

# COLLISON ESTATE SECTION 173 AGREEMENT FREQUENTLY ASKED QUESTIONS



Last updated: 12 September 2022

The draft Collison Estate Development Plan (the Development Plan) has been prepared by KLM Spatial on behalf of the Collison Estate Group Incorporated (also known as the Collison Estate Committee) in conjunction with the City of Casey.

The Development Plan (DP) applies to Collison Estate in Cranbourne East (Collison Estate) and seeks to provide for an integrated residential development consisting of approximately 1,700 allotments. It provides diversity in dwelling types and sizes, whilst optimising the site's proximity to existing services and open spaces. The DP also seeks to provide for an activity centre and community facilities within the Estate which will facilitate a greater level of amenity services for the Estate and the wider community.

In July 2020, the City of Casey resolved to prepare a development contribution plan and apply the Development Contribution Plan Overlay (DCPO) to the Estate as the most appropriate development contributions mechanism to implement the DP. Also see the *Collison Estate Draft Development Plan and Development Contributions Plan Frequently Asked Questions* sheet.

It is proposed that Section 173 Agreements (S173 Agreement) will be entered into with each landowner and Council to help manage and implement a future drainage scheme for the Collison Estate that includes Drainage Reserves and underground drainage pipes in existing or proposed easements. A copy of the template draft S173 Agreement has been provided to landowners for their consideration as part of the community consultation process.

## What is a Section 173 Agreement?

A Section 173 Agreement (S173 Agreement) is a legal Agreement made between a landowner and a Council (in this instance – the City of Casey) under Section 173 of the *Planning and Environment Act 1987*. S173 Agreements typically set out restrictions, conditions or obligations between the landowner and Council.

Following signing by both parties, the S173 Agreement is registered on the title to the land, meaning that it remains in effect until the conditions outlined within the S173 Agreement are met, even if the property is sold to a new owner. This means that the obligations contained within the S173 Agreement become bound to the property, not any one landowner.

## Why have I received this draft S173 Agreement template?

Your property has been identified within the draft Collison Estate Development Plan (DP) and Development Contributions Plan (DCP) as containing land required for future drainage infrastructure. You can review the draft DP and DCP on Casey Conversations at:

<https://conversations.casey.vic.gov.au/collison-estate-development-consultation>.

In line with both the draft DP and DCP, a small portion of land at the rear of your property is proposed to be given over to Council to facilitate the construction of drainage infrastructure to an urban standard. You will receive reimbursement in the form of a credit that will be offset against the development contributions should your property develop in the future.

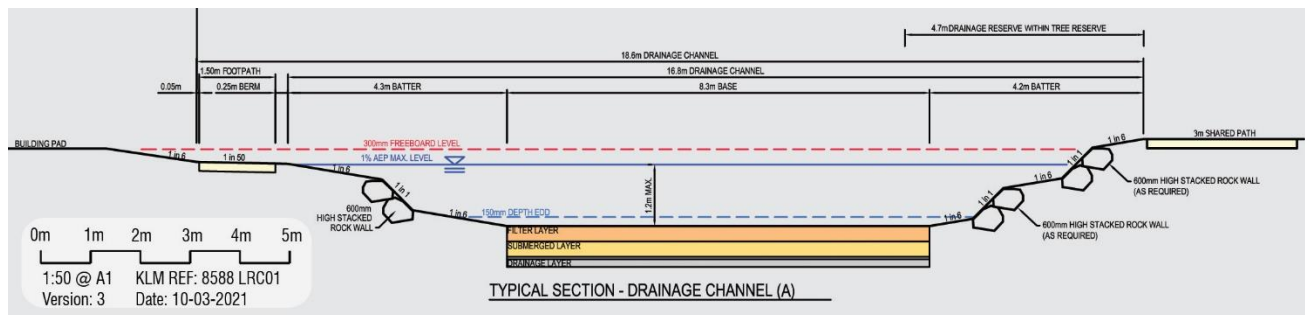
## What is the purpose of this draft S173 Agreement template?

The draft S173 Agreement template is meant to facilitate four objectives:

1. To facilitate access to a property for any surveying or other works as required to facilitate the construction of drainage infrastructure,
2. To facilitate the transfer of land to Council,
3. To allow the construction, access, and maintenance of drainage infrastructure, and
4. To facilitate the reimbursement of landowners via credits that will be offset against future development contributions.

## What will the drainage infrastructure look like?

The drainage infrastructure is to be installed through drainage channels/reserves, which are approximately 20 metre wide open swales including a flow path, landscaping and in some areas, a shared path connected via closed drainage pipes. These drainage channels/reserves manage the collection and distribution of overflow water through the network of channels/reserves connecting to the drainage outfall points and broader drainage scheme. An example of a typical drainage reserve cross section is provided below.



## How much land will be required from my property?

In the draft S173 Agreement template, you will find your property address in Schedule 4 entitled Land Budget Table. Under the column entitled 'Land required for Drainage Reserve (hectares)'; you can see the proposed amount of land identified for your property that is set aside for drainage infrastructure. For a more detailed plan showing the proposed amount of land, please see in Annexure "A" of the draft S173 Agreement template, or in Section 3.9 of the draft Development Plan, which shows the typical dimensions for the proposed drainage channel/reserve.

## What if I have structures on that portion of my land required for drainage infrastructure?

If you have any structures or other improvements on the portion of your land that is intended to be vested to Council, please get in touch with Council and an officer will liaise with you to determine the best outcome in your circumstance. The draft S173 Agreement template provides for the ability to specify how this issue can be considered.

## What happens to my back fence when the drainage channel on my property is to be constructed?

When the drainage channel on your property is to be constructed, your back fence will be removed, and temporary fencing erected until the drainage channel is constructed. If required, your back fence will be reinstated along your new property boundary as the land of the drainage channel is to be vested to Council for future access and maintenance of the drainage channel/reserve land.

## When would I have to hand over my land?

The intention of the S173 Agreement is to facilitate the transfer of the drainage land at the time it is necessary for development. Thus, the timing of the transfer of your land to Council will be determined by

the drainage requirements of downstream properties that are developing. The developing party will be responsible for all costs associated with the subdivision process and the transfer of your land to Council. It is not a compulsory acquisition process.

### **How will I be reimbursed for my land?**

Council will maintain a register highlighting the amount of credit that has been attributed to your property. You will receive an amount of credit equal to the value of the land required to be given over to Council to facilitate the construction of the drainage channel/reserve. The land value for all Development Contribution Projects is determined annually at the start of a new financial year and applies throughout the financial year. The 2021 value attributed to your property can be found on the online interactive platform accessed via the Casey Conversations page link (<https://conversations.casey.vic.gov.au/collison-estate-development-consultation>) and is expressly provided for community consultation purposes that is to be interpreted as a guide only. Reimbursement is not applicable to the proposed drainage pipes within easements.

### **When will I receive reimbursement for my land?**

You will be credited for the land for drainage channels upon handing it over to Council. The amount of credit applicable to your property will be kept in a Council register that will be made available to you upon request. This credit will be offset against future contributions due under the Development Contributions Plan upon the development of your land, generally with stage 1 of your development.

### **What is a works-in-kind credit?**

A works-in-kind (WIK) is the carrying out of work identified in the draft Development Contributions Plan (DCP) in return for a reduction in the number of monetary contributions required. In this case, a WIK credit will be provided to offset the value of the land for drainage channels/reserves and reduce the monetary payment due by the landowner under the DCP upon the development of your land.

### **Can I apply for a works-in-kind credit?**

Yes - Council agrees to provide a WIK credit against the development contributions payable under the draft Development Contributions Plan (DCP).

### **Why does the draft S173 Agreement template specify that people might need to access my property before handing the land over to Council?**

As part of the construction of the drainage channel/reserve, it is typical that some survey or other work might need to be done on your land prior to you needing to hand the land over to Council. Access to your property would usually involve an engineer or surveyor contacting you to arrange access to your property to perform some measurements or other non-intrusive survey work on the land in your backyard.

### **Why does the draft S173 Agreement template specify Standard Terms of Entry for access to the land?**

The Standard Terms of Entry in the draft S173 Agreement template is to ensure a landowner is provided with reassurance around access to their land affected by the S173 Agreement before the land is vested to Council. These Standard Terms ensure reasonable notice is given prior to any access to land and reinstating the land to its existing condition, as well as providing access for construction and maintenance of the relevant infrastructure on the property.

### **Why should I consider signing the S173 Agreement?**

As part of the preparation of the draft Development Plan (DP) and Development Contributions Plan (DCP), Council identified that the delivery of the necessary road and drainage infrastructure would be key impediments to development in the Estate due to the fragmented nature of land ownership within the Estate.

The delivery of both road and drainage infrastructure requires collaboration between numerous landowners. Council has drafted the S173 Agreement template to help provide developing landowners with the certainty that they will be able to access the necessary drainage land to enable them to develop, regardless of the development status of the other landowners upstream.

Council has also agreed to forward fund the upgrade of a portion of Collison Road, depending on the uptake of S173 Agreement template signing from landowners. For example, if more owners in the northern portion of the Estate signal their intention to develop through the signing of the S173 Agreement, Council will deliver this portion of the road or vice versa. The early delivery of a portion of Collison Road by Council will ease the burden on developing landowners by not requiring the urbanisation of the road at the time of development, thus lowering the upfront costs of development.

### **What if landowners downstream of my property do not sign the S173 Agreement?**

If landowners downstream of your property do not sign the S173 Agreement, then it is highly unlikely that you will be able to develop your property. Council would not be able to reserve the land for the future construction of the required drainage infrastructure to support development on your property and the entire drainage sub-catchment upstream of a property not signed up to the S173 Agreement.

### **Can I change the text of the S173 Agreement?**

No – the wording of the S173 Agreement template is set and cannot be changed. If you have any questions regarding the wording of the S173 Agreement, please contact Council and an officer will contact you to address your concerns. However, the draft S173 Agreement does provide flexibility to specify how structures or other improvements on the portion of your land that is intended to be vested to Council will be considered.

### **Do I have to sign the S173 Agreement?**

No – the S173 Agreement is voluntary. However, signing the S173 Agreement will help progress the development of the Estate and may make it easier for your land to be developed at some stage in the future. If you do not have land required for drainage infrastructure, then you will not need to consider the S173 Agreement.

Should you sign the S173 Agreement and have a mortgage, you will need to get your bank or mortgagee to also consider signing the S173 Agreement.

### **Are there any costs involved with signing the S173 Agreement?**

No – Council will bear all the costs associated with the signing and execution of the S173 Agreement. Any other fees such as bank or mortgagee fees or any legal services you require would be borne by you as the landowner. You will need to confirm your own additional costs if any.

### **Have such S173 Agreements been used elsewhere in the City of Casey?**

It is common in the City of Casey to use S173 Agreements to facilitate the construction and delivery of infrastructure where there is a Development Contributions Plan. Generally, all transactions where a developer is providing land or construction of infrastructure via a DCP including reimbursements, are enshrined in a S173 Agreement.

### **How do I sign the Agreement?**

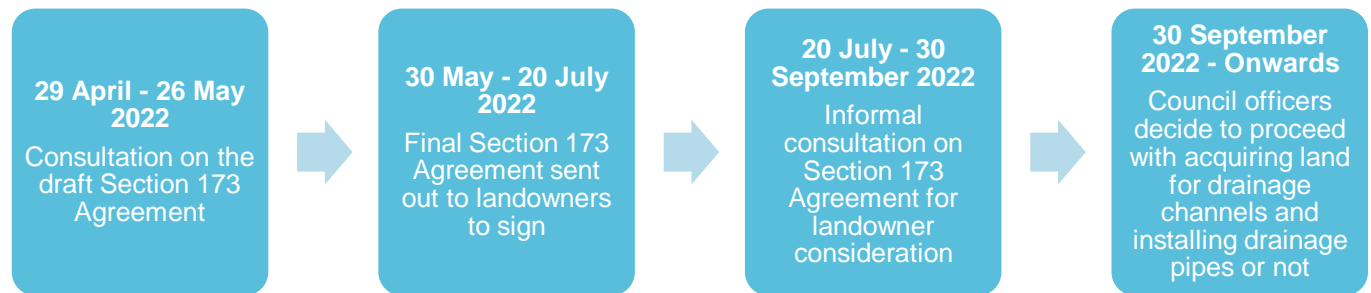
If you are a landowner affected by the S173 Agreement, a Council officer is happy to provide additional information and you will receive a letter or email with a link to sign the S173 Agreement digitally. If you decide to sign the S173 Agreement, please let Council know and an officer will contact you with further instructions.

### **What are the next steps?**

As shown in the below timeline, we would like to consult with you on the draft S173 Agreement template

over the next four weeks before finalising the S173 Agreement template. As shown in the timeframes below, the S173 Agreement template is expected to be finalised in June 2022 and sent out to all affected landowners for their consideration in July 2022. Based on the signed S173 Agreements received, Council will decide whether to proceed or not with the Council intervention.

### Section 173 Agreement Timeline



### How can I make a submission to the draft S173 Agreement?

Council has placed the draft Development Plan (DP) and Development Contributions Plan (DCP) on community consultation. You can make a written submission to the draft DP and DCP via the Casey Conversations page at <https://conversations.casey.vic.gov.au/collison-estate-development-consultation>.

The **closing date for submissions is midnight Thursday 23 June 2022.**

Submissions must be in writing and can be made via the online form on the Casey Conversations page link above, email or post. Submissions should include *Draft Collison Estate Development Plan* in the title and be addressed to Sonja van Nieuwenhoven, Principal Strategic Planner.

*Postal Address:*

City of Casey  
PO Box 1000  
NARRE WARREN, VIC, 3805

*Email Address:*

[planningscheme@casey.vic.gov.au](mailto:planningscheme@casey.vic.gov.au)

Your submission is encouraged to be specific about the issues you support, object to, or seek to change.

### What do I need to consider when making a submission?

Should you make a submission, the following general privacy disclosure applies.

A copy of any written submissions received may be made available to others for the express purpose of resolving issues. Submissions may be published in the Council agenda which is a public document. Council may redact your name, address, email, and phone number. By making a submission, you authorise Council to copy your submission and make it available to the public as set out above and that your submission does not breach any third party's copyright.

### What if I have any further questions about the draft S173 Agreement?

If you have any questions and would like to discuss the draft S173 Agreement further, please book an appointment to meet with a Council officer via the Casey Conversations page link as follows:

<https://conversations.casey.vic.gov.au/collison-estate-development-consultation>



