



# PLANNING INFORMATION

## Section 173 Agreements

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#### What is a Section 173 Agreement?

A Section 173 Agreement is a legal contract made between Council and another party or parties, entered into under Section 173 of the *Planning and Environment Act 1987*.

A landowner is normally the other party to the Agreement, while in some cases a third party, such as a referral authority, may also be involved. Mortgagee's consent will be required to any Agreement if applicable.

An Agreement generally provides for continuous restrictions or on-going requirements on the use or development of the land. A Section 173 Agreement may be used, for example:

- To allow the subdivision of the land to occur prior to the completion of the development of the land in accordance with an approved development permit;
- To prevent the further subdivision of land;
- To prevent a dwelling being constructed on a new rural lot created by subdivision;
- To provide for the provision of infrastructure;
- To provide ongoing protection and management of native vegetation or to require implementation of an Offset Management Plan;
- To require ongoing implementation of an approved Land Management Plan.

#### Who prepares a Section 173 Agreement?

The person required to enter into the Section 173 Agreement would usually engage a solicitor to prepare it. A standard template is available for use and can be accessed on the Colac Otway Shire website under the Planning and Building Services tab.

Section 173 Agreements are legal documents that are binding on the Council and all other parties to the Agreement. As such, it is considered important that Section 173 Agreements be properly reviewed on behalf of Council by a qualified member of the legal profession with appropriate experience of the Victorian planning system.

All Section 173 Agreements submitted to Council are reviewed by solicitors acting on behalf of Council. This review process is consistent with the practice of other Victorian Councils.

Any reasonable costs and expenses (including legal expenses) incurred by Council in association with a Section 173 Agreement must be borne by the applicant. This includes the cost of any review undertaken. This is consistent with the requirement of relevant conditions placed on planning permits.

Appropriate use of Council's Section 173 Agreement template will minimise the cost of the review undertaken by Council's solicitors. Agreements should be submitted in draft form and should not be signed until it has been confirmed by the Council's solicitors that the Agreement is acceptable.

A flow chart on the reverse of this sheet provides an outline of Council's process for Section 173 Agreements.

#### Registration of a Section 173 Agreement

The Section 173 Agreement must be approved and signed by Council. It is then the responsibility of Council to apply to Land Victoria to have the Section 173 Agreement registered on the Certificate of Title.

A Section 173 Agreement is registered on the Certificate of Title of the land to which it applies. This ensures that all future owners are aware of, and bound by, the requirements of the Section 173 Agreement.

#### Can the Section 173 Agreement be amended?

An agreement can be amended or ended in two ways:

- by agreement between the responsible authority and all persons bound by the agreement
- by following a process which may be used where the responsible authority agrees in principle to a proposal to amend or end the agreement, but the agreement of all parties cannot be obtained. The process is outlined below.

An owner of land, or a person who has entered into a Section 173 Agreement in anticipation of becoming the owner of the land, may apply to Council to amend an Agreement, or to end an Agreement (wholly or in part), in respect of that land. The application form, to amend or end an Agreement, sets out the information required.

Council must advise the owner, and any person who entered the Agreement anticipating becoming the owner, whether it agrees in principle to the proposal. If Council does not agree in principle, that is the end of the matter. The applicant cannot apply to VCAT for a review of Council's decision.

When assessing an application, Council considers the purpose of the Agreement, whether any change in circumstances necessitates a proposed amendment, whether an amendment or ending of the Agreement would disadvantage any person (whether or not party to the Agreement), the reasons the Council entered into the Agreement, and whether and why an Agreement is no longer required.

Guidance can also be found at Section 178 of the Planning and Environment Act 1987 and in the DPCD publication 'Planning and Environment Amendment (General) Act 2013' (DPCD, April 2013), a guide which is available at [dpcd.vic.gov.au](http://dpcd.vic.gov.au).

#### When does a Section 173 Agreement end?

Whilst generally intended to have ongoing effect, an Agreement can end after a specified event or time period outlined in the Agreement. A person may also apply to Council if the Section 173 Agreement is no longer considered relevant.

**PLEASE CONTACT THE PLANNING  
TEAM IF YOU HAVE ANY QUERIES  
REGARDING SECTION 173  
AGREEMENTS**



Planning Permit condition requires preparation of a Section 173 Agreement



Lodgement of unsigned draft Section 173 Agreement by the applicant, or solicitor acting on behalf of applicant



Agreement registered and acknowledged by Council



Agreement reviewed on behalf of Council by a qualified member of the legal profession



Council's legal representative will liaise directly with applicant, or solicitor acting on behalf of applicant, regarding any changes required to the Agreement and to arrange signing of the Agreement by all relevant parties



Final Agreement provided to Council for signing



Signed Agreement sent to Council's legal representative who will apply to the Registrar of Titles to register the Agreement



Invoice sent to applicant or solicitor (acting on behalf of applicant) for payment



Confirmation received by Council from the Titles Office of the registration of the Agreement on the Certificate of Title

