



# POLICY MANUAL

<b>Policy title:</b>	<b>GUIDELINES AND PRACTICES FOR MEDIATION OF DEVELOPMENT APPLICATIONS POLICY</b>
<b>Policy number:</b>	<b>5.2.5</b>
<b>Objective:</b>	<b>Resolve conflict involving development applications, objectors and Council.</b>
<b>Link to community vision/service:</b>	<b>Strategic Planning, Assessment and Construction</b>
<b>Program Area:</b>	<b>Development and Compliance</b>
<b>Policy created: 1995</b>	<b>Council reviewed: 4/03, 11/9/07</b>
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## 1. Background

Lismore City Council has adopted the principle that a professional independent mediator be engaged by Council in situations of conflict involving development applications, objectors and Council.

## 2. What is Mediation?

Mediation of development proposals is a voluntary process at which an independent mediator acts as a catalyst to assist both developers and objectors to identify mutual interests, concerns and reach settlement in a confidential forum. Mediation is only possible in situations where both parties are willing to participate and achieve reasonable compromise.

The mediated outcomes are included, where appropriate, in the planning report which assesses relevant statutory requirements and makes a recommendation for determination.

A mediated outcome may not necessarily be adopted by Council if such an outcome is contrary to relevant planning requirements. If no mediated outcome is determined Development & Governance will prepare and give Council direction in respect of the matter or application. Mediation is not considered a substitute or an abrogation of Council's responsibility to make decisions. The process is considered an important test and measure of community concerns and opportunity to reach agreed outcomes in the decision making process.

Mediation and other "alternative dispute resolution techniques" have some very clear benefits. These include:

- Disputing parties can meet on a face-to-face basis and resolve their differences in an atmosphere conducive to conciliation.
- Greater responsiveness to local concerns and issues.
- Fresh, innovative and creative ideas and options often emerge.
- Disputing parties are empowered to resolve their differences among themselves.
- There is greater potential for early resolution of conflict.
- Avoidance of litigation in the Land & Environment Court, reducing time and costs.
- Reduced community conflict and improved public confidence in the development assessment

process.

- Savings for the development industry and the Council because of faster assessment of applications.

Mediation will be instigated by Council or the Executive Director-Development & Governance and applied to the following applications and matters which have generated significant and relevant objection.

- Development applications;
- Subdivision applications;
- Other environmental and land use planning, regulatory and approval matters which Council or the Executive Director-Development & Governance may consider appropriate to mediate.

### **3. Objectives of Mediation Guidelines and Practices**

- To establish an effective and equitable process for the resolution of disputes relating to development applications and related matters.
- To define procedures that enable disputing parties to identify and resolve issues of contention on a mutually acceptable basis.
- To enable development proposals to be assessed and determined by the Council without unnecessary delay.
- To ensure consistency and fairness in the manner in which the Council deals with and resolves disputes.

### **4. Mediation Process**

The mediation process should be generally conducted in accordance with the following guidelines and practices:

#### **4.1 Initiation of Mediation**

Council's Executive Director-Development & Governance will consider mediation in either of the following situations:

- At the request of either the developers or objectors;
- After consideration of submissions of objection and support following the public exhibition of development and/or other planning or approval proposals.

#### **4.2 Selection of the Mediator**

Council's Executive Director-Development & Governance will appoint a mediator from Council's register or list of mediators. A co-mediator may also be used where necessary. Prior to agreeing to mediate a matter, the selected mediators shall disclose any interest or circumstance likely to generate or lead to a presumption of bias in the matter or process.

#### **4.3 Notification of Mediation**

The Council will inform the parties of the name of the appointed mediator and where appropriate, i.e. in an instance of significant and large numbers of objections, provide administrative support to the mediator in the preparation of advance notices of meeting and mail out costs.

#### **4.4 Time, Date and Place of Mediation**

The mediator shall be responsible for the fixing of a time, date and place in which to conduct the process. The mediator shall endeavour to set a suitable time, date and place that suits the parties in the matter. The mediation shall take place as soon as practicable after the decision to initiate mediation following the period of exhibition of the development proposal.

#### **4.5 Provision of Information**

Council shall provide to the mediator a copy of the following:

- Development application including plans, statement of effects and where appropriate, environmental impact statements and other documentation or additional information supplied by the developer, including any amended plans after public exhibition is completed.
- Letters of support and objection with a list of those key contact persons in the matter.
- A map which locates the land subject of the application.

Council's Development & Governance staff will provide a briefing to the mediator and, where

appropriate, will be available to conduct an on-site inspection of the subject site with the mediator. This will be undertaken during normal office hours.

#### **4.6 Statement of Issues**

Participants in the mediation process are encouraged to provide at the separate meetings a statement of issues which outlines their concerns and objections. The mediator, prior to the final combined meeting of all parties, will provide to both parties a copy of the respective statement of issues.

#### **4.7 Authority of the Mediator**

The mediator does not have authority to impose any settlement on the parties. The function of the mediator is to attempt to help the parties reach a satisfactory understanding and resolution of their dispute. The mediator is authorised to conduct joint and separate meetings with the parties (see Section 4.8).

Council's Executive Director-Development & Governance will nominate a delegate (usually the planner dealing with the development application or other relevant officer) who shall be in attendance at the final combined meeting of all parties to provide technical advice as requested. This person will not participate in the mediation process, unless invited by the mediator with the agreement of both parties.

The nominated Council delegate will not give advice nor should be asked questions which may prejudice the statutory assessment and Council's final determination of the application.

The mediator is authorised to end the mediation, whenever, in the opinion of the mediator, further efforts at mediation will not contribute to a resolution of the dispute between the parties.

If the parties select a dispute resolution process in which mediation is followed by an expert determination or arbitration, the mediator cannot act as the expert or arbitrator.

#### **4.8 Representation and Attendance at Meetings**

Generally the mediation process will consist of four meetings, described below:

- 4.8.1 Initially, a meeting between the mediator and relevant Council staff at which the mediator will be briefed on the proposal and provided with information as described above (see Section 4.5).
- 4.8.2 A meeting between the objectors who made written submissions and the mediator. If there are a large number of objectors it is preferable that representatives of the objectors attend this meeting in order to maintain an effective working number of participants.
- 4.8.3 A meeting between the developer/s (including consultants and designers if necessary) and mediator.
- 4.8.4 A combined meeting with the objectors (nominated representatives in the case of a large number of objectors) and developers.

The process and agenda of mediation meetings may vary from situation to situation and from mediator to mediator. It is the responsibility of the mediator to explain the mediation process to all parties at the respective meetings.

#### **4.9 Confidentiality**

Information disclosed in the course of a mediation conference is confidential, and must not be divulged by any of the parties or the mediator. This does not apply to the mediator's final report which is submitted to Council and copies provided to the parties participating in mediation. At commencement of mediation, participating parties are required to sign an agreement to confidentiality.

A mediator must not divulge records, reports or other documents received in the course of mediation, or testify as to the proceedings of the mediation, unless otherwise compelled to do so by law.

The parties must maintain the confidentiality of the mediation. They 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 conference.

- 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 media conference, unless these documents are otherwise discoverable.
- Briefing notes and other documents distributed to the parties immediately prior to a mediation conference.

No transcript shall be kept of the proceedings of a mediation conference. The mediator is to provide a brief final report of the process and where appropriate the mediated settlement that has been negotiated between parties. The parties shall sign the settlement. Such settlement is concluded “without prejudice”.

#### **4.10 Termination of Mediation**

Mediation proceedings are to be terminated if:

- The parties execute a settlement or agreement.
- The mediator makes a written declaration to the effect that further efforts at mediation are unlikely to be fruitful.
- One or all of the parties makes a written or oral declaration to the effect that the mediation proceedings are terminated.

#### **4.11 Alternatives to Mediation**

In the event that one or more of the parties refuses to enter into mediation, Council may offer an opportunity for the parties to participate in an information exchange meeting facilitated by the mediator. This meeting will permit each party to provide information, and discuss and explain views and issues with a view to improving the level of understanding of issues and concerns raised. Whilst no mediated settlement or written agreement is envisaged, this exchange of information may resolve some or even all of the identified issues and concerns.

#### **4.12 Liability**

Neither the Council nor the mediator will be liable to any party for any act or omission, whether involving negligence or not.

#### **4.13 Costs**

The Council will meet administrative costs and mediators’ fees. Any other costs borne by the parties in preparing or presenting information or attendances at the mediation will be the responsibility of the parties concerned.

NOTE: This policy is effective from August 21, 1995.