

## COUNCIL PROCEDURE

**PROCEDURE TITLE: MEDIATION**

**Procedure Number:**

**Lead Policy Title: MEDIATION POLICY**

### 1. PURPOSE

To provide direction on the use of mediation.

### 2. OPERATING PROCEDURE

#### When to use mediation

In determining when mediation may be offered/entered into the following factors should be considered:

- The nature of the issue(s) or dispute and/or its history: and
- The likely cost of alternatives: and
- The benefit(s) that may be gained: and
- Any actual or potential legal / insurance liability on the part of Council.

#### General Procedures for Disputes

For pre-hearing meetings for resource consent applications and private mediation as a result of an appeal to the Environment Court against a Council decision, the pre-process detailed here is optional.

All complaints/disputes should, in the first instance, be handled by the specific departmental/customer service complaints procedures.

If, at the conclusion of this process, the external party to the dispute is not satisfied with the outcome, then written notification outlining the issues is to be lodged by the aggrieved party with Council.

The following options then need to be considered and the appropriate one(s) implemented:

- An internal review of the outcome and/or process already undertaken, by a manager. Depending on the degree of technical complexity, political risk, relationship etc, this would generally be the Customer Service Manager, Legal Officer, a Group Manager or the Chief Executive: or

- An internal peer review of the outcome and/or process already undertaken. This would generally involve a person of similar technical understanding and experience, to that of the original decision maker and if possible from a different area of Council: or
- An external peer review.

One of the review options above should generally be undertaken before mediation is considered, unless the Chief Executive or Council decides otherwise.

### **Selecting People to Represent Council at Mediation**

When deciding who will represent Council in a mediation process the Chief Executive or his/her delegate, will ensure there is no significant imbalance in numbers between the parties.

Council representatives should have appropriate knowledge of the issue, be competent to negotiate an agreement and where possible have the full delegated authority to enter into an agreement on Council's behalf.

### **Preparation for Mediation**

Prior to mediation staff shall be fully familiar with the issue and documentation.

For pre-hearing meetings for resource consent applications and private mediation as a result of an appeal to the Environment Court against a Council decision, the pre-process detailed here is optional as these generally have their own specific requirements:

Prior to any preliminary conference arranged by the mediator, preparation should include:

- Clearly establishing, in writing, the extent of authority the Council representatives have to settle: and
- A written summary of the:
  - Background to the dispute, outlining all the known facts: and
  - Sequence of events up to the signing of the agreement to mediate: and
- A brief written summary of the issue(s) to be solved: and
- A copy and schedule, in chronological order, of all documents related to the dispute.
 

Some documents may not be publically available under the Local Government Information and Meetings Act 1987(LGOIMA). These should not be made available to the other party.
- A copy of the publically available documents, along with a copy of the schedule of all related documents (with reasons why, under the LGOIMA individual documents cannot be released) and the summary of the background and sequence of events is to be made available to the other party via Council's Legal Officer.

Note that the term "documents" means any recorded information held by Council regardless of the format or medium in which it is held.

## **Selecting a Mediator**

Mediators must be people:

- With a recognized mediation qualification: and/or
- With substantial experience in mediation: and
- With suitable experience in the field of the dispute / issue: and
- Who belong to a relevant professional organization which requires its members to adhere to an explicit code of ethics and which implements specific disciplinary procedures in the event of complaints or allegations of misconduct against its members: and
- Who, through other dealings with Council, are not likely to hold a potential bias in carrying out their role as mediator.

## **Reporting on Mediation Entered Into**

All elected members are to be advised informally when and with whom mediation is being entered into and when it is settled or terminated.

Mediation used for pre-hearings for resource consent applications is excluded from this requirement.

## **Budget for Mediation**

The cost of employing mediators is:

- To be charged to the activity which is directly involved in the mediation: and
- To be charged to a separate “mediation” line item: and
- To be budgeted centrally in the democracy activity.

The Democracy Manager is to authorize a matching journal to transfer the funding to the activity incurring the expense, provided there are dedicated funds available to do so. The activity will have to manage the cost within their own budget if the central fund has all been used.

The following are to be paid for and funded by the activity directly involved.

- Mediators used for pre-hearings for resource consent applications.
- Private mediation for Environment Court appeals.

The cost of settlements arising from mediation will not be funded from the central mediation budget in Democracy.

## **Guidance on the use of the Policy / Procedures**

The Democracy Manager will be responsible for providing advice and support on the use of the mediation policy and its procedures.

### **3. RELEVANT DELEGATIONS**

Where appropriate the Chief Executive will delegate authority to Group Managers to:

- Decide whether mediation is offered / entered into: and
- Approve the people to represent Council's interest: and
- Approve the scope of their authority: 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.

Group Managers will have the authority to sub-delegate to Divisional Managers or their equivalent, the authority to:

- Decide whether mediation is offered / entered into.
- Approve the people to represent Council's interest.
- Agree the mediator to be used.

#### **4. REFERENCES**

- Resource Management Act 1991.
- Local Government Official Information and Meetings Act 1987.
- Mediation Policy Sept 2002.