



Agenda Report for Decision

Meeting Date: 1 August 2024

Item Name	Civil Penalties and Enforceable Voluntary Undertakings (Authorisations under Sections 225 and 230)
Presenters	Hayley Pasut and Nick Buick
Purpose of Report	Decision
Item Number	5.2
Strategic Plan Reference	NA
Work Plan Reference	NA
Confidentiality	Not Confidential (Release Immediately)
Related Decisions	N/A
Conflicts Declared	Nil
Is the Report author aware of any potential undeclared conflict?	NO

Recommendation

It is recommended that the State Planning Commission (the Commission) resolves to:

1. Approve the designation of this item as Not Confidential (Release Immediately).
2. Pursuant to sections 225(17)(b) and 230(14)(b) of the *Planning, Development and Infrastructure Act 2016* (the Act), authorise the following councils to utilise the enforcement tools available under sections 225 and 230 of that Act on an ongoing basis (as per **Attachment 1**):
 - Adelaide Hills Council
 - Alexandrina Council
 - City of Adelaide
 - City of Burnside
 - City of Charles Sturt
 - City of Holdfast Bay
 - City of Marion
 - City of Mitcham
 - City of Mount Gambier
 - City of Norwood Payneham & St Peters
 - City of Onkaparinga
 - City of Playford
 - City of Port Adelaide Enfield

- City of Salisbury
 - City of Unley
 - City of Victor Harbor
 - City of West Torrens
 - Coorong District Council
 - District Council of Grant
 - District Council of Loxton Waikerie
 - District Council of Robe
 - District Council of Yankalilla
 - Kingston District Council
 - Mount Barker District Council
 - Port Augusta City Council
 - Wattle Range Council
3. Further to Resolution 2 and pursuant to sections 225(18)(a) and 230(15)(a) of the Act, grant the authorisation to the councils subject to the following conditions:
- (a) The Council must provide details (date of commencement of proceedings, alleged offender, details of the breach and the outcome once known) to the Commission regarding the commencement of proceedings under section 225 of the Act as soon as practicable after the proceedings are commenced.
 - (b) The Council must provide to the Commission a copy of any enforceable voluntary undertaking that is given, varied or withdrawn under section 230 of the Act.
 - (c) Where the Council is proposing to take enforcement action under the relevant sections and the Council was not the relevant authority that granted development authorisation, it must notify the relevant authority that did grant development authorisation indicating that it proposes to take enforcement action under the relevant sections.
 - (d) Enforcement action under the relevant sections may only be commenced or undertaken by an authorised officer appointed by the Council under the Act.
 - (e) The Council must, to the best of their ability, make use of the enforcement tools available under the relevant sections in a consistent manner that is proportionate to the alleged offence or breach of the Act.
 - (f) In granting authorisation to the Council, the Council acknowledges and agrees that the Commission will not be liable for any costs associated with entering into (or subsequently enforcing) proceedings initiated or undertakings given under the relevant sections.
4. Authorise the Chair of the Commission to make any minor amendments as required and sign the draft letter to the councils (**Attachment 2**).

Background

On 3 September 2021, the City of Mitcham wrote to the Commission seeking authorisation to enable the City of Mitcham to use the enforcement tools available under sections 225 (civil penalties) and 230 (enforceable voluntary undertakings) of the *Planning, Development and Infrastructure Act 2016* (the Act).

Section 225 – Civil Penalties

Civil penalties are contemplated in section 225 of the Act. A civil penalty is a pecuniary penalty generally imposed by the court in civil proceedings (as distinct from a fine in criminal proceedings).

Under section 225, when a designated entity is satisfied that a person has committed an offence by contravening the Act, it may recover an amount as a civil penalty as an alternative to criminal proceedings. This may be done voluntarily by negotiation between the parties or by application to the Environment, Resources and Development Court (the Court).

The maximum amount which can be negotiated as a civil penalty is the amount specified in the Act for the offence, or \$120,000; whichever is the lesser. The maximum amount that the Court may impose as a civil penalty is the criminal penalty specified in the Act for the offence.

The Act does provide some restrictions as to when civil penalties may be utilised, including that a council must be satisfied that an offence has been committed and it cannot be used for offences which require proof of intention/state of mind (which would generally include more serious offences). Further to this, a person may elect to be prosecuted instead of having a civil penalty imposed and there is no criminal conviction of guilt where a civil penalty is imposed.

Section 230 – Enforceable Voluntary Undertakings

Pursuant to section 230 of the Act, a designated entity may accept (by written notice) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention of the Act by the person. The giving of an undertaking does not constitute an admission of guilt by the person giving the undertaking, and an undertaking may be varied or withdrawn at any time through written agreement.

It is an offence to breach an undertaking once it has been entered into and a designated entity may apply to the Court for enforcement of the undertaking. When proceedings regarding a contravention of the Act have been commenced but are yet to be finalised, a designated entity may accept an undertaking regarding that same contravention. The designated entity must then discontinue the proceedings.

For the purposes of both sections 225 and 230, a designated authority is either of the following:

- the Commission
- a council acting under an authorisation granted by the Commission
- the Commissioner for Consumer Affairs acting after consultation with the Commission.

In granting an authorisation to a council, the Commission may do so subject to certain conditions. The Commission may also vary or revoke an authorisation. It is important to note that there are obligations on the Commission to ensure that details regarding the commencement of proceedings under section 225 and any notice of the giving, varying or withdrawal of an undertaking under section 230 are published on the SA Planning Portal (the Portal).

Since 30 September 2021, the following councils have been authorised by the Commission (or by the Chair authorised on behalf of the Commission) to utilise the enforcement tools available under sections 225 and 230 Act.

- Adelaide Hills Council
- Alexandrina Council
- City of Adelaide
- City of Burnside
- City of Charles Sturt
- City of Holdfast Bay
- City of Marion
- City of Mitcham
- City of Mount Gambier
- City of Norwood Payneham & St Peters
- City of Onkaparinga
- City of Playford
- City of Port Adelaide Enfield
- City of Salisbury
- City of Unley
- City of Victor Harbor
- City of West Torrens
- Coorong District Council
- District Council of Grant
- District Council of Loxton Waikerie

- District Council of Robe
- District Council of Yankalilla
- Kingston District Council
- Mount Barker District Council
- Port Augusta City Council
- Wattle Range Council

Pursuant to sections 225(18)(a) and 230(15)(a) of the Act, the authorisations were granted to the councils subject to the following conditions:

- (a) The Council must provide details (date of commencement of proceedings, alleged offender, details of the breach and the outcome once known) to the Commission regarding the commencement of proceedings under section 225 of the Act as soon as practicable after the proceedings are commenced.
- (b) The Council must provide to the Commission a copy of any enforceable voluntary undertaking that is given, varied or withdrawn under section 230 of the Act.
- (c) Where the Council is proposing to take enforcement action under the relevant sections and the Council was not the relevant authority that granted development authorisation, it must notify the relevant authority that did grant development authorisation indicating that it proposes to take enforcement action under the relevant sections.
- (d) Enforcement action under the relevant sections may only be commenced or undertaken by an authorised officer appointed by the Council under the Act.
- (e) The Council must, to the best of their ability, make use of the enforcement tools available under the relevant sections in a consistent manner that is proportionate to the alleged offence or breach of the Act.
- (f) In granting authorisation to the Council, the Council acknowledges and agrees that the Commission will not be liable for any costs associated with entering into (or subsequently enforcing) proceedings initiated or undertakings given under the relevant sections.

These authorisations were granted for the period 30 September 2021 to 30 September 2024 and so the Commission now needs to consider whether to grant an extension based on feedback from councils on the effectiveness of the enforcement tools.

Discussion

On 20 May 2024, the Chair wrote to all councils with existing authorisations in place (**Attachment 3**) seeking information on the effectiveness of the enforcement tools to determine whether to grant future authorisations, as well as to determine the appropriateness of the current conditions imposed. A table of their responses has been provided (**Attachment 4**).

Of the 26 councils that are authorised, 13 councils provided feedback. Whilst not all councils that responded have utilised the enforcement tools, all respondents see the tools as a beneficial means of alternative enforcement. Most respondents with existing authorisations have been able to resolve breaches by negotiation. Of the four councils that advised they have used the enforcement tools; they have been used to seek civil penalties proportionate to the offences committed in lieu of prosecution.

All the responses indicated a desire for the authorisations to be extended, with City of Port Adelaide Enfield seeing no reason as to why they could not be extended on an ongoing basis. None of the respondents indicated any concerns with the current conditions imposed and viewed the current conditions as appropriate and effective. Further, the City of Onkaparinga expressed that the reintroduction of expiations in relation to offences under the Act, as were available under the repealed *Development Act 1993*, would also be of benefit to councils when undertaking enforcement action.

Given the conditions attached to the authorisations require councils to notify the Commission of any commencement of proceedings or details of any enforceable voluntary undertakings, it is recommended that the Commission extend the authorisations currently in place on an ongoing basis. This condition ensures that the Commission will have ongoing oversight of the use of the enforcement tools.

Further it is a condition that Councils are required to use the enforcement tools in a consistent manner that is proportionate to the alleged offence or breach of the Act. The Commission reserves the right to revoke any authorisation in future, in accordance with section 225(18)(b) and 230(15)(b) if the Commission so determines, should councils not adhere to the conditions or if any concerns over any misuse of the authorisation arises.

A draft letter from the Chair of the Commission to be sent to each of the 26 councils extending their authorisation to utilise the enforcement tools under section 225 and 230 of the Act is at **Attachment 2**.

Attachments:

1. State Planning Commission Agenda Report, 30 September 2021 (#17646913)
2. Draft template response to the councils (#21832101)
3. Letter to councils about continued use of authorisation under s225 and 230 (#21567091)
4. Table of Council Responses (#21605818)

Prepared by: Hayley Pasut

Endorsed by: Ben Sieben and Jane Trotter

Date: 18 July 2024



Agenda Report for Decision

Meeting Date: 30 September 2021

Item Name	Civil Penalties and Enforceable Voluntary Undertakings
Presenters	Nick Buick and Ben Sieben
Purpose of Report	Decision
Item Number	4.3
Confidentiality	Not Confidential (Release Immediately)
Related Decisions	N/A

Recommendation

It is recommended that the State Planning Commission (the Commission) resolves to:

1. Approve the designation of this item as Not Confidential (Release Immediately);
2. Pursuant to sections 225(17)(b) and 230(14)(b) of the *Planning, Development and Infrastructure Act 2016* (the Act), authorise the City of Mitcham (the Council) to utilise the enforcement tools available under sections 225 and 230 of that Act for the period 30 September 2021 to 30 September 2024 (as per **Attachment 1**);
3. Further to resolution 2 and pursuant to sections 225(18)(a) and 230(15)(a) of the Act, grant the authorisation to the Council subject to the following conditions:
 - (a) The Council must provide details (date of commencement of proceedings, alleged offender, details of the breach and the outcome once known) to the Commission regarding the commencement of proceedings under section 225 of the Act as soon as practicable after the proceedings are commenced;
 - (b) The Council must provide to the Commission a copy of any enforceable voluntary undertaking that is given, varied or withdrawn under section 230 of the Act;
 - (c) Where the Council is proposing to take enforcement action under the relevant sections and the Council was not the relevant authority that granted development authorisation, it must notify the relevant authority that did grant development authorisation indicating that it proposes to take enforcement action under the relevant sections;
 - (d) Enforcement action under the relevant sections may only be commenced or undertaken by an authorised officer appointed by the Council under the Act;
 - (e) The Council must, to the best of their ability, make use of the enforcement tools available under the relevant sections in a consistent manner that is proportionate to the alleged offence or breach of the Act; and

- (f) In granting authorisation to the Council, the Council acknowledges and agrees that the Commission will not be liable for any costs associated with entering into (or subsequently enforcing) proceedings initiated or undertakings given under the relevant sections;
4. Request that the Council report on the effectiveness of the enforcement tools prior to 31 August 2024 to assist the Commission with granting future authorisations;
 5. Write to the Local Government Association (LGA) of South Australia requesting that it seek information on whether other councils are interested in utilising the enforcement tools available under sections 225 and 230 of the Act, on the basis of a framework for the authorisation which is consistent with the authorisation for the City of Mitcham; and
 6. Authorise the Chair of the Commission to make any minor amendments as required and sign the draft letter to the Council (**Attachment 2**) and the draft letter to the LGA (**Attachment 3**).

Background

On 3 September 2021, Mr Alex Mackenzie, Acting General Manager, Development and Community Safety, City of Mitcham, wrote to the Commission seeking authorisation to enable the Council to use the enforcement tools available under sections 225 (civil penalties) and 230 (enforceable voluntary undertakings) of the Act (**Attachment 1**).

Section 225 – Civil Penalties

Civil penalties are contemplated in section 225 of the Act. A civil penalty is a pecuniary penalty generally imposed by the court in civil proceedings (as distinct from a fine in criminal proceedings).

Under section 225, when a designated entity is satisfied that a person has committed an offence by contravening the Act, it may recover an amount as a civil penalty as an alternative to criminal proceedings. This may be done voluntarily by negotiation between the parties or by application to the Environment, Resources and Development Court (the Court).

The maximum amount which can be negotiated as a civil penalty is the amount specified in the Act for the offence, or \$120,000; whichever is the lesser. The maximum amount that the Court may impose as a civil penalty is the criminal penalty specified in the Act for the offence.

The Act does provide some restrictions as to when civil penalties may be utilised, including that a council must be satisfied that an offence has been committed and it cannot be used for offences which require proof of intention/state of mind (which would generally include more serious offences). Further to this, a person may elect to be prosecuted instead of having a civil penalty imposed and there is no criminal conviction of guilt where a civil penalty is imposed.

Section 230 – Enforceable Voluntary Undertakings

Pursuant to section 230 of the Act, a designated entity may accept (by written notice) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention of the Act by the person. The giving of an undertaking does not constitute an admission of guilt by the person giving the undertaking, and an undertaking may be varied or withdrawn at any time through written agreement.

It is an offence to breach an undertaking once it has been entered into and a designated entity may apply to the Court for enforcement of the undertaking. When proceedings regarding a contravention of the Act have been commenced but are yet to be finalised, a designated entity may accept an undertaking regarding that same contravention. The designated entity must then discontinue the proceedings.

For the purposes of both sections 225 and 230 (the relevant sections), a designated authority is either of the following:

- the Commission;
- a council acting under an authorisation granted by the Commission; or
- the Commissioner for Consumer Affairs acting after consultation with the Commission.

In granting an authorisation to a council, the Commission may do so subject to certain conditions. The Commission may also vary or revoke an authorisation.

The Council is of the view that civil penalties and undertakings will enable it to better respond in a more targeted, pragmatic and efficient way, to the wide variety of compliance scenarios it is commonly faced with. In particular, this includes the ability to deal with matters that are serious enough to warrant some form of statutory compliance action (i.e. over and above a formal warning), but not serious enough to warrant the full force of a criminal prosecution or civil enforcement proceedings.

The Council has specifically sought that unconditional authorisation be provided for a period of three years, which will allow it to adequately utilise the benefit of the provisions, evaluate their effectiveness, whilst also recognising the time it often takes to successfully reach a resolution.

Discussion

It is important to note that there are obligations on the Commission to ensure that details regarding the commencement of proceedings under section 225 and any notice of the giving, varying or withdrawal of an undertaking under section 230 are published on the SA Planning Portal (the Portal).

There are three options that the Commission may wish to consider going forward regarding the authorisation sought by the Council:

- *Option 1* – do not allow the Council to utilise the tools at all;
- *Option 2* – require the Council to seek authorisation from the Commission on a case-by-case basis for individual enforcement matters; or
- *Option 3* – the Commission grants a standing authorisation (subject to conditions) to the Council allowing it to use the tools when it requires.

Option 1

The Commission may determine to not enliven the relevant sections for the Council at all, as it already has a variety of other enforcement tools available. This includes:

- Enforcement Notices – a council may direct a person to refrain from taking further action for a specified period or direct a person to make good a breach of the Act within a specified period;
- Civil Enforcement – a council may apply to the Court for an order to remedy or restrain a breach of the Act (and the Court may make various orders, including granting an injunction or requiring payment of compensation for losses incurred); and
- Prosecution – a council may also prosecute for an offence against the Act.

While the Council does have these tools available, civil penalties and undertakings may assist with filling a void where a matter requires more than an enforcement notice, but does not warrant costly court action. The tools may also assist with removing enforcement matters from the court system, as they would be significantly less costly.

It should also be noted that the burden of proof required in a civil matter is *on the balance of probabilities*; whereas, in a criminal matter it is *beyond reasonable doubt*. The Council may

therefore find it more attractive to commence proceedings in the Court for civil penalties, as it may be a far more effective and cost-beneficial enforcement tool.

Option 2

The Commission may require the Council to seek authorisation on a case-by-case basis (at least at the outset) each time it wishes to utilise the tools available under either of the relevant sections. The Council would be required to provide details regarding the matter it proposes to utilise the tools for, and the Commission would then consider whether to grant the Council authorisation.

This provides the Commission with significant control and oversight over the enforcement action taken under the relevant sections, and would also provide the Commission with the appropriate information to publish on the Portal at the outset.

It must be noted that the powers to authorise the Council under the relevant sections have already been delegated to the Executive Director and two Directors of Planning & Land Use Services. The Commission could therefore consider allowing them to authorise the Council (and future councils going forward) on a case-by-case basis. Should the Commission wish to explore this option further, guidance material could be developed to ensure the delegates use this power appropriately and in line with the Commission's intentions.

This option may be considered overly burdensome for the Council and it may discourage it from utilising the enforcement tools under the relevant sections. It may also cause unnecessary delays should the Council wish to take action relatively quickly under the Act. Case-by-case authorisation would also become quite burdensome for the Commission (and/or its delegates), as it would need to satisfy itself that the enforcement action proposed is appropriate in each instance.

Option 3

The Commission could grant a broad authorisation that is subject to certain conditions allowing the Council to utilise the enforcement tools under the relevant sections when it so requires. The Commission could grant the authorisation for a period of time and require the Council to report back on their effectiveness following this period. This information could then be utilised by the Commission when considering to grant future authorisations.

To ensure the Commission receives the information it needs to meet its obligations regarding information being published on the Portal and to ensure that the enforcement tools are not misused, the Council's authorisation should be subject to the following conditions:

- (a) The Council must provide details (date of commencement of proceedings, alleged offender, details of the breach and the outcome once known) to the Commission regarding the commencement of proceedings under section 225 of the Act as soon as practicable after the proceedings are commenced;
- (b) The Council must provide to the Commission a copy of any enforceable voluntary undertaking that is given, varied or withdrawn under section 230 of the Act;
- (c) Where the Council is proposing to take enforcement action under the relevant sections and the Council was not the relevant authority that granted development authorisation, it must notify the relevant authority that did grant development authorisation indicating that it proposes to take enforcement action under the relevant sections;
- (d) Enforcement action under the relevant sections may only be commenced or undertaken by an authorised officer appointed by the Council under the Act;
- (e) The Council must, to the best of their ability, make use of the enforcement tools available under the relevant sections in a consistent manner that is proportionate to the alleged offence or breach of the Act; and
- (f) In granting authorisation to the Council, the Council acknowledges and agrees that the Commission will not be liable for any costs associated with entering into (or subsequently enforcing) proceedings initiated or undertakings given under the relevant sections.

While the Act places a limit on the maximum civil penalty that can be negotiated, it is worth noting that should multiple councils be granted authorisation, negotiation and agreement on civil penalties may not be applied consistently across councils. This is something that should be monitored by the Commission and, if required, the Commission could place a further limitation on the amount that councils are authorised to negotiate through a condition.

If minded, the Commission could also restrict the Council's use of the enforcement tools available under the relevant sections to specific breaches of the Act or offences under the Act. This would also assist with ensuring the tools are not misused; however, it would involve significant further work in identifying all possible breaches and offences under the Act and then considering whether it would be appropriate for the Council to have the tools available to utilise.

It is recommended that should the Commission be minded to authorise the Council to utilise the enforcement tools available under the relevant sections of the Act, that it progress with option 3. Option 3 will allow the Commission to maintain oversight, while also providing the Council with the flexibility and scope to pursue enforcement mechanisms as appropriate.

The Council has requested that authorisation be granted for a period of three years, as this would provide adequate time to utilise the benefit of the provisions, evaluate their effectiveness, whilst also recognising the time it often takes to successfully reach a resolution.

It would also be appropriate for the Council to report back prior to the end of the three year period with information regarding the effectiveness of the enforcement tools. This information can then be used by the Commission in determining whether to grant future authorisations, as well as any conditions to place on an authorisation. A draft response back to the Council is attached reflecting this position (**Attachment 2**).

In addition to this, it is recommended that the Commission write to LGA requesting that it seek information on whether other councils are interested in utilising the enforcement tools available under the relevant sections of the Act. This would provide scope for the Commission to grant authorisations to multiple councils at once and align the expiry of the authorisations, where possible for administrative efficiency. A draft letter to the LGA is attached for the Commission's consideration (**Attachment 3**).

Attachments:

1. Correspondence from the City of Mitcham, 3 September 2021 (#17646909).
2. Draft response to the City of Mitcham (#17646911).
3. Draft letter to the Local Government Association (#17646912).

Prepared by: Ben Sieben

Endorsed by: Sally Smith

Date: 22 September 2021

21832101

12 September 2024

Level 10
83 Pirie Street
Adelaide SA 5000GPO Box 1815
Adelaide SA 50011800 752 664
saplanningcommission@sa.gov.au

By email: [REDACTED]

Dear [REDACTED]

Planning, Development and Infrastructure Act 2016 – Authorisation to use Civil penalties (s 225) and Enforceable voluntary undertakings (s 230)

I refer to your existing authorisation from the State Planning Commission (the Commission) to use the enforcement tools available under sections 225 and 230 (the relevant sections) of the *Planning, Development and Infrastructure Act 2016* (the Act).

I am pleased to advise that pursuant to sections 225(17)(b) and 230(14)(b) of the Act and behalf of the Commission, I authorise [REDACTED] (the Council) to continue to utilise the enforcement tools available in the relevant sections on an ongoing basis.

Pursuant to sections 225(18)(a) and 230(15)(a) of the Act, the authorisation is subject to the following conditions:

- (a) Council must provide details (date of commencement of proceedings, alleged offender, details of the breach and the outcome once known) to the Commission regarding the commencement of proceedings under section 225 of the Act as soon as practicable after the proceedings are commenced.
- (b) Council must provide to the Commission a copy of any enforceable voluntary undertaking that is given, varied or withdrawn under section 230 of the Act.
- (c) Where the Council is proposing to take enforcement action under the relevant sections and the Council was not the relevant authority that granted development authorisation, it must notify the relevant authority that did grant development authorisation indicating that it proposes to take enforcement action under the relevant sections.
- (d) Enforcement action under the relevant sections may only be commenced or undertaken by an authorised officer appointed by the Council under the Act.
- (e) Council must, to the best of their ability, make use of the enforcement tools available under the relevant sections in a consistent manner that is proportionate to the alleged offence or breach of the Act.

- (f) In granting authorisation to the Council, the Council acknowledges and agrees that the Commission will not be liable for any costs associated with entering into (or subsequently enforcing) proceedings initiated or undertakings given under the relevant sections.

For your awareness, the Commission has extended authorisations under sections 225(17)(b) and 230(14)(b) of the Act to all councils, subject to the above conditions.

Please note that the Commission reserves the right to revoke any authorisation in accordance with section 225(18)(b) and 230(15)(b) if it determines it is necessary and appropriate.

Yours sincerely

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke that curves upwards at the end.

Craig Holden
Chair

21979173

12 September 2024

Level 10
83 Pirie Street
Adelaide SA 5000GPO Box 1815
Adelaide SA 50011800 752 664
saplanningcommission@sa.gov.au

By email: [REDACTED]

Dear Mr Dodson

Planning, Development and Infrastructure Act 2016 – Authorisation to use Civil penalties (s 225) and Enforceable voluntary undertakings (s 230)

I write regarding previous consultations in 2021 where the State Planning Commission (the Commission) authorised a number of councils to use the enforcement tools available under sections 225 and 230 (the relevant sections) of the *Planning, Development and Infrastructure Act 2016* (the Act).

The Commission recently wrote separately to those authorised councils seeking feedback on the effectiveness of the enforcement tools, to inform the continuance of their current authorisation expiring on 30 September 2024.

As a result, I am pleased to advise that pursuant to sections 225(17)(b) and 230(14)(b) of the Act and on behalf of the Commission, the authorisation has been extended to be available not only to those previously authorised, but for all councils to utilise on an ongoing basis.

I note there is no obligation for councils to utilise the enforcement tools available in the relevant sections, however, should they wish to, the authorisation is subject to the following conditions pursuant to sections 225(18)(a) and 230(15)(a) of the Act:

- (a) Council must provide details (date of commencement of proceedings, alleged offender, details of the breach and the outcome once known) to the Commission regarding the commencement of proceedings under section 225 of the Act as soon as practicable after the proceedings are commenced.
- (b) Council must provide to the Commission a copy of any enforceable voluntary undertaking that is given, varied or withdrawn under section 230 of the Act.
- (c) Where the Council is proposing to take enforcement action under the relevant sections and the Council was not the relevant authority that granted development authorisation, it must notify the relevant authority that did grant development authorisation indicating that it proposes to take enforcement action under the relevant sections.

- (d) Enforcement action under the relevant sections may only be commenced or undertaken by an authorised officer appointed by the Council under the Act.
- (e) Council must, to the best of their ability, make use of the enforcement tools available under the relevant sections in a consistent manner that is proportionate to the alleged offence or breach of the Act.
- (f) In granting authorisation to the Council, the Council acknowledges and agrees that the Commission will not be liable for any costs associated with entering into (or subsequently enforcing) proceedings initiated or undertakings given under the relevant sections.

The Commission also reserves the right to revoke any authorisation in accordance with section 225(18)(b) and 230(15)(b) if it determines it is necessary and appropriate.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized, cursive 'C' followed by a long, sweeping horizontal line that ends in a small dot.

Craig Holden
Chair

OFFICIAL

Council	Has Council used the powers?	Are the current conditions appropriate?	Would Council like an extension to the authorisations currently in place?
City of Burnside	Not at this time	Yes	Yes
Coorong District Council	No comment	No comment	Yes
Mount Barker	Used to resolve breaches through negotiation	Yes	Yes
City of Port Adelaide Enfield	Not at this time	Yes	Yes - requested powers be granted on an ongoing basis
City of West Torrens	Not at this time	-	Yes
City of Adelaide	Not at this time	Yes	Yes
City of Playford	Yes - successfully sought civil penalties against a building company that commenced the development of 11 dwellings without the requisite development approval in 2022. Council considers that this was an effective and appropriate enforcement tool with a penalty proportionate to the offences committed.	Yes	Yes
City of Unley	Yes - On two separate occasions, both occasions Council have successfully exercised its authority to negotiate with involved parties an agreed payment of a civil penalty to the Council in lieu of prosecution pursuant to section 225(1) of the Act commensurate with the seriousness of the offending, responsibility, intent and cooperation with Council investigations.	Yes	Yes
City of Onkaparinga	Yes - These powers have been used in circumstances where actions such as unauthorised demolition of heritage items, removal of regulated/significant trees and illegal dumping of fill on land have occurred, and council's authorised officers have determined that a civil penalty is appropriate for a particular circumstance. None of the matters have resulted in the need for commencement of proceedings having been resolved via successful negotiation or reverting to applications to the Environment, Resources and Development (ERD) Court for breaches of section 215 of the Act	Yes	Yes + The reintroduction of expiations in relation to offences under the Act, as were available under the repealed <i>Development Act 1993</i> , would be of much benefit to councils when undertaking enforcement action.
Adelaide Hills Council	Yes - on three occasions. In all three instances the civil penalty has been recovered by negotiation in the settlement of appeals against Enforcement Notices issued for unlawful development under section 213 of the Act by an authorised officer appointed by the Council rather than by proceedings commenced under s225 of the Act	No comment	Yes
City of Marion	Not at this time - current matter where Council is intending on negotiating a civil penalty under Section 225	Yes	Yes
Alexandrina Council	Not at this time	Yes	Yes
City of Mount Gambier	Not at this time	No comment	Yes
City of Charles Sturt	N/A		
City of Holdfast Bay	N/A		
City of Mitcham	N/A		
District Council of Grant	N/A		
District Council of Loxton Waikerie	N/A		
District Council of Robe	N/A		
District Council of Yankalilla	N/A		
Kingston District Council	N/A		
Port Augusta City Council	N/A		
Wattle Range Council	N/A		
City of Victor Harbor	N/A		
City of Salisbury	N/A		
City of Norwood Payneham & St Peters	N/A		