

## Melbourne Water Information on s.173 Agreements under the *Planning and Environment Act 1987* (Vic)

Melbourne Water provides the following information regarding the use of the planning instrument known as s173 Agreements made under section 173 of the *Planning and Environment Act 1987* (Vic) (the **P&E Act**).

Section 173 Agreements and agreements of this nature have been in use by planning authorities since the introduction of the P&E Act in 1987. Responsible authorities, including Melbourne Water and local councils, use section 173 Agreements to negotiate with an owner of land to set out conditions or restrictions on the use or development of the land.

Section 173 Agreements (and indemnity wording contained within them) have not been introduced in response to the 2022 Maribyrnong flood event. It is incorrect to assert that they have been, given section 173 Agreements:

- Were introduced by the P&E Act 1987
- Are used in locations across Melbourne and Victoria, not just the Maribyrnong area
- Are used by a range of planning authorities other than Melbourne Water, including local councils
- Are applied to manage a range of risks including fire risk and to deliver other planning objectives

Melbourne Water also notes:

- Section 173 Agreements are used by Melbourne Water, as the referral authority, for floodplain advice to provide conditions as part of a planning application. For example, where there is a proposed use or alteration to the permit by an owner which involves flood risk. Section 173 Agreements can also be used by Melbourne Water to impose mitigation measures to reduce flood risk exposure on the applicant's land.
- An owner who is asked to enter the section 173 Agreement is made aware of the risk of the proposed development or change and by agreeing to the terms, accepts the risk along with any conditions Melbourne Water (or other authorities) might set to reduce impacts.
- The indemnity provision is a recognition of the acceptance of the conditions imposed by Melbourne Water. This indemnity provision is regularly sought by other planning authorities involved in the application.
- We are not aware of insurance being denied to property owners where properties are subject to a section 173 Agreement. On the contrary, the registration on title of a section 173 Agreement operates to provide certainty of compliance with planning conditions which may reduce risks to property owners and their insurers.