

FILE NO: PSC2008-9962

TITLE: ALTERNATIVE DISPUTE RESOLUTION POLICY

POLICY OWNER: LEGAL SERVICES MANAGER

PURPOSE:

The purpose of this policy is to provide a process to help resolve disputes that relate to Port Stephens Council. The policy framework sets out a clear, consistent and fair means to address disputes in an effective and cooperative manner. The Policy also provides an alternative dispute handling process that is less formal and less costly than litigation.

The policy relates to planning, development, environment, enforcement issues, land management, customer and business disputes.

CONTEXT/BACKGROUND:

Due to its business, community and regulatory roles, Council can find itself dealing with conflict in many areas including the building, development assessment and planning areas, neighbourhood disputes over trees noise, odours and animals. Many of these disputes may be dealt with effectively by staff as they arise, however at times some disputes may escalate into significant issues which consume considerable time, energy and community money to address.

Mediation, negotiation, facilitation and other forms of Alternative Dispute Resolution can be used when appropriate to assist resolve difficult disputes or as an alternative to the expensive and time- consuming option of litigation.

Not all difficult issues will warrant the use of alternative dispute resolution processes involving independent negotiators or mediators. Many disputes can be dealt with and resolved informally by staff without the need to resort to other means. This policy is only meant to cover the more difficult disputes that Council encounters where it is considered that an alternative dispute handling process is the best option.

The NSW Ombudsman encourages NSW councils to use Alternative Dispute Resolution as an alternative to litigation and as a means to help resolve disputes between members of the community involving councils.

In accordance with NSW Ombudsman's Guidelines for Local Government, this policy must not fetter or limit the range of discretion conferred by a statute on Council staff involved in regulatory or enforcement matters. In exercising that discretion, officers must not act under the dictation or at the behest of any third person or body.

This policy is meant only to provide guidance in the exercise of those powers and at times, depending on the issues surrounding the particular dispute, mediation or negotiation may not be the best option.

SCOPE:

It is through the adoption and use of policies that Council can aim to deal with matters consistently, particularly where such matters have a direct effect on the rights, interests or legitimate expectations of individuals within the community.

Council has a responsibility to try to ensure that breaches of the law are dealt with appropriately and to meet community expectation that pursuit of Council's enforcement functions will be undertaken in a consistent and equitable manner. A consistent approach also helps Council to deal with breaches of the law in a procedurally sound and cost effective way.

DEFINITIONS:

Alternative Dispute Resolution (ADR)	The term “alternative dispute resolution” or “ADR” is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court processes. ADR systems may be generally categorised as negotiation, conciliation/mediation, or arbitration systems.
Arbitration	Arbitration is a formal dispute resolution process governed by the <i>Commercial Arbitration Act 1984</i> (NSW) (or the equivalent in other states) in which two or more parties refer their dispute to an independent third person (the arbitrator) for determination. Providing that the arbitration is conducted according to the principles of natural justice its procedures may be varied by the parties to suit the size and complexity of their dispute.
Development Application (DA)	A development application is a formal request for permission to carry out development, and includes plans and drawings, a statement of environmental effects and a completed application form.
Facilitation	The term facilitation is broadly used to describe any activity which makes tasks for others easy. For example: Facilitation is used in business and organisational settings to ensure the designing and running of successful meetings or negotiations. A person who takes on such a role is called a facilitator.
Mediation	A process in which parties to a dispute with the assistance of a



	neutral third party (“the Mediator”) identify disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or other determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.
Mediation Agreement	A mediation agreement is a written agreement setting out the terms of settlement reached between the parties to the mediation process. The agreement is confidential except where the terms of the agreement expressly permit part or all of its contents to be divulged to other parties. The agreement must be signed by all parties to the agreement.
Negotiation	At its most basic, negotiation is an informal bargaining process. It takes place directly between the people in dispute, but can be assisted by others e.g. lawyers and advocates. The people involved in the dispute communicate directly to try to reach an agreement. Communication may be written or spoken and may take some time.
Neutral Evaluation	This is a process provided by the NSW Land and Environment Court as a form of mediation in some disputes.
Section 34 Conferences	These are conducted by the Land and Environment Court (NSW). These conferences are more formal than other Court managed ADR processes and are presided over by a single Commissioner.

POLICY STATEMENT:

The Alternative Dispute Resolution process endeavours to:

- 1) Establish a clear, consistent and fair process to help address disputes.
- 2) Provide an alternative dispute handling process that is less formal and more cooperative than litigation.
- 3) Save time and costs.
- 4) To reduce conflict in the dispute handling process.

The Alternative Dispute Resolution policy will apply to development, environment and land management disputes and other disputes concerning animals, trees, noise effluent, odours and other forms of pollution. It also applies to business disputes. The following principles relate to the way ADR is applied by Council:

- 1) ADR is a voluntary process.
- 2) To preserve the legitimacy of the process, all parties to ADR are given the opportunity to be represented and have control over the outcomes.
- 3) Where appropriate, ADR is to be initiated as soon as possible to avoid issues escalating.
- 4) Council will ensure confidentiality and respect privacy requirements when dealing with disputes.
- 5) Council will ensure procedural fairness in ADR matters.
- 6) Where mediation is used as one of the ADR options, the mediator is to be suitably qualified, independent and impartial to the dispute at hand.
- 7) Any mediated agreement will be documented and signed by all parties.
- 8) Costs associated with ADR are generally shared between all parties to the dispute unless other arrangements are agreed to by Council.

Awareness and Cooperation

Council will encourage parties to a dispute to resolve issues as they arise or come to notice before they escalate into significant matters.

Council will take a proactive approach to minimise the occurrence of disputes.

Approach

Council will not enter into ADR:

1. Where there are issues that relate to the content of Council Policies (as opposed to the application of the Policy).
2. Where a dispute may create a planning precedent.
3. Where the parties are not willing to cooperate.
4. Where Council does not believe that ADR is the best option, based on the particular circumstances and broader public interest considerations.

POLICY RESPONSIBILITIES:

- 1) Manager Legal Services is responsible for the implementation of this policy in conjunction with other Council officers as appropriate.

RELATED DOCUMENTS:

1. Compliance Policy
2. Complaint Handling Policy
3. Managing Unreasonable Complainant Conduct
4. Council Prosecutions Policy
5. Port Stephens Council Code of Conduct

CONTROLLED DOCUMENT INFORMATION:

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VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	28/04/2009	Manager Environmental Services	Adopted by Council	117
2.0	28/03/2017	Manager Legal Services	Revision of Policy and incorporation into new styling format	071