

**FILE NO:** PSC2008-9962

**TITLE:** ALTERNATIVE DISPUTE RESOLUTION

**POLICY OWNER:** GOVERNANCE SECTION MANAGER

**1. PURPOSE:**

- 1.1 The purpose of this policy is to provide a process to help resolve disputes that relate to Port Stephens Council. The framework sets out a clear, consistent and fair means to address disputes in an effective and cooperative manner. This Policy also provides an alternative dispute handling process that is less formal and less costly than litigation.
- 1.2 This policy relates to planning, development, environment, enforcement issues, land management, customer and business disputes.

**2. CONTEXT/BACKGROUND:**

- 2.1 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, and 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 and resourcing to address.
- 2.2 Mediation, negotiation, facilitation and other forms of Alternative Dispute Resolution (ADR) can be used when appropriate to assist to resolve difficult disputes or as an alternative to the expensive and time-consuming option of litigation.
- 2.3 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.
- 2.4 The NSW Ombudsman encourages NSW councils to use ADR as an alternative to litigation and as a means to help resolve disputes between members of the community involving councils.
- 2.5 In accordance with NSW Ombudsman's guidelines, 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.

- 2.6 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.

### 3. SCOPE:

- 3.1 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.
- 3.2 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.

### 4. 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 process where the parties present arguments and evidence to an independent third party, the arbitrator, who makes a determination. It may be voluntary, ordered by a Court or Tribunal or required as part of a contract.
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. The process of negotiation may take some time.

## 5. POLICY STATEMENT:

### 5.1 This policy endeavours to:

- 5.1.1 Establish a clear, consistent and fair process to help address disputes.
- 5.1.2 Provide an alternative dispute handling process that is less formal and more cooperative than litigation.
- 5.1.3 Save time and costs.
- 5.1.4 Reduce conflict in the dispute handling process.

### 5.2 This 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.

### 5.3 Principles - the following principles relate to the way ADR is applied by Council:

- 5.3.1 ADR is a voluntary process (except where ordered by a Court or Tribunal).

- 5.3.2 To preserve the legitimacy of the process, all parties to ADR are given the opportunity to be represented and have control over the outcomes.
- 5.3.3 Where appropriate, ADR is to be initiated as soon as possible to avoid issues escalating.
- 5.3.4 Council will ensure confidentiality and respect privacy requirements when dealing with disputes.
- 5.3.5 Council will ensure procedural fairness in ADR matters.
- 5.3.6 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.
- 5.3.7 Any mediation agreement will be documented and signed by all parties.
- 5.3.8 Costs associated with ADR are generally shared between all parties to the dispute unless other arrangements are agreed to by Council.

### 5.4 Awareness and Co-operation

- 5.4.1 Council will encourage parties to a dispute to resolve issues as they arise or come to notice before they escalate into significant matters.
- 5.4.2 Council will take a proactive approach to minimise the occurrence of disputes.

### 5.5 Approach – Council will not enter into ADR where:

- 5.5.1 There are issues that relate to the content of Council Policies (as opposed to application of a policy)
- 5.5.2 A dispute may create a planning precedent.
- 5.5.3 The parties are not willing to co-operate.
- 5.5.4 Council does not believe that ADR is the best option, based on the particular circumstances and broader public interest considerations.

## 6. POLICY RESPONSIBILITIES:

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

## 7. RELATED DOCUMENTS:

- 7.1 Compliance Policy
- 7.2 Complaint Handling Policy
- 7.3 Managing Unreasonable Complainant Conduct Policy
- 7.4 Council Prosecutions Policy
- 7.5 Port Stephens Council Code of Conduct

**CONTROLLED DOCUMENT INFORMATION:**

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<b>EDRMS container No</b>	PSC2008-9962	<b>EDRMS record No</b>	TBA
<b>Audience</b>	Port Stephens community, elected body of Council & Council employees		
<b>Process owner</b>	Governance Section Manager		
<b>Author</b>	Legal Services Manager		
<b>Review timeframe</b>	3 years	<b>Next review date</b>	TBA
<b>Adoption date</b>	28 April 2009		

**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

3.0	10/12/2019	Legal Services Manager	<p>Reviewed this policy, including numbering to each paragraph, administrative amendments and updated version control.</p> <p>Policy Owner – now Governance Section Manager</p> <p>1.1 – inserted the word “This” to read “This policy...”</p> <p>1.2 – inserted the word “This” to read “This policy...”</p> <p>2.1 – deleted “energy” and “community money” and replaced with “resourcing”</p> <p>2.2 – added acronym “ADR”</p> <p>2.4 – deleted “Alternative Dispute Resolution” and replaced with “ADR”</p> <p>2.5 – deleted “for Local Government”</p> <p>4. Definitions: Replaced the definition for “Arbitration”</p> <p>Deleted definitions for “Development Application”, “Neutral Evaluation” and “Section 34 Conferences”</p> <p>5.1 – deleted “The Alternative Dispute Resolution process” and replaced with “This policy”</p> <p>5.2 – deleted “The Alternative Dispute Resolution” and replaced with “This”</p> <p>5.3 – added the word “Principles”</p> <p>6.1 – amended to read “Legal Services Manager is responsible...”</p> <p>7.3 – added the word “Policy”</p>	256
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4.0	TBA	Legal Services Manager	<p>Reviewed this policy including minor typographical and definition adjustments.</p> <p>2.1 inserted the word “and” in the third line to read “...areas, and neighbourhood...”</p> <p>2.2 inserted the word “to” in the second line to read “..assist to resolve...”</p> <p>4. Definitions:</p> <p>Amended definition of “Arbitration” by deleting the words “the court” from the third line and replacing them with “a Court or Tribunal..”</p> <p>Amended definition of “Negotiation” by deleting the word “and” from the fifth line and replacing it with “The process of negotiation...”</p> <p>5.1.2 amended “and” to read “Provide an alternative dispute...”</p> <p>5.3.1 included “(except where ordered by a Court or Tribunal).”</p> <p>Changed the review timeframe to 3 years, in line with process for review of all Council policies.</p>	TBA
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