



This advice sheet is intended to assist landowners who own properties that have a Section 173 Agreement registered on the certificate of title.

What is a Section 173 Agreement?

A Section 173 Agreement is a legal agreement made between Council and the landowner under Section 173 of the *Planning and Environment Act 1987*. In some cases a third party, such as a referral authority, may also be involved in an agreement.

A Section 173 Agreement may be required by Council in planning permit applications for development and/or subdivision of the land where a condition on a planning permit, or Planning Scheme controls are not considered adequate for particular requirements and there is a need to have ongoing, transparent controls in place

An agreement may provide for:

- The prohibition, restriction or regulation of the use or development of the land;
- The conditions subject to which the land may be used or developed for specified purposes;
- The payment of Development Contributions;
- Any matter intended to achieve or advance the objectives of planning in Victoria or the objectives of the Wangaratta Planning Scheme or an amendment to the Planning Scheme, for which notice has been given.

A Section 173 Agreement may be used, for example:

- To protect native vegetation;
- To restrict development to within an approved building envelope;
- To prevent development in an approved building exclusion zone;
- To ensure development of land is undertaken in accordance with a planning permit;
- To secure off-site vegetation planting to compensate for approved removal of native vegetation; &
- To prevent the further subdivision of land.

Always know your obligations and responsibilities under your Section 173 Agreement

A number of properties within the Municipality have a Section 173 Agreement registered on title. It is therefore important that landowners (and their representatives) know whether or not a Section 173 Agreement affects their property, and if so, they understand their obligations under the agreement. Independent legal advice may need to be sought to gain a full understanding of the Section 173 Agreement and its implications.

Some (but not all) Agreements allow variations to requirements subject to Council consent

Some Section 173 Agreements afford landowners the opportunity to seek Council consent to vary some requirements contained within the agreement. This opportunity is generally provided for in the agreement by the use of the phrase 'except with the prior written consent of Council'. Independent legal advice may need to be obtained to confirm that this opportunity applies to the Section 173 Agreement affecting your land. If your Agreement provides this opportunity, landowners have the ability to lodge an application for consent, termed by Council as a 'miscellaneous consent'. An application form for miscellaneous consent is attached to this advice sheet.

A request for miscellaneous consent to vary or remove an obligation under an agreement will be considered by Council on its planning merits. *Please note that because consent can be granted to vary or waive the requirement, this does not imply that consent should or will be granted.*

It is important to note that not all Section 173 Agreements afford the landowners this entitlement.

Check your Agreement before you commence development or remove vegetation

Due to the complexity of some Section 173 Agreements, if you are contemplating developing your land and/or removing vegetation and/or carrying out an action that may be in contravention of your Section 173 Agreement, it is imperative that you discuss your proposal with officers of Council's Planning Unit **before** commencing such work. *Please note that substantial penalties apply for breaches to Section 173 Agreements (as is the case with breaches to planning permits and the Wangaratta Planning Scheme).*

Section 173 Agreements are enforceable legal documents with penalties for breaches

Section 173 Agreements are enforceable by Council, and Council takes breaches to Section 173 Agreements very seriously. As such, landowners are obliged to comply with the provisions of a Section 173 Agreement affecting their land. If an unforeseen circumstance eventuates which requires your proposal to deviate from any requirement contained within your agreement, you are strongly encouraged to obtain advice from Council's Planning Unit to establish what legal avenues are available to you **prior to** proceeding.

Ending or varying a Section 173 Agreement

An agreement can end after a specified event or time period if outlined in the agreement. If the agreement does not specify a mechanism for the ending of the agreement, the owner or another interested party can lodge with Council a request to end the agreement. This application must address the matters identified in Section 178(B) of the *Planning and Environment Act 1987*.

A request can also be lodged by the owner or another interested party to the land seeking a variation to a Section 173 Agreement and again this application must address the matters identified in Section 178(B) of the *Planning and Environment Act 1987*.

In both situations, Council recommends that advice is sought from a legal practitioner prior to lodging such an application, as in some situations a legal practitioner will be required to identify the parties affected by the Section 173 Agreement. As part of Council's consideration of the application, other parties to the agreement will be notified of the application and will be afforded an opportunity to object to the proposal to end or vary the agreement.

This advice sheet is to be used as a general guide only. Council has made all reasonable effort to ensure the information provided in this series is true and accurate. However, it is recommended that readers seek professional advice before acting or making decisions on the basis of this information. For any questions or clarification, please contact Council's Planning Unit on 5722 0888.



REQUEST FOR AMENDING OR ENDING A SECTION 173 AGREEMENT (FEE \$540)

OFFICE USE ONLY

Application no: _____

Date received: _____

THE APPLICANT

Name: _____

Postal address: _____ Postcode: _____

Phone No. _____ Mobile: _____ Fax No. _____

Email address: _____

THE LAND

Property Address: _____

DESCRIBE THE WAY THE LAND IS USED NOW

DESCRIBE WHAT THIS SUBMISSION IS FOR

THE OWNER

If the applicant is NOT the owner, provide owner details and sign either A OR B

Owner name _____

Postal Address _____ Postcode _____

Phone No. _____ Mobile _____

A	I am the owner of the land. I have seen this application.	Signature: Date:
B	I/We, the applicant, declare that I/we have notified the owner about this application.	Signature: Date:

INFORMATION CHECKLIST

If you do not provide sufficient details or information with your request, you will be asked for more information. This WILL DELAY your application.

HAVE YOU:

- Answered all the questions on this form?
- Included payment to cover the application fee for Amending/Ending a Section 173 Agreement?
- Attached a recent copy of Title (obtained within the last 6 months), including the relevant plan of subdivision, and a copy of any restrictive covenant or Section 173 Agreement which relates to the land?
- If applicable, attached three (3) copies of a scaled and fully dimensioned set of plans, relating to your proposal (including showing accurate details of any building envelopes / no build areas as referenced on Title and show on the plan of subdivision as appropriate).

DECLARATION TO BE COMPLETED FOR ALL APPLICATIONS	
I/We, the applicant, declare that all the information I/we have given is true.	Signature: Date:



