

# Using Victoria's Planning System

## Chapter 8: Agreements

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## 8.1. What is a section 173 agreement?

PEA s 173

The responsible authority can negotiate an agreement with an owner of land to set out conditions or restrictions on the use or development of the land, or to achieve other planning objectives in relation to the land.

These agreements are commonly known as 'section 173 agreements'. The power to enter into the agreement arises under section 173 of the *Planning and Environment Act 1987* (PE Act).

Like other agreements, a section 173 agreement is a legal contract. However, the benefit of a section 173 agreement is that it is recorded on the title to the land so that the owner's obligations under the agreement bind future owners and occupiers of the land. A further benefit of being recorded on the title is that it gives prospective owners notice of the agreement.

PEA ss 114, 126

A section 173 agreement is enforced in the same way as a permit condition or planning scheme. It is an offence to use or develop land in contravention of a section 173 agreement.

The purpose of an agreement is to make it easier to achieve specific planning objectives for an area or particular parcel of land than is possible with other statutory mechanisms.

## 8.2 Parties to an agreement

PEA ss 3, 173

The PE Act provides that a section 173 agreement can be entered into between a responsible authority and an owner of land (normally the registered proprietor) or a purchaser of land in anticipation of that person becoming the owner.

Where the agreement is entered into with a prospective owner, it does not bind the existing owner unless the existing owner agrees. Normally, an agreement with the prospective owner will specify that the agreement does not commence operation until that person becomes the owner of the land. Once the prospective owner becomes the owner of the land, the obligations under the agreement will then commence and bind the owner and any future owners and occupiers.

Provided the responsible authority and owner (or prospective owner) are parties to a section 173 agreement, other persons or bodies may be additional parties to the agreement and become bound by the terms of the agreement. This may include, for example:

- a planning authority or referral authority where it is useful for that body to coordinate its powers or functions in relation to the land
- a developer or occupier with an interest in the development or use of the land.

It is not possible for a section 173 agreement to be entered into with a developer or occupier of land without the owner or prospective owner also being a party. This is because the owner must agree to the obligations under the agreement being recorded on the title to the land.

PEA s 182A

After an agreement has been entered into, parts of the land that are subject to the agreement may pass into separate ownership through subdivision or by sale of separate lots.

If such land is transferred to another person, the new owner becomes an additional party to that agreement unless the agreement includes a provision to the contrary. This means that obligations under an agreement are assigned to subsequent owners of separate holdings.

## 8.3 When should an agreement be used?

Before deciding to use a section 173 agreement, a responsible authority should carefully consider other mechanisms available to achieve its desired planning objective.

Section 173 agreements can be complex and costly to administer and are difficult to amend or end, particularly after the affected land is subdivided.

### 8.3.1 Advantages of agreements

The advantages of a section 173 agreement include:

- It can be recorded on the title to land and become binding upon future owners as well as giving notice of the obligations under the agreement to prospective owners.
- Unlike a planning scheme provision or permit condition, which allows something to be done, a section 173 agreement can expressly require something to be done. This is particularly useful where a responsible authority wants to guarantee certain outcomes prior to, or as part of, the granting of a planning permit for a specific use or development.
- An agreement can set out a level of detail or site-specific information which is difficult to include in a permit condition or other form of planning provision.
- Unlike restrictive covenants, a section 173 agreement can include positive covenants and thus include performance criteria or more innovative arrangements for the use or development of land.
- An agreement can create positive obligations on a responsible authority or other parties and thus achieve broader planning objectives than a permit.
- An agreement can continue to operate and impose restrictions on land even if the need for a permit ceases and the need to operate under that permit no longer exists.

### 8.3.2 When not to use an agreement

PEA s 180

An agreement cannot and should not be used as a basis for trying to extend an authority's powers under the PE Act. A section 173 agreement cannot authorise any use or development contrary to the planning scheme or a permit. This means that an agreement cannot provide for less restrictive provisions than those in a planning scheme or permit, such as allowing a use or development that is otherwise prohibited. However, an agreement could provide for more restrictive provisions than those in the planning scheme or a permit, such as prohibiting or placing greater restrictions on a use or development that is otherwise allowed.

An agreement is not a substitute for planning provisions and should not be used if an objective can be met and enforced through a permit condition. Before requiring a section 173 agreement, the responsible authority must ensure that the issue involved really requires the powers and complexity of an agreement rather than a clearly worded permit condition.

For example, an agreement should not simply provide for certain works to be done to the satisfaction of the responsible authority, when a similar condition could just as easily have been included in a permit or restrict a particular use or development that would in any event require an amendment to the permit.

An agreement is a contract and should not be entered into without first obtaining legal advice. If an agreement is not carefully drafted, there may be difficulties in enforcing or amending it.

Importantly, an agreement can only be entered into voluntarily.

### 8.3.3 What can an agreement cover?

PEA s 174

The PE Act allows the section 173 agreement to provide for:

- the prohibition, restriction or regulation of the use or development of land
- conditions subject to which the land may be used or developed for specified purposes
- any matter intended to achieve or advance the objectives of planning in Victoria under the planning scheme or an amendment.

This provides a wide scope for agreements. However, there should generally be a connection between the agreement and the specific planning outcomes sought to be achieved for the land over which the agreement will be recorded.

Section 173 agreements have been used in a wide variety of matters. Some examples are:

- coordination of development with adjoining landowners or other regulatory authorities
- to provide for staged developments
- rehabilitation of property, repair of the environment, heritage protection or vegetation protection
- provision of community infrastructure or specific development infrastructure – such as open space or facilities on the land or nearby land under a contributions plan
- securing developer contributions under a contributions plan
- restrictions on change of use, or abandoning existing use rights
- limits on future development, including neighbourhood agreements to protect neighbourhood character
- planning 'trade-offs', such as a planning concession on one property based on a commitment to do something on another property
- the development or provision of land for affordable housing.

## 8.4 Procedure for making and amending an agreement

### 8.4.1 Negotiating an agreement

Negotiating agreements can be involved and time-consuming, therefore the objectives must be clear and must relate to the planning approval process. The most successful agreement is one in which both parties actively consider and negotiate conditions, without viewing it as a technique for restricting development by the responsible authority. The focus of all parties should be joint problem-solving and achieving a performance-oriented planning outcome for the land.

While agreements are generally negotiated, a section 173 agreement can sometimes be required by a planning scheme or a permit condition prior to the commencement of a specific use or development. To avoid any perception that the responsible authority has an undue negotiating 'advantage', an authority should be careful not to act unreasonably in seeking planning concessions or other covenants in the agreement beyond those necessary to achieve its proper planning objectives for the land.

PEA s 188

To avoid delays in negotiations, it is useful for the responsible authority to delegate negotiating powers to officers who can liaise with the relevant parties and report to the authority as required.

## 8.4.2 Content of an agreement

PEA s 174

The PE Act details the matters an agreement can address. An agreement can be more positive and specific than a permit condition. In this way it can be used as an effective means of ensuring performance of obligations and, if there is a need, attaching the obligations in the agreement to the land.

PEA s 174(1)

An agreement must bind the owner of the land to the covenants specified in the agreement. This means that the primary purpose of the agreement is to set out the owner's obligations so that they can be clearly enforced against the owner or future owners of the land.

Care must be taken by a responsible authority when defining its own obligations (if any) under an agreement. The responsible authority has no power to enter into an agreement that obliges it to exercise a statutory discretion in a particular manner in the future. For example, if an owner is prepared to enter into an agreement that is conditional upon the approval of a planning scheme amendment, then the agreement should specify that it does not commence until the amendment is approved. If the amendment is not approved, the owner will not be bound by the agreement. The agreement should not attempt to bind the responsible authority to the future approval of the amendment or the grant of a permit, as this would fetter the future exercise of its statutory discretion and be beyond its power, and therefore be subject to legal challenge.

PEA s 180

An agreement must not require or allow anything to be done that would breach a planning scheme or a permit. An agreement can become unnecessarily complicated by including an array of matters between the responsible authority and the owner, or between the owner and other parties to the agreement, with different or unspecified end times. Any obligation set out in a section 173 agreement should only be put in place with the intention that it would run with the land as a covenant and be enforced under the PE Act.

PEA s 175

Bonds and guarantees may form part of an agreement, with provision for forfeiture of money if the owner fails to carry out the agreement to the satisfaction of the responsible authority. This does not apply if the responsible authority is entering into an agreement with a Minister. An agreement must not require a Minister to provide a bond or guarantee to the responsible authority.

PEA ss 176, 177, 184

An agreement will usually begin immediately after it is executed (by way of signature of all parties to it in the presence of at least one adult witness who is not a party to the agreement). An agreement will not usually be binding on subsequent owners until it is recorded on the title to the land. However, the PE Act allows a date to be specified or for the commencement to be tied to a specified event, including a planning scheme amendment coming into operation or a permit being granted. This can be useful if the obligations under the agreement are tied to a specific use or development. The same triggers can be used for the ending of an agreement. An agreement can also be ended by agreement between the responsible authority and all persons bound by any covenant in the agreement.

### 8.4.3 Availability of agreement

PEA ss 179, 197A

The responsible authority must keep a current copy of each agreement at its office and make it available in accordance with the public availability requirements.

If an agreement is recorded on the title to the land, the copy lodged for record is available for inspection as part of a search of the certificate of title.

PEA s 17(2)

If an agreement coming into effect is conditional on a planning scheme amendment being approved, and the agreement is executed prior to exhibition of the amendment, a copy of the agreement must be forwarded to all parties who receive a copy of the amendment.

## 8.5 Form of an agreement

An agreement must clearly and precisely set out the obligations and rights of the parties. Generality, vagueness and ambiguity must be avoided.

PEA s 174(1)

Corporations Act 2001 s 127

The agreement must be in writing, made under seal and signed by all parties in the presence of at least one adult witness who is not a party to the agreement. For the responsible authority or any party that is a company, the common seal of the authority or company will need to be affixed in accordance with its legal requirements. Where there is a clear written delegation, an officer of the responsible authority may be able to seal the agreement on the authority's behalf.

Ensure that sufficient original copies of the agreement are signed and sealed to satisfy the requirements of the Registrar of Titles for recording in accordance with section 181 of the PE Act. Copies are also needed for each party and the responsible authority.

The basic elements of an agreement are listed below to give some insight into the sorts of things that need to be considered before seeking legal assistance in drafting the document. This information is not necessarily exhaustive.

### 8.5.1 Date and parties to agreement

The heading of the agreement should contain the date of the agreement and identify the parties, for example, the responsible authority and the individual or company who owns the subject land. The name of the owner of the land should be consistent with what appears on the title. A title search should be undertaken to confirm the owner of the land.

Addresses should be included for all parties. Companies should include an Australian Company Number (ACN). In some cases, there will be additional parties to the agreement, such as another government agency, a developer or an occupier. Similar information should be included for these parties.

### 8.5.2 Recitals

This section gives the background to the agreement so that the operative provisions can be readily understood. It should clearly identify:

- the land to be encumbered, by reference to the certificate(s) of title on which the covenants will be recorded and also by reference to a plan if appropriate (the street address of the land should also be inserted)
- the owner (or prospective owner) of the land

- why the agreement is being entered into
- the municipal jurisdiction and the responsible authority for the administration and enforcement of the related planning scheme – for example, 'the land is within the Gumnut Planning Scheme for which the Gumnut City Council is the responsible authority' (also add zoning information if this is relevant)
- other parties, if any, and the basis on which they are necessary parties.

The responsible authority should conduct a title search to ensure that all the relevant land is referred to in the agreement; otherwise there may be problems with registration or enforcement. This section should also indicate whether a planning permit or an amendment to the planning scheme affects the land and the basis of the agreement.

### 8.5.3 The agreement

This section details what each party to the agreement is agreeing to do. Depending on the detail of the agreement it may include the following:

- **Definitions and interpretation:** Important terms should be defined. This helps to prevent potential legal problems. It should be clearly stated that the agreement is made in accordance with section 173 of the PE Act.
- **Effect of agreement:** This requires the parties to indicate their intention to be bound by the agreement and should indicate that the agreement will run with the land and bind future owners.
- **Requirement to record the agreement on title:** It is common practice to include a term requiring the owner to do all things necessary to enable the responsible authority to submit the agreement to the Registrar of Titles so that it can be recorded on title in accordance with section 181 of the PE Act.
- **Procedural terms:** The linking of the agreement to any planning permit or planning scheme amendment should be set out if necessary.
- **Commencement or completion times of the agreement:** These should be clearly set out, including whether commencement or completion is tied to a specific event.
- **Points of agreement:** The points of agreement detail what each party is undertaking to do and may include a bond or guarantee by the owner. The covenants should be clearly identified for example, 'the owner of the subject land covenants that...'. The covenants should be specific and provide sufficient detail of the obligations to enable the covenants to be clearly understood and enforceable.

There are legal difficulties in incorporating personal obligations in a section 173 agreement, intended for a specific person. However, if for some reason personal obligations are being included in an agreement (such as a condition that is relevant only to the initial developer of the land), these must be clearly separated and identified to avoid confusion with any covenants that will run with the land and bind future owners or other parties.

The responsible authority should try to foresee how the agreement will operate in the future to ensure that the need for any amendments to the agreement are minimised. In particular, if land affected by an agreement is subsequently subdivided, the agreement will ordinarily affect all the new titles unless the agreement specifies otherwise. This may not be what was intended by the parties and may lead to difficulties in amending the agreement or releasing individual allotments. Where possible, the agreement should set out the effect of the agreement in relation to the original parcel of land and on any subsequently subdivided allotments.

- **Dispute resolution:** If an agreement relies heavily on performance criteria, it may be advisable to include a dispute resolution clause. The Victorian Civil and Administrative Tribunal (VCAT) has only limited jurisdiction to resolve disputes where matters require the consent or satisfaction of the responsible authority.
- **Service of notices:** A party to an agreement may be required to advise other parties of certain information (such as when certain works have been completed). In these cases, the agreement should describe the manner in which this notice is to be given (for example, in writing, within a specified time period and to a specified address).

PEA s 177

- **Lapse or termination:** Many agreements will also include a time clause (that is, the agreement lapses after a certain period of time or if planning provisions are amended). Agreements can also require subsidiary agreements at a later date and can make provisions conditional upon approval from another authority (for example, the Head, Transport for Victoria).
- **Cost apportionment:** Many agreements list which of the parties are to be responsible for any associated costs. This is a matter for negotiation between the parties, although it is common for a responsible authority to require that an owner meet the authority's costs in the preparation of an agreement where the agreement is for the primary benefit of the owner.

## 8.6 Procedure for recording an agreement

PEA ss 181, 182; PE Regs reg 59, Form 21

The purpose of recording an agreement on title is to ensure that the obligations in the agreement run with the land and therefore bind all future owners of the land.

An application to record an agreement must be made without delay. The responsible authority should lodge a copy of the agreement with the Registrar of Titles using the prescribed Form 21. A fee is payable. Relevant fees are specified on the 'Fees, guides and forms' page of the department's website.

The Registrar of Titles cannot record an agreement over Crown land or common property.

PEA ss 221(4)–(5)

Agreements entered into before 28 October 2013 are not required to be recorded on title. The discretion to record these earlier agreements rests with the responsible authority.

A responsible authority must, however, apply to record an agreement entered into before 28 October 2013, without delay, if it is amended after that date.

PEA ss 179, 197A

The responsible authority must keep a copy of each agreement available, indicating any amendment made to it, in accordance with the public availability requirements.

### 8.6.1 Mortgagee's consent

The duplicate certificate of title does not need to be provided to the Titles Office to record an agreement. The record is only noted on the original title held at the Titles Office in the same way as caveats and other covenants. This may mean that the custodian of the duplicate title, if not the owner (such as a bank or mortgagee), may be unaware of the making of the agreement and/or the effect of the agreement on its security.

When this may be an issue, the responsible authority will generally require the owner to either notify the mortgagee or obtain the mortgagee's consent before the agreement is entered into, particularly in situations where the owner's obligations under the agreement could materially affect the mortgagee's interests. It is best to involve the mortgagee early on

in the process, as a request for their consent too late in the process could cause considerable delay if the mortgagee then requires changes to the agreement.

## 8.6.2 Cancelling or altering the record of an agreement

PEA s 183; PE Regs reg 60, Forms 22, 23, 24

If an agreement is cancelled or amended, the responsible authority must, using the prescribed form, notify the Registrar of Titles to cancel or amend the record of the agreement.

It is particularly important to monitor agreements that have a termination date or event included as part of the agreement and to ensure that the Registrar is immediately notified of the ending of that agreement. This will avoid unnecessary complications, for example, if land is subsequently subdivided and a covenant inadvertently placed on each individual lot because the Registrar was not advised of the ending of the obsolete agreement.

## 8.7 Amending or ending an agreement

PEA s 177

An agreement may provide that the agreement ends wholly or in part or as it applies to any part of the land on or after:

- the happening of a specified event
- a specified time
- the ending of the use or the development of the land for a specified purpose.

If the agreement does not specify when it ends, it can be ended by agreement between the responsible authority and all persons who are bound by any covenant in the agreement. An agreement can also be amended in the same way.

PEA ss 178, 178A–H; PE Regs reg 55

However, obtaining the consent of all persons bound by the agreement to amend or end the agreement can take considerable time and may be impossible to achieve if there is opposition to the proposal or a large number of parties are involved.

Where the consent of all parties to amend or end an agreement cannot be obtained, a landowner (or a prospective landowner who has entered into an agreement) can apply to the responsible authority to have the proposal assessed.

The proposal can be to amend or end the agreement wholly or in part, or to end it in relation to a defined part of the land.

The process is similar to the process for making an application for a planning permit and can be broken down into the following key steps:

1. Responsible authority's in-principle support
2. Notice of the proposal – 'advertising'
3. Responsible authority's decision
4. Notice of decision
5. The decision takes effect

A responsible authority may require the applicant to pay the cost of preparing the amended agreement.

The responsible authority may, on its own initiative, also propose to amend or end an agreement.

## 8.7.1 Step 1 – Responsible authority's in principle support

PEA ss 178A, 178B, PE Regs reg 55, PE (Fees) Regs reg. 16

An application to amend or end an agreement must be made in writing to the responsible authority. It must include the information set out in regulation 55 and it must be accompanied by the prescribed fee. Currently a fee is prescribed in the Planning and Environment (Fees) Regulations 2016.

Section 178B sets out a number of matters that the responsible authority must consider when forming a view about a proposal. The matters required to be considered include the purpose of the agreement and the reasons why the responsible authority entered into the agreement in the first place.

After considering the matters set out at section 178B, the responsible authority must notify the applicant and owner (if a different person to the applicant) as to whether it agrees 'in principle' to the proposal. If the responsible authority does not agree in principle, that is the end of the matter. The applicant cannot apply to VCAT for a review of the responsible authority's decision.

## 8.7.2 Step 2 – Notice of the proposal – 'advertising'

PEA ss 178C, 178D, 178H, 184A(2)(a); PE Regs regs 56, 62, Form 18

If the responsible authority agrees in principle to a proposal (or proposes to end or amend an agreement on its own initiative) it must give notice (also known as 'advertising') of the proposal to:

- all parties to the agreement
- any other persons, if the responsible authority considers that the decision to amend or end the agreement may cause material detriment to them.

The notice must include the prescribed information set out Form 18 in Schedule 1 of the Regulations. The responsible authority may require the applicant to pay the costs of giving the notices.

Any person who is given (or ought to have been given) notice of a proposal may object to the proposal or make any other submission in relation to the proposal.

If the responsible authority does not give notice of the proposal within 21 days of notifying the applicant that it agrees in principle to the proposal, the applicant may apply to VCAT for a review of the failure of the responsible authority to make a decision on the matter. This is discussed further in part 8.8 of this chapter.

## 8.7.3 Step 3 – Responsible authority's decision

PEA s 178E

The responsible authority must not make a decision on a proposal until at least 14 days after the giving of the last notice.

Before making a decision on the proposal, the responsible authority must consider any objections and submissions together with matters under section 178B that it considered in forming its original view on the proposal.

The responsible authority may then decide to:

- amend or end the agreement in accordance with the proposal
- amend or end the agreement in a manner that is not substantially different to the proposal

- refuse to end or amend the agreement.

If there are objections or other submissions, the responsible authority may also propose to amend or end the agreement in a manner that is substantially different to the proposal. If the responsible authority does decide to do this, it must give notice of the revised proposal as if it were a new proposal.

### 8.7.4 Step 4 – Notice of decision

PEA ss 178F, 184A; PE Regs regs 57, 58, Forms 19 and 20

If an objection or submission is lodged, the responsible authority must give notice of its decision to both the applicant and each person that made an objection or a submission. Where no objections or submissions are lodged, notice is given to the applicant.

A notice of a decision to amend or end an agreement must include the information set out in Form 19 in Schedule 1 to the Regulations.

A notice of a decision to refuse to amend or end an agreement must include the information set out in Form 20 in Schedule 1 to the Regulations

Where a notice of refusal is issued, it must set out the grounds of the refusal.

The PE Act enables the applicant, a party to the agreement, an objector and any affected person to apply to VCAT for a review of the responsible authority's decision. This is discussed further in part 8.8 of this chapter.

A responsible authority must not proceed to amend or end an agreement until at least 21 days after the giving of notice of the decision, or if an application for review to VCAT is made, until the application is determined by VCAT or the application is withdrawn.

### 8.7.5 Step 5 – Implementing the decision

PEA ss 178G, 178I, 183; PE Regs. reg. 60, Forms 22, 23 and 24

If the responsible authority decides to amend or end an agreement, it must not proceed to do so:

- until at least 21 days after the giving of any required notice of its decision
- where an application for review is made within the 21-day period, until the matter is determined by VCAT or withdrawn.

If the responsible authority amends the agreement, then it must without delay:

- sign the amended agreement
- give a copy of the signed amended agreement to each other party to the agreement.

It is not necessary for the amended agreement to be signed or otherwise agreed to by any other party to the agreement. A party to an agreement is bound by the agreement as amended, even though the party did not sign the amended agreement.

The responsible authority must without delay notify the Registrar of Titles of any amendment to an agreement or an ending of an agreement. This must be done in the manner prescribed under the regulations.

An amendment or ending of an agreement comes into effect on the day on which the Registrar of Titles:

- cancels in whole or part the recording of the agreement in the Register under section 183(2)
- makes a recording in the Register of the matters notified under section 183(1).

## 8.8 Reviews and enforcement of agreements

### 8.8.1 Application to VCAT for an amendment to a proposed agreement

PEA s 184; PE Regs reg. 61

A landowner can apply to VCAT for an amendment to a proposed agreement where a planning scheme or a permit makes the use or development of land for specified purposes conditional upon an agreement being entered into and the owner objects to any provision of the agreement.

The application for review must be made within 60 days of the applicant being given a copy of the proposed agreement.

VCAT may approve the proposed agreement with or without amendments.

### 8.8.2 Reviews in relation to ending or amending of agreements

PEA s 178

If the responsible authority decides that it does not agree in principle to a proposal to amend or end an agreement, the matter does not proceed and the agreement remains in place unchanged. The applicant cannot apply to VCAT for a review of this initial decision.

#### Reviews of the responsible authority's failure to make a decision

PEA ss 184A, 184F; PE Regs reg. 62

If the responsible authority agrees in principle to a proposal to amend or end an agreement, the applicant may apply to VCAT for a review of the responsible authority's failure to make a decision on the application if the responsible authority fails to:

- give notice of the proposal within 21 days of giving notice to the applicant that it agrees in principle
- decide on the application within 60 days of giving notice to the applicant that it agrees in principle.

The responsible authority may decide to amend or end the agreement at any time after the application for review is made and must inform VCAT's principal Registrar if it does make a decision. However, the responsible authority must not proceed to amend or end the agreement or give notice of the decision except in accordance with the advice of the Registrar.

#### Reviews of the responsible authority's decision

The applicant may apply to VCAT for a review of a decision by the responsible authority to:

- amend or end the agreement in a manner that is different from the proposal (if the applicant received a notice of the responsible authority's decision, the application for review must be made within 21 days after the responsible authority gave the notice)
- refuse to amend or end the agreement (the application for review must be made within 60 days after the responsible authority gave notice of its decision).

PEA ss 184B–E; PE Regs regs. 63, 64

In addition to the applicant, the following people can apply to VCAT for a review of the responsible authority's decision to amend or end an agreement:

- a party to the agreement
- an objector

- any person who was entitled to object to a proposal to amend or end an agreement but did not object because the person was not given notice.

An application for review by a party to the agreement or an objector must be made within 21 days of the responsible authority giving notice of their decision.

An objector is entitled to notice of an applicant's application to VCAT for review of the responsible authority's decision or failure to make a decision.

### VCAT decision on reviews

PEA s 184G

VCAT may direct the responsible authority to amend or end the agreement, or it may determine that the agreement should not end or be amended. The responsible authority must comply with the direction without delay.

### 8.8.3 Application to VCAT for an interpretation of an agreement

PEA ss 148, 149A(1A)

A specified person or a party to an agreement may apply to VCAT for a determination of a matter relating to the interpretation of a section 173 agreement.

## 8.9 Affordable housing agreements

PEA s 173(1A)

Section 173(1A) enables a responsible authority to enter into an agreement with an owner of land for the development or provision of land in relation to affordable housing.

An example affordable housing agreement has been prepared by the department to assist councils in entering into a voluntary affordable housing agreement under the PE Act and is available on the department's website.

## 8.10 Other agreements

There are other forms of statutory agreements that affect the use and development of land. Some operate in a similar way to section 173 agreements and can be recorded on a title.

Examples of other statutory agreements include agreements:

- for the preservation of heritage places under sections 134 and 135 of the *Heritage Act 2017*
- to secure the completion of works or compliance with statutory requirements under section 17 of the *Subdivision Act 1988*. (These agreements can be less formal than a section 173 agreement but, if executed under seal, can be recorded as if they were section 173 agreements)
- relating to exemptions from Building Regulations under the *Building Act 1993*.