for any damage to the public way resulting from the construction or placing thereof.

Amendment of Act No. 58, 1932.

New secs. 76c and 76d.

Pipes, wires, etc., under or over public ways. cf. Act No. 41, 1919, s. 421.

(b)

(b) The council shall not grant permission to any person to construct a tunnel under any public way unless and until the approval of the Governor thereto has been obtained.

(2) Any such permission granted shall not authorise permanent obstruction of the ordinary and reasonable user of such public way.

(3) A person shall not construct, lay, suspend, or otherwise place any rails, pipes, wires, cables, tunnels, poles or structures of any sort whatsoever upon, under or over any public way without having obtained the permission of the council.

(4) Where, in the council's opinion the existence of any rails, pipes, wires, cables, tunnels, poles or structures aforesaid causes damage to a public way, the council may require that the damage be made good by the person entitled to the use and benefit of such rails, pipes, wires, cables, tunnels, poles or structures.

(5) Where any rails, pipes, wires, cables, tunnels, poles or structures aforesaid have not been in regular use for a period of twelve months the council may order the removal thereof, and may order the repair of any damage to any public way resulting from such removal. The person entitled to the use and benefit of the rails, pipes, wires, cables, tunnels, poles or structures shall comply with the order.

(6) This section shall apply to rails, pipes, wires, cables, tunnels, poles and structures laid, suspended or placed upon, under or over any public way before or after the commencement of the Local Government (Amendment) Act, 1937, but shall not apply to—

- (a) cases where such things were so laid, suspended or placed under the authority of any statute; or
- (b) cases where a tunnel has been so placed by a person who at the time of the placing thereof held the fee-simple of the public way

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way and also held the fee-simple of the land on each side of the public way where such tunnel is so placed.

76d. (1) The council may, at any time, when in its opinion any rails, pipes, wires, cables, tunnels, poles or structures, laid, suspended or placed upon, under or over any public way require repair in the interests of public safety or convenience, order that such repairs as it may deem necessary be effected.

Repairs.
cf. Act No.
41, 1919, s.
422.

(2) In default of such repairs being effected the council may remove or fill in such rails, pipes, wires, cables, tunnels, poles or structures, or any part thereof, and recover the cost of so doing as a debt from the person to whom permission has been granted under section 76c of this Act or his successors in title.

(3) This section shall not apply to the Crown, nor to any works constructed or to be constructed by a statutory body under any statute, but shall apply to any person other than the Crown or such statutory body and shall apply to rails, pipes, wires, cables, tunnels, poles and structures laid, suspended or placed upon, under or over any public way before or after the commencement of the Local Government (Amendment) Act, 1937, including any such things so placed under the authority of any statute.

Exemption
of certain
works.

(b) by inserting at the commencement of subsection one of section one hundred and twelve the words "Subject to the provisions of sections 76c and 76b of this Act";

Sec. 112
(1).
(Conse-
quential.)

(c) by inserting in section one hundred and fifty-one immediately after the word "cables" wherever therein appearing the words "poles, tunnels, structures."

Sec. 151.
(Conse-
quential.)

13. The Sydney Corporation Act, 1932-1934, is amended—

Further
amendment
of Act No.
58, 1932.

(a) by omitting paragraph (b) of subsection one of section eleven;

Sec. 11.
(Cost of lists.)

(b)

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New sec.
16A.Cost of
lists and
rolls.

(b) by inserting after section sixteen the following new section:—

16A. The council shall in respect of each election pay into the Treasury a sum fixed by the Colonial Treasurer as the cost of collecting, printing, preparing and revising the lists and rolls of citizens and of any work incidental thereto.

Sec. 18c.
(Polls.)

(c) by inserting after subsection two of section 18c the following new subsection:—

(3) (a) A citizen shall not vote more than once at any poll of citizens.

(b) A ratepayer shall not vote more than once at any poll of ratepayers.

Cancellation
of realign-
ment of
part of
Roslyn-
street.

14. The realignment of the north-eastern side of Roslyn-street between Darlinghurst-road and Roslyn-avenue, notified in the Government Gazette of the twenty-fourth day of December, one thousand nine hundred and thirty, is hereby cancelled.

PART IV.

PROVISIONS AS TO CERTAIN LOANS.

Amendment
of Act No.
38, 1915.

15. The Grafton and South Grafton Water Supply Administration Act, 1915, as amended by the Grafton and South Grafton Water Supply Administration (Amendment) Act, 1931, is amended—

Sec. 14.
New subsecs.
(3)-(6).(Securities
of Grafton
and South
Grafton
Water
Board to
be trustee
invest-
ments.)

(a) by inserting at the end of section fourteen the following new subsections:—

(3) Any trustee unless expressly forbidden by the instrument (if any) creating the trust may invest any trust moneys in his hands in any such security over the undertaking and revenues of the board in a form approved by the Governor and the investment shall be deemed to be an investment authorised by the Trustee Act, 1925.

(4)

(4) The approval of the Governor to any form of security as aforesaid shall in favour of the lender and his assigns be conclusive evidence not only that the security over the undertaking and revenues of the board is approved by the Governor, but also that the money lent on the security is borrowed by the board with the consent of the Governor for the purposes of the board.

(5) The provisions of sections one hundred and ninety-three to one hundred and ninety-six (both inclusive) of the Local Government Act, 1919, as amended by subsequent Acts, shall apply to and with respect to any security over the undertaking and revenues of the board in a form approved by the Governor, and the holder thereof, and for such purposes the security shall be deemed to be a mortgage deed and the board a council.

(6) No person lending any money to the board shall be bound to see to the application thereof or be in any way responsible for the non-application or misapplication thereof.

(b) by inserting at the end of section three the words "The body corporate shall continue to exist notwithstanding any vacancy or vacancies in its membership. The board may sue and be sued in its corporate name, and shall, for the purposes and subject to the provisions of this Act, be capable of purchasing, holding, granting, mortgaging, demising, disposing of and alienating real and personal property, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer." Sec. 3.
(Body corporate.)

16. (1) The council of the St. George County District (in this section called "the St. George Council") shall be deemed to have had power and authority to borrow from the State Superannuation Board (hereinafter in this section and in section seventeen of this Act called "the Board"), and the Board shall be deemed to have had power and authority to lend to the St. George Council Validation of certain loans by the State Superannuation Board to the St. George County Council.

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Council the respective sums of fifty thousand pounds, fifty thousand pounds, one hundred thousand pounds, and one hundred thousand pounds on the security of the deeds of mortgage from the St. George Council to the Board dated the twenty-ninth day of August, one thousand nine hundred and twenty-four, the twenty-fourth day of November, one thousand nine hundred and twenty-five, the eleventh day of January, one thousand nine hundred and twenty-seven, and the nineteenth day of September, one thousand nine hundred and twenty-nine, respectively, and the St. George Council shall be deemed to have had power and authority to execute in favour of the Board each of the aforesaid four deeds of mortgage for the purpose of securing to the Board the repayment as therein provided of the loan therein referred to with interest thereon as therein mentioned.

(2) The assignment in favour of the Board contained or referred to in each of the said deeds of mortgage and all the powers, rights and remedies in favour of the Board contained or referred to or implied in such deed of mortgage shall be and be deemed to have been valid and enforceable as if the same were herein enacted and set forth at length.

Validation
of certain
loans by
the State
Superannu-
ation Board
to the
Clarence
River
County
Council and
of the guar-
antee there-
of by the
Colonial
Treasurer.

17. (1) The council of the Clarence River County District (in this section called "the Clarence River Council") shall have and shall be deemed to have had power and authority to borrow from the Board, and the Board shall have and shall be deemed to have had power and authority to lend to the Clarence River Council, the respective sums of ninety thousand pounds and fifty thousand pounds on the security of the deeds of mortgage from the Clarence River Council to the Board dated the thirty-first day of July, one thousand nine hundred and thirty-six, and the twenty-seventh day of April, one thousand nine hundred and thirty-seven, respectively, and the Clarence River Council shall have and shall be deemed to have had power and authority to execute in favour of the Board each of the aforesaid two deeds of mortgage for the purpose of securing to the Board the repayment as therein provided of the loan therein referred to with interest thereon as therein mentioned.

(2)

(2) The assignment in favour of the Board contained or referred to in each of the said deeds of mortgage and all the powers, rights and remedies in favour of the Board contained or referred to or implied in such deeds of mortgage (including power in the Board to apply under section one hundred and ninety-three of the Local Government Act, 1919, as amended by subsequent Acts, to the Supreme Court for the appointment of a receiver of the rates and other income of the Clarence River Council) shall be and shall be deemed to have been valid and enforceable as if the same were herein enacted and set forth at length.

(3) The action of the Colonial Treasurer in giving to the Board the guarantee under his hand and seal dated the thirtieth day of April, one thousand nine hundred and thirty-seven, in respect of the payment by the Clarence River Council to the Board of the moneys secured by the deeds of mortgage referred to in subsection one of this section, and the action of the Governor and the Executive Council in authorising such guarantee is hereby validated, and the said guarantee shall be and be deemed to have been valid.

18. The Local Government Act, 1919, as amended by subsequent Acts, is hereby amended as follows:—

Amendment of Act No. 41, 1919.

(a) by inserting after section five hundred and sixty-four the following new section:—

New sec. 564A.

564A. Any trustee unless expressly forbidden by the instrument (if any) creating the trust may invest any trust moneys in his hands in any debentures, mortgage deeds or bonds issued under the Local Government Act, 1919, as amended by subsequent Acts, by a county council having power to borrow money on any such security and to levy rates, and the investment shall be deemed to be an investment authorised by the Trustee Act, 1925.

County councils' securities to be trustees' investments.

(b) by inserting in subsection one of section one hundred and ninety-one after the word "debentures" the words "mortgage deeds or bonds";

Sec. 191 (1).

(c) by inserting at the end of subsection one of section five hundred and sixty-one the words "In any such proclamation constituting a county

Sec. 561 (1).

Sec. 561.
New sub-
sec. (5).

county district it shall be and be deemed to have been sufficient if the county district has been or is expressed to be constituted for local government purposes without indicating the purposes and the production of a copy of the Gazette containing any such proclamation shall be conclusive evidence that the land therein described or referred to has been duly constituted as a county district”;

(d) by inserting at the end of section five hundred and sixty-one the following new subsection:—

(5) Notwithstanding any other provision in this Act where a county council for a county district has borrowed or borrows money on the security of any debenture, mortgage deed or bond, and any money secured thereby remains unpaid the proclamation constituting the county district shall not be rescinded or be altered or varied so as to reduce the land comprised in the county district except with the consent of the holder of such debenture, mortgage deed or bond, or in pursuance of an order of the Supreme Court in its equitable jurisdiction which may be applied for by summons in Chambers and in respect to the application the court may make such order as to costs as it thinks proper.”

Sec. 563 (1).

(e) by inserting at the end of subsection one of section five hundred and sixty-three the words “The body corporate shall continue to exist notwithstanding any vacancy or vacancies in its membership”;

Sec. 564 (3).

(f) by inserting at the end of subsection three of section five hundred and sixty-four the words “The production of a copy of the Gazette containing any such proclamation shall be conclusive evidence of the existence of the county council and that the functions, powers and duties therein referred to (including the power to levy rates or to borrow) have been duly delegated to the county council”;

Sec. 564 (5).

(g) by inserting at the end of subsection five of section five hundred and sixty-four the words “Where a county council for a county district has

has borrowed or borrows money on the security of any debenture, mortgage deed or bond, and any money secured thereby remains unpaid, no repeal or amendment of a delegation shall be made except with the consent of the holder of such debenture, mortgage deed or bond, or in pursuance of an order of the Supreme Court in its equitable jurisdiction which may be applied for by summons in Chambers and in respect to the application the court may make such order as to costs as it thinks proper”:

(h) by inserting at the end of section five hundred and sixty-four the following new subsections:—

Sec. 564.
New
subsecs.
(6)-(8).

(6) The production of a copy of the Gazette containing any delegation amending any previous delegation shall be conclusive evidence that any powers, functions and duties therein referred to as delegated (including the power to levy rates or to borrow) have been duly delegated to the county council.

(7) Where the Governor approves of a county council borrowing any money, and the approval indicates that the money may be borrowed on the security of a debenture, mortgage deed or bond, such approval shall in favour of the lender and his assigns be conclusive evidence that the county council has full power and authority to borrow the amount mentioned in the approval upon any such security and to execute the security.

(8) Notwithstanding the generality of subsection four of this section the provisions of sections one hundred and ninety-three to one hundred and ninety-seven (both inclusive) of this Act shall apply to and with respect to any debenture, mortgage deed or bond issued by a county council to secure a loan approved of by the Governor, and the holder thereof, and for such purposes the county council shall be deemed to be a council.