

KELLEHERS AUSTRALIA

In-House Memorandum

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History of Section 173 Agreement

S173 has been a part of the *Planning and Environment Act 1987* (Vic) ('PE Act') since 1987, but its predecessor was S52 of the *Town and Country Planning Act 1961*. The section provides for agreements between a landowner, responsible authority and, sometimes third parties to be registered and marked on title. In effect they 'run with the land' even where the land is subsequently sold or ownership changes hands. They ensure that anyone searching for the land's title will be aware of its site constraints. They also ensure that future owners are bound by conditions regulating the future use and development of the land.

The *Planning and Environment Bill* was introduced in September 1986. Mr Frank Wilkes MP, then Minister for Housing, noted in his second reading speech:

*"The agreements with owners provisions in Division 2 of Part 10 augment the existing powers by providing explicitly for agreements in anticipation of ownership and for bonds and guarantees. There are powers of amendment which anticipate some registered agreements lasting a long time."*¹

Prior to PE Act, legislative measures dealing with agreements between responsible authorities and owners were dealt with by ss52A-C, which were introduced by the *Town and Country Planning (Amendment) Bill* (No.2) in 1983. *Rosemeier v City of Greater Geelong* (No 1) 1997 20 AATR 86 noted:

*"perceived insufficiencies in the law without them, including an ability to effectively achieve the sort of control sought by these conditions where the adjunct of agreements ratified by statute is not available."*²

The 2004 Department of Sustainability and Environment's review of the role of s173 agreements emphasised practical concerns about the structure of S173 agreements. A report by the Law Institute of Victoria to the 2004 review identified problems with s173 agreement, including complexity, cost, over-use, their frequent mandatory status through permit conditions, and resource constraints at the Land Registry. It stated that these problems arise from:

*"lack of understanding of the intent and limitations of the legislative framework, or from a lack of care in considering whether an agreement is required, or in the drafting or administration of agreements."*³

The history of this legislation, which brought agreements between responsible authority and owner into effect, demonstrates the overall intention for public access and knowledge of the purpose of s173 agreements.

Cameron Algie
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¹ Second Reading Speech of The Minister for Housing of 18 September 1986, 676

² At [101].