

Mediation

Policy, procedure, protocol	Policy
Document version	V 3.0
Date adopted by Council	24 June 2014
Minute number	14.049/14
File reference number	ECM 1308907
Due for review	June 2018
Documents superseded	V1.0 – 19/09/2006 – 09.150/06 V2.0 – 15/11/2011 – 13.241/11
Related documents	Privacy Management Plan Mediation Request Form
Author	Director
Section / Department	Environment, Development & Regulated Services
Linkage to Our Community Plan	1 Our Society
Objective	1.4 We will have access and equity of services
Strategy	1.4.7 Work with the community and partners to inform, develop and maintain an inclusive and equitable community

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1. Purpose

To present a formal process of mediation for the resolution of disputes involving Council and community members, to encourage the development of mutually agreed outcomes in an impartial setting. The policy relates generally to disputes between community members in which Council is implicated, and specifically to disputes relating to development applications.

2. Definitions

Mediation is a voluntary process of assisted negotiation between the parties to a dispute. It is a way by which the parties can explore and resolve their differences.

3. Background/legislative requirements

Mediation is a voluntary process where an independent mediator assists proponents and objectors work towards a resolution. Within Council, mediation involves the arranging for the services of an independent mediator to act as a catalyst to assist conflicting parties to identify areas of mutual interest, recognise the concerns of other parties, and reach settlement in a confidential and impartial forum. The process recognises areas of community concern, but does not overrule relevant regulations or Council's responsibilities in the enforcement of those regulations or legislation.

However, mediation does provide opportunities for opposing sides to reach a resolution in a dispute. These include:

- disputing parties can meet on a face to face basis and resolve their differences in an atmosphere conducive to conciliation;
- Council has greater access to community concerns;
- fresh, innovative and creative ideas and options may emerge;
- there is greater potential for early resolution of conflict;
- litigation may be averted, saving considerable time and costs in the determination of applications; and
- there is reduced community conflict and less likelihood of erosion of public confidence in the development assessment process specifically, or Council's responsibilities generally.

Where a conflict becomes evident, the General Manager will be responsible for the implementation of mediation.

4. Objectives

The objectives of the policy are:

- (a) to establish an effective and equitable process for the resolution of disputes,
- (b) to define procedures that enable disputing parties to identify and resolve issues of contention on a mutually acceptable basis,
- (c) to ensure consistency and fairness in the manner in which the Council deals with and resolves disputes,

- (d) to enable development proposals to be assessed and determined by the Council without unnecessary delay, and
- (e) to avoid litigation arising from the determination by Council of Development Applications.

This policy will apply to the following matters:

- (i) development and subdivision applications;
- (ii) any other matters where a dispute may have arisen and where Council is involved either directly or indirectly.

5. Policy statement

This policy shall cover both mediation in the determination of Development Applications, and mediation in the event of conflict between community members where Council has an interest or is called upon to act.

Council will provide mediation services in situations where it is thought that this would assist in the formulation of a solution between opposing parties, in particular in the determination of development applications where there are significant and sustained objections.

In relation to disputes concerning **development applications**, the policy embodies the following principles.

5.1 Pre-application consultation

Potential or real community concerns should be identified and considered as part of the initial design process for a development. Developers are encouraged to discuss proposals with affected community members prior to lodging applications with Council, avoiding unnecessary conflict and delays.

5.2 Public Exhibition Period

Council officers should provide adequate information and advice during the public exhibition period in order to increase understanding of the application and assessment process.

5.3 Early initiation of dispute procedures

Dispute resolution procedures, including mediation, should be initiated as early as is practical to reduce the likelihood of an escalation of conflict.

5.4 Face to face contact

Mediation sessions allow opposing parties to meet face to face, encouraging open dialogue on the issues involved, and improving the opportunities for a resolution.

5.5 Self resolution of differences

While the final determination of a development application remains with Council, opposing parties are to be encouraged to resolve issues between themselves, if necessary with the assistance of a mediator.

5.6 Outcome of mediation

A report is to be prepared by the mediator presenting a statement of issues and areas of agreement and disagreement for consideration by Council in conjunction with the Development Application determination.

5.7 Time limit for dispute resolution

The General Manager reserves the right to impose a time limit on mediation procedures or terminate the process.

6. Procedures for implementation of mediation process in development applications

6.1 Initiation of Mediation

Mediation may be considered in the following situations:

- at the request of either party in dispute, and with the agreement of any other party involved;
- after consideration of submissions of objection and support following the public exhibition of development and/or other planning or approval proposals; or
- where the General Manager is of the opinion that a mediated solution is preferable and achievable.

Requests for mediation must be submitted to the General Manager on the attached Mediation Request Form, and must include a statement outlining the issues or areas of concern that relate to the Development Application.

Requests for mediation must be approved by the General Manager. Prior to approval, Council officers will seek confirmation from the opposing parties of their willingness to participate in a mediation process. Mediation, however, will not prejudice Council's final determination of any Development Application or other issue through the circumvention of legislative requirements. In addition, refusal by either party to take part in mediation proceedings will not in any way prejudice or influence the decision or recommendations of Council officers.

6.2 Selection of the Mediator

An external mediator will be selected by the General Manager. Any issues of bias or conflict of interest will be considered at time of appointment.

Within fourteen (14) days of appointment of the mediator the parties and the mediator shall sign a Mediation Appointment Agreement.

6.3 Notification of Mediation

The disputing parties will be notified of the appointment of a mediator, and the mediator will be provided with administration assistance for the preparation of mediation material.

6.4 Provision of Information

Council will provide the mediator with all relevant information. In the case of a development application, this shall include plans, a locality map, environmental impact statements, and any information provided by the developer in support of the application. The mediator shall also be provided with copies of letters of support and objections relative to the case.

Council officers will meet with the mediator to give a briefing on the issue, and if necessary, arrange for an on-site inspection.

Prior to the mediation session, participants will be encouraged to provide a statement of issues detailing their concerns. This will be provided to both parties prior to the meeting.

6.5 Representation and attendance

If an opposing party is an individual, that individual or their nominated representative must attend the mediation session. The nominated representative must have written authority to negotiate on behalf of the individual involved.

If the opposing party is a company, government authority or unincorporated associated, a nominated representative with written authority to negotiate must attend.

Where a dispute involves a group of individuals with common interests, the group may be requested to nominate a representative to mediate on their behalf. Other members of the group may attend the sessions, but not participate in the mediation process.

Each party is entitled to bring legal representatives or advisers to the mediation sessions.

6.6 Authority of the mediator

The mediator does not have the authority to impose or indicate any settlement to the opposing parties. The role of the mediator is assist opposing parties reach a resolution. A Council officer will be in attendance at all sessions to provide technical advice as necessary, but not as a participant in the mediation process. The Council officer is not to give advice that may prejudice the statutory assessment and Council's final determination of an application.

The mediator may arrange separate meetings between objectors and developers prior to the mediation session.

6.7 Confidentiality

Information provided during the mediation session is confidential, and all parties involved in the mediation process are to sign a confidentiality agreement prior to the mediation commencing.

The parties shall not rely upon, or introduce as evidence, in any arbitration or litigation:

- views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- admissions made by another party in the course of a mediation session;
- proposals made or views expressed by the mediator;
- the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the mediator;
- statements or notes made by the mediator;
- documents presented at the mediation session, unless these documents are otherwise discoverable;
- briefing notes and other documents distributed to the parties immediately prior to a mediation conference.

The mediator, however, will produce a report to be presented to Council with the application, prepared in accordance with Council's Privacy Policy and the Privacy and Personal Information



Protection Act 1998. This report will also be supplied to the parties involved in the mediation process.

6.8 Reporting of Mediation outcomes

Following mediation, a report to the General Manager will be produced. The following processes will then be put into place:

- (a) if the issues are resolved without amendment to the application and the objections to the application are withdrawn (by written agreement), the application can then be determined by Council officers under delegation if appropriate;
- (b) if the issues are resolved and the objections to the application are withdrawn (by written agreement) subject to amendments to the application, the application may be determined by Council officers under delegation, or referred to Council for determination;
- (c) if the issues are resolved subject to conditions that involve some action by Council, the written agreement must specify what actions Council is requested to undertake, or
- (d) if there is no agreement, or only partial agreement on the issues, the mediator should document the issues and indicate any common ground and the areas of conflict. This will then be included in the documents provided to Council with the Application for determination.

6.9 Termination of mediation

Mediation may be terminated in the following situations:

- an agreement is reached between the opposing parties;
- the mediator determines that mediation has been unsuccessful and an agreement is unlikely to be reached;
- one of the parties involved in the mediation process withdraws.

6.10 Costs

Council will meet administrative costs. However any other costs including the mediator's fees, and the preparation or presentation of information, or attendance at mediation sessions will be allocated between the parties at the discretion of the General Manager.

7. Procedures for the implementation of a mediation process in other issues

7.1 Initiation of Mediation

Mediation will be considered in the following situations:

- at the request of either party in dispute;
- after consideration of ongoing costs associated with repeated involvement of Council officers in the dispute.

Requests for mediation must be submitted to the General Manager on the attached Mediation Request Form, and must include a statement outlining the issues or areas of concern that relate to the issue.

Requests for mediation must be approved by the General Manager. If approved, Council officers will seek confirmation from the opposing parties of their willingness to participate in a mediation



process. Mediation is only to be undertaken where there is a reasonable likelihood of reaching a resolution to the conflict and where all parties have agreed in writing to meet the costs set out in 6.10 above.

7.2 Selection of the Mediator

A mediator will be selected by the General Manager and must be an external mediator. Any issues of bias or conflict of interest will be considered at time of appointment.

Within fourteen (14) days of appointment of the mediator the parties and the mediator shall sign a Mediation Appointment Agreement.

7.3 Notification of Mediation

The disputing parties will be notified of the appointment of a mediator, and the mediator will be provided with administration assistance for the preparation of mediation material.

7.4 Provision of Information

Council will provide the mediator with all relevant information. This may include reports from Council officers on the history of the conflict and Council's involvement to date.

Council officers will meet with the mediator to give a briefing on the issue, and if necessary, arrange for an on-site inspection.

Prior to the mediation session, participants will be encouraged to provide a statement of issues detailing their concerns. This will be provided to both parties prior to the meeting.

7.5 Representation and attendance

If an opposing party is an individual, that individual or their nominated representative must attend the mediation sessions. The nominated representative must have written authority to negotiate on behalf of the individual involved.

If the opposing party is a company, government authority or unincorporated associated, a nominated representative with written authority to negotiate must attend.

Where a dispute involves a group of individuals with common interests, the group may be requested to nominate a representative to mediate on their behalf. Other members of the group may attend the sessions, but not participate in the mediation process.

Each party is entitled to bring legal representatives or advisers to the mediation sessions.

7.6 Authority of the mediator

The mediator does not have the authority to impose or indicate any settlement to the opposing parties. The role of the mediator is assist opposing parties reach a resolution. A Council officer will be attendance at all sessions to provide technical advice as necessary, but not as a participant in the mediation process.

The mediator may arrange separate meetings between conflicting parties prior to the mediation session.

7.7 Confidentiality

Information provided during the mediation session is confidential, and all parties involved in the mediation process are to sign a confidentiality agreement relating to views or admissions by parties, briefing notes or statements, and confirm any material thus obtained is not to be used in any arbitration or litigation proceedings.



The mediator, however, will produce a report for the General Manager prepared in accordance with Council's Privacy Policy and the Privacy and Personal Information Protection Act 1998.

7.8 Termination of mediation

Mediation may be terminated in the following situations:

- an agreement is reached between the opposing parties;
- the mediator determines that mediation has been unsuccessful and an agreement is unlikely to be reached;
- one of the parties involved in the mediation process withdraws.

7.9 Costs

Council will meet administrative costs. However any other costs relating to the mediator's fees and the preparation or presentation of information, or attendances at mediation sessions will be allocated between Council and the parties involved at the discretion of the General Manager.

8. Attachment

- Mediation Request Form
- Confidentiality agreement