

COUNCIL LEAD POLICY

POLICY TITLE: MEDIATION

1. POLICY OBJECTIVES

To enable the use of an independent disputes resolution service to resolve disputes or address issues between Council and other parties while ensuring impartiality and fairness.

2. PRINCIPLES

- Council recognises that it cannot, in all situations, resolve disagreements or disputes that may arise between Council and other parties. Therefore Council is committed to using, where appropriate, independent mediation as an impartial and fair means of resolving such disagreements and disputes.
- Council recognises that mediation will not always result in complete agreement.
- Council will act in good faith in its involvement in mediation.
- Council recognises that mediation relies on the open disclosure and exchange of information relevant to the matters in dispute and that provision of information will be consistent with the rights and obligations under the Local Government Official Information and Meetings Act 1987.
- Council recognises that the mediation process itself is confidential and that any agreement reached through mediation requires that the agreement itself will also remain confidential to the parties involved, unless all the parties agree otherwise.

3. BACKGROUND

Council's mission statement is:

“By working in partnership with the community and engaging in meaningful consultation, the Council will:

- *Provide leadership.*
- *Enhance quality of life for current and future residents.*
- *Plan for and provide affordable quality services.*

While managing the balance between social, economic and environmental sustainability.”

One of the ways in which Council can provide leadership is by offering an independent and impartial means of dispute resolution for disagreements and disputes that have not been resolved through normal Council processes.

What is mediation

Mediation aims to provide a fair, consensus building dispute resolution process in which the disputing parties are empowered to:

- Clarify their needs and interests: and
- Acknowledge the needs and interests of other parties: and
- Become aware of the range of potential solutions and actively participate in good faith to achieve an agreement which:
 - satisfies their interests.
 - is fair.
 - is capable of implementation within existing statutory processes.

4. DEFINITIONS

Mediation

Is one option for resolving disputes and addressing issues. It is a voluntary, flexible process, conducted "without prejudice" and in confidence, in which an independent and impartial third party (the mediator) endeavours to help the disputing parties reach an agreement which resolves some or all of the issues in dispute.

Mediator

A trained professional who is independent and impartial and who manages the mediation process by helping the parties to:

- define the issues in dispute: and
- relate those issues to the parties' underlying needs and interests: and
- explore possible options for resolving the issues: and
- where possible reach an agreement which resolves the issues in a manner consistent with the respective needs and interests of the parties.

The mediator is not a decision maker and has no authority to impose a decision on the parties. Nor is the mediator an advocate or legal advisor for any party.

Mediation agreement

In effect a contract between the mediator and the disputing parties. Matters usually covered include:

- Protocols relating to the process, based on those adopted by the Arbitrators' and Mediators' Institute of NZ (AMINZ).
- An acknowledgement that the mediation is "without prejudice" and confidential (within the limits of the law) and that participation in the process is voluntary.
- The mediator's role i.e. the "manager" of the process, not a decision maker or an advocate for or advisor to any party.
- Commitment from the parties that they will not involve the mediator in any subsequent legal proceedings nor attempt to hold the mediator liable for anything relating to or arising from the mediation.
- Payment of mediator's fee and associated costs.
- Statement that any agreement reached be reduced to writing and signed by the parties. Such agreement to be legally binding unless specifically agreed otherwise.

- Reservation of parties' respective legal rights and remedies in the event that agreement is not reached.
- Disclosure of any past relationships and/or potential or actual conflicts of interest, the mediator has with any of the parties (Note, that such disclosure will remain an on-going duty throughout the mediation).

5. POLICY STATEMENT

5.1. When Council will use Mediation

Mediation will be an option if:

- An appeal is lodged with the Environment Court: or
- Council's customer/departmental complaints system has been used and an external party is still disputing the outcome: or
- The dispute is centred on issues arising from the use of the Resource Management Act, Building Act or other legislation and alternative processes are likely to be too costly in either money and/or time: or
- The issue is contentious and an unacceptable amount of staff time has been or could be spent on it: or
- The issue has a significant degree of political risk associated with it: or
- The issue is in dispute between Council and other local authorities or external organisations: or
- It is recommended by an external body and agreed to by parties to the matter: or
- Resolving the matter does away with the need to commence formal / statutory processes: or
- It can narrow the differences between Council and other parties before entering formal / statutory processes: or
- Council decides that using a dispute resolution process is in the best interests of Council: or
- The issue is about the behaviour or conduct of an elected member and that elected member has agreed to mediation.

5.2. When Council will not use Mediation

Council will not offer or agree to enter mediation under the following circumstances, except as required otherwise by law:

- The issue is about the behaviour/conduct of staff and/or elected members: or
- Council considers another dispute resolution procedure may be more appropriate: or
- The dispute does not involve Council's business or responsibilities: or
- Council considers that the nature of the dispute / issue lacks sufficient grounds and/or is trivial or vexatious.

5.3. Providing Information to the Other Parties

Information normally available through the Local Government Official Information and Meetings Act 1987 will be provided by Council to the other parties to the dispute via Council's legal advisor, if appropriate.

5.4. Agreement to Mediate

All parties to a dispute must sign a mediation agreement before the commencement of mediation.

5.5. Agreements Reached in Mediation

Agreements reached in mediation will be confidential unless specifically agreed otherwise by the parties.

Council representatives will, where possible, be given authority to settle.

Council will be bound by agreements reached in mediation by appropriately authorised representatives.

5.6. Cost of Mediation

Council will share the cost of employing a mediator equally with other parties to the mediation.

Through the delegated authority of the Chief Executive, this may be changed where the cost of mediation may be a barrier to a party entering mediation and resolving the dispute and / or the goodwill and/or public benefit to be gained far outweighs the likely cost of mediation.

Council will not seek to recover any costs incurred, as a result of mediation, from any party to the mediation.

5.7. What this Policy does not apply to

This policy does not:

- Replace any statutory appeal or statutory mediation process: and/or
- Replace any court imposed mediation: and/or
- Replace any specific dispute resolution procedures prescribed in legislation or as part of the terms of a contract: and/or
- Apply to employment matters: and/or
- Apply to insurance claims or potential insurance claims involving Council.

As a matter of clarification, Council may decide to use mediation to explore the possibility of reaching a settlement either prior to or during a statutory process but the statutory process remains available if mediation fails to provide a full agreement.

6. RELEVANT DELEGATIONS

The Chief Executive will have delegated authority to:

- Decide whether mediation is offered / entered into: and
- Approve the people to represent Council's interest: and
- Approve the scope of the authority of Council representatives: and
- Agree the mediator to be used: and
- Agree with the other party on whether the mediation proceeding and any settlement agreement should not be confidential: and
- Decide any change to Council's share of the cost of mediation: and
- Sub-delegate any of the above.

7. REFERENCES AND RELEVANT LEGISLATION

- Resource Management Act 1991.

- Local Government Official Information & Meetings Act 1987.