

# Fact Sheet: Section 173 Agreements

This fact sheet is designed to assist permit holders who need to enter into a Section 173 Agreement under the Planning and Environment Act 1987.

## What is a Section 173 Agreement?

A Section 173 Agreement (Agreement) is a legally binding agreement entered into between Council and a land owner. It places ongoing requirements on how land can be used or developed.

The power to enter into an Agreement arises under Section 173 of the Planning and Environment Act 1987.

Agreements are recorded on the land title so existing (and any future) land owners can easily be informed of any particular provisions or requirements on how the land may be used or developed.

A Section 173 Agreement can be enforced by Council in the same way as a permit condition or Planning Scheme.

## When is a Section 173 Agreement required?

As part of a planning permit condition, the Responsible Authority may require an Agreement be entered into with an owner of land to set out particular provisions or restrictions on how the land may be used or developed, or to achieve other planning objectives or protection in relation to the land.

## What is the process when entering into a Section 173 Agreement?

A Section 173 Agreement must be prepared by a legal practitioner (usually a lawyer).

You have the option of engaging your own lawyer, or utilising Council's lawyers. It is usually more cost effective to engage Council's lawyers, since an agreement prepared by a third party will need to be referred to one of Council's lawyers to conduct a final review and to attend to the recording of the Agreement

on the certificate of title to the land, at the applicant's cost, to ensure it meets Council's requirements.

Regardless of whether you choose to engage Council's lawyer or your own, you will need to provide the following information to enable the Agreement to be drafted:

- A copy of the Planning Permit; and,
- A recent copy of the certificate of title for the land (less than 3 months old).

Other information may be required depending on the terms of the Agreement. The lawyer will advise you of any additional requirements.

Once the content of the Agreement is finalised, it is to be executed (signed and witnessed) by the landowner plus any mortgagee and/or caveator. Council's lawyer will then send these copies to Council for final execution. Council's lawyer will attend to the registration of the agreement on the certificate of title to the land with Land Use Victoria.

A copy of the registered Agreement will then be sent to you and Council.

## Council's Lawyers

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Preparation and execution of Section 173 Agreements is undertaken electronically – in-person attendance is not required.

