

Town Planning Department - Preparation Service for Section 173 Agreements

Who Prepares a Section 173 Agreement?

Wyndham City Council will prepare the Section 173 (S173) Agreement on your behalf. Depending on the complexity of the Agreement, it will be prepared in house by Council officers, or may be referred to Council's solicitors.

If you prepare the agreement privately, the document must be referred to Council's solicitors to ensure that Council's interests have been protected. This will involve Council's solicitors reviewing the document, consulting with Council and negotiating any changes required. You will be responsible for any legal fees associated with the review of the document.

What fees are involved with a Section 173 Agreement?

Council charges an application fee of \$530 to cover the administrative costs associated with the preparation of the document. For more complex agreements the application may be referred to Council's solicitors for review. In addition to the application fee, you will be responsible for any legal fees associated with this review. Please contact the Town Planning Department directly to confirm what fees will apply to the preparation of your agreement.

Registration of a Section 173 Agreement

A S173 Agreement must be registered on the title to the land to which it applies. This ensures that all future land owners are aware of, and bound by, the requirements of the S173 Agreement. It is the applicant's responsibility to ensure that the Agreement is registered at the titles office in a timely manner.

What is a Section 173 Agreement?

A S173 Agreement is a legal contract made between Council and another party or parties 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.

An agreement provides for continuous restrictions or on-going requirements on the use or development of the land.

Why would a Section 173 Agreement be required?

A S173 Agreement may be required as a condition of permit. An agreement may be used, for example:

To allow the subdivision of the land to occur prior to the completion of the development on the land in accordance with an approved development.

Process for S173 Agreements Prepared by Council

1. Applicant submits Section 173 Agreement application form to Council.
2. Council prepares draft agreement and returns to applicant for review.
(If the agreement is to be prepared by Council's solicitors the applicant will be provided with an estimate of costs prior to the preparation of the agreement).
3. If the applicant is satisfied with the agreement they will return two (2) signed copies of the agreement to Council.
4. The final agreement will be signed by Council's Town Planning Manager.
5. The signed agreement and relevant documentation required by the Land Titles office will be posted to the applicant.
6. It is the applicant's responsibility to take the signed agreement and required documentation to the land titles office for registration. The agreement must be registered on title in accordance with the requirements of the Planning and Environment Act 1987. Any costs associated with the registration of the agreement are entirely the responsibility of the applicant.

Section 173 Agreement Checklist

When applying for Council to prepare a S173 agreement on your behalf, the following documentation must be submitted:

| Checklist Item | Have you provided? |
|--|--------------------------|
| <p>A <u>completed</u> application form.</p> <p>This form can be downloaded from www.wyndham.vic.gov.au</p> <p><i>Remember it is against the law to give false and misleading information.</i></p> | <input type="checkbox"/> |
| <p>A copy of the Title.</p> <p>A full, current copy of the title of the property including any restrictions/covenants listed. A copy of this can be obtained from the Land Titles Office www.land.vic.gov.au or ph 8636 2456. Copies of Titles must not be older than 7 days.</p> | <input type="checkbox"/> |
| <p>A company search.</p> <p>If the subject land is owned by a company, a company search must be submitted with the application to confirm the correct ownership details. The company search must not be older than 7 days.</p> | <input type="checkbox"/> |
| <p>The appropriate fee.</p> <p>Application fee \$530 (including GST). This covers the administrative costs of preparing the agreement. Please note fees may be subject to change.</p> <p>PLEASE NOTE: If the agreement requires referral to Council's solicitors the applicant will be responsible for any associated costs. An estimate of costs will be provided prior to the application being referred.</p> | <input type="checkbox"/> |

Application Form for the Preparation of a Section 173 Agreement

NOTE: PLEASE CONTACT THE TOWN PLANNING DEPARTMENT PRIOR TO SUBMITTING THIS APPLICATION FORM TO CONFIRM THAT THE REQUIRED AGREEMENT IS APPROPRIATE FOR THIS SERVICE.

Applicants Details:

Name: _____

Postal Address: _____

Email Address: _____

Contact Phone: _____

Have you discussed the agreement with a Council Officer? Yes/ No

Name of Council officer: _____

Planning Permit requiring the S173 Agreement: _____ / _____ (e.g.: WYP1234/05)

Which condition of the permit requires a S173 Agreement: _____ (eg. Condition 2)

Address of subject land: _____

Volume, Folio and Plan of Subdivision No.: _____

What must the S173 Agreement provide for (refer to condition of permit requiring agreement):

Name of the Parties entering into the Agreement:

Address of the Parties entering into the Agreement:

If the land is owned by a company provide ABN: _____

Declaration

I declare that I am the applicant; and that all the information in this application is true and correct; and the owner (if not myself) has been notified of the application.

Signature: _____ Date: _____

Office Use Only

Receipt No: _____ Date: _____