



Policy Owner: Director Corporate Services

Direction: 5. Our Civic Leadership

1. STATEMENT OF INTENT

1.1 The purpose of this Policy is to promote and support the use of mediation by North Sydney Council in the resolution of disputes in areas of building and development, or other matters in which Council has an interest or responsibility.

2. ELIGIBILITY

2.1 This Policy applies to:

- a) All Development Applications submitted to Council; and
- b) Issues involving Council and/or stakeholders in the community, which are the subject of disputes between these parties

3. DEFINITIONS

3.1 Mediation - a form of assisted negotiation between the parties to a dispute. Mediation takes place in the form of a meeting between the parties to a dispute and an impartial mediator. It is a means by which parties can discuss and negotiate on relevant aspects of the matter in dispute with the intention of resolving their differences.

3.2 Mediator - a neutral, independent and suitably qualified person appointed by Council to assist all parties involved in a dispute, in finding a mutually acceptable solution.

3.3 Parties - any persons involved in the mediation process. This may be Council as an organisation, community members, resident organisations or groups, applicants, State or Federal Government Authorities.

3.4 Objector - a person or group of representatives who have concerns relating to an application and have presented these concerns to Council in writing.

3.5 Applicant - a person/group/organisation that has signed and submitted a development application to Council. It may not necessarily be the owner of the property, rather a consultant acting on the behalf of the owner.

- 3.6 Council Assessment Officer - the Council Officer who is responsible for assessing the development or building application in accordance with State planning legislation and Council's policies and plans.

4. PROVISIONS

- 4.1 Mediation of Development Matters - mediation of these matters only occurs when the elected Council is of the opinion that issues relating to the application have not already been satisfactorily resolved prior to the determination of the application, and when all parties involved agree to mediate.

- 4.2 Mediation of other matters in which Council has an interest or responsibility - where appropriate, Council will provide mediation services in areas other than development and building in which Council has an interest or responsibility.

In such cases Council itself may be a party in a dispute, or may wish to offer mediation services to parties external to Council where it is recognised that mediation of the dispute will be beneficial to the parties involved, to Council, or to the broader local community.

The decision to offer mediation services will be made by the appropriate Division Director.

- 4.3 Selection of the Mediator - suitably qualified mediators, preferably with experience in the Local Government environment or on the basis of individual specialisations, will be appointed to mediate matters in dispute.

- 4.4 Impartiality of Mediator - prior to agreeing to mediate a matter, the selected Mediator must disclose to Council any interest or circumstance which may lead to a presumption of bias in the matter. If a declaration of interest is disclosed, another Mediator will be selected.

The parties will then be informed of the name of the appointed Mediator. The appointment of the Mediator is dependent upon the agreement of all parties to the dispute.

- 4.5 Mediation Appointment Agreement - prior to the mediation, the parties and the Mediator must sign a mediation agreement setting out the terms under which the mediation will be conducted. The terms of the mediation agreement will be consistent with this policy.

- 4.6 Time, Date and Place of Mediation - the appointed Mediator will nominate a date, time and location for the mediation which is agreeable to all parties

involved. The mediation will take place as soon as practicable after Council has resolved that mediation should occur. Under guidance from the appointed Mediator, parties involved in mediation will have the opportunity to arrange further mediation sessions if it is the Mediator's recommendation that such sessions are likely to result in settlement of the dispute.

- 4.7 Authority of the Mediator - the Mediator does not have the authority to impose any settlement on parties in the mediation. The function of the Mediator is to assist parties in reaching a satisfactory understanding of the issues and resolution of their dispute.

The Mediator is authorised to conduct joint and separate meetings with the parties. Whenever necessary, and with the agreement of all parties, the Mediator may also obtain expert advice concerning technical aspects of the dispute. For this purpose, and with the agreement of all parties involved, the Mediator may request that an appropriate representative from Council's staff be present throughout the mediation.

Note: Council will not provide advice that could pre-empt its final determination of any matter that is not within the parameters of its normal responsibilities.

The Mediator must not act in any capacity in any subsequent proceedings (e.g. court proceedings, arbitration etc.) to resolve a dispute if he/she has previously acted as a Mediator in that dispute.

- 4.8 Representation and Attendance - mediation meetings are not open to the public. For all matters subject to mediation, any person who is considered to be a party in the dispute shall be invited to attend the mediation session, and may be accompanied by a representative or expert to the mediation on his/her behalf.

Where a party in mediation constitutes a large number of interested persons, the number of representatives of that party able to attend the mediation will be nominated by the appointed Mediator. In such circumstances the Mediator may request that members constituting the party elect representatives to speak on behalf of the 'enjoined' group. Others from the group may attend as observers, but may not participate in the formal proceedings except with the consent of the Mediator and the other mediation parties.

If the party is a company, government organisation, or unincorporated association, an authorised representative must attend the mediation.

Note: the Mediator should ensure that there is an equal level of representation (as far as practical) for all parties involved in the mediation meeting.

People not identified as parties in a mediation, including Councillors, may not attend mediation sessions unless invited by the Mediator in consultation with the parties involved. The Mediator may invite a Council officer to attend a mediation session in circumstances where that officer may provide explanation or insight into relevant policies, legislation or complex technical matters.

All representatives at the mediation must have authority to make decisions on behalf of the individual or organisation, or the ability to present a proposed settlement to their constituency. Each party is entitled to bring its legal representative or other advisers with knowledge or experience relevant to the matter in dispute.

At least three days prior to the mediation, the parties in the mediation must inform Council of the names of all persons who will be attending the mediation meeting. Council must provide this information to the other parties and the Mediator.

- 4.9 Confidentiality - Information whether written, verbal or any other form, disclosed in the course of a mediation conference is confidential and must not be divulged by any of the parties, the mediator or their advisors unless compelled to do so by law.

Before the mediation commences every person attending a mediation must sign a confidentiality agreement.

The parties acknowledge that any such information disclosed or provided by any other party is disclosed or provided 'without prejudice' for the purpose of any arbitration, litigation or any other proceedings.

- 4.10 Mediation Transcript - no transcript shall be kept of the proceedings of a mediation.

- 4.11 Outcome of Mediation - where parties in a mediation of a development or building matter reach agreement, original signed copies of the settlement agreement will be provided to those parties and to Council. The original copy for Council will be forwarded to the responsible Council Officer for addition to the relevant file. A copy will also be attached to the Council Officer's report for presentation to Council, to enable a final determination to be made.

Where settlement is reached in mediations of other matters in which Council has an interest or responsibility, original signed copies of the settlement agreement will be provided to all parties involved and to the appropriate Division Director.

- 4.12 Termination of Mediation - at the appointed Mediator's discretion, mediation proceedings will be terminated where:

- a) the parties execute a settlement or agreement;
- b) the mediator makes a written declaration to the effect that further efforts at mediation are unlikely to result in a mutually agreed settlement;
- c) the mediation guidelines have not been complied with;
- d) any one or more of the parties makes a written or oral declaration to the Mediator, to the effect that the mediation proceedings are terminated.

4.13 Liability - the parties shall agree in writing that neither Council nor the Mediator shall be liable to any party for any act or omission arising from the mediation, whether involving negligence or not.

4.14 Costs - Council will meet administrative costs and the Mediator's fees. Any other costs incurred by the parties in preparing or presenting information or attending the mediation will be the responsibility of the parties concerned. Expenses involved in obtaining advice beyond that normally provided by Council are the responsibility of the parties and not Council.

5. RESPONSIBILITY/ACCOUNTABILITY

5.1 Council's Directors and Managers are responsible for considering mediation as an alternative for resolution of disputes within the parameters of this policy and for referring such matters as appropriate.

5.2 Appointed Mediators are responsible for mediating each matter referred by Council and for providing the appropriate Council Officer with a comprehensive report at the conclusion of each mediation.

6. RELATED POLICIES/DOCUMENTS/LEGISLATION

The Policy should be read in conjunction with the following Council policies and documents:

- Compliance and Enforcement Policy

| Version | Date Approved | Approved by | Resolution No. | Review Date |
|---------|------------------|-------------|----------------|-------------|
| 1 | 2 August 2004 | Council | 794 | 2008/09 |
| 2 | 16 February 2009 | Council | 61 | 2012/13 |
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