



Ashfield  
Council

# Ashfield Interim Development Assessment Policy 2013

## Mediation Policy Development Applications

Tel (02) 9716 1800 260 Liverpool Road Ashfield NSW 2131  
Fax (02) 9716 1911 PO Box 1145 Ashfield NSW 1800

[www.ashfield.nsw.gov.au](http://www.ashfield.nsw.gov.au)

## CONTENTS

1. OBJECTIVES	1
2. PRE-MEDIATION DISCUSSION	1
3. MEDIATION PROCEDURE - STAFF MEDIATOR	1
4. GUIDELINES FOR THE CONDUCT OF MEDIATION MEETINGS - <i>STAFF MEDIATOR</i>	2
5. MEDIATION PROCEDURES - <i>EXTERNAL MEDIATOR</i>	3
6. CRITERIA FOR THE USE OF MEDIATION	3
7. CRITERIA FOR DETERMINING WHEN MEDIATION WILL NOT BE CONDUCTED	3

## 1. OBJECTIVES

The objectives of this Policy are:

- i) To provide a forum where applicants, objectors and the Council can endeavour to resolve differences of opinion in respect to Development Applications in a non-adversarial manner.
- ii) To avoid litigation arising from the determination by Council of Development Applications.
- iii) To ensure that, where staff are intending to recommend an application for refusal, applicants are afforded the opportunity to present their case and have their application reviewed prior to the final report to Council.
- iv) To promote acceptance and understanding of Council's DA/BA assessment and decision-making process.

## 2. PRE-MEDIATION DISCUSSION

Initially, where it is considered an application could not be recommended for approval or objections have been received, which are considered to have substance, a qualified staff member is appointed to contact the applicant and/or objectors in an attempt to resolve the points of concern as part of the normal assessment of the application.

If this initiative is successful, no further action would be required and reports could then be prepared for determination.

If it is unsuccessful, then the Director Planning and Environment may appoint, from a panel of staff trained and/or experienced in mediation, a person who has so far not been involved directly with the application to mediate on the matter.

## 3. MEDIATION PROCEDURE - STAFF MEDIATOR

- i) That meetings be held within Council premises (or, if appropriate, on site) in the form of a formal meeting and be chaired by the appointed mediator.
- ii) That applicants and objectors be invited to the proposed mediation meeting and given seven (7) days notice as to the date, venue and timing of the meeting.
- iii) That staff members responsible for processing the application be present to answer technical questions only and are not to influence the discussion.
- iv) That Councillors be invited to attend the mediation as observers only, in order to maintain impartiality of the assessment process.
- v) That the invitees are requested to advise Council whether they (and/or any legal representatives or other consultants) wish to attend at least forty-eight (48) hours prior to the scheduled meeting date.
- vi) Legal representatives and/or other consultants may not take part in discussions and

are to attend as observers only in order to facilitate direct discussion between the parties involved (unless otherwise agreed to by all parties present or decided by the mediator).

- vii) That when an objection is in the form of a petition, only the head petitioner, or the petitioner's nominee, be invited to address the meeting (though all petitioners are to be invited, through the head petitioner, to attend the meeting).
- viii) That the outcome of the meeting be included in the report to Council.
- ix) The parties to the mediation are to agree to participate in good faith and are to instruct their advisor (if any) likewise.
- x) The parties agree not to call the mediator in any subsequent court proceedings.
- xi) The parties each sign a letter prior to commencement of the meeting stating they have read this policy and agree to abide by it.

#### **4. GUIDELINES FOR THE CONDUCT OF MEDIATION MEETINGS (STAFF MEDIATOR)**

The following guidelines are suggested for the conduct of mediation meetings chaired by a Council staff mediator:-

- i) Mediator to explain procedures and rules of conduct to be followed in the mediation meeting, introduce parties and to circulate the agenda containing the issues to be discussed.
- ii) Issues raised by objectors to be on a "no prejudice" basis.
- iii) Attendees be invited to add any issues.
- iv) Applicant to be invited to present and explain the proposal.
- v) Objectors be invited to comment on each issue, with a response from the applicant.
- vi) Those addressing the meeting be permitted to do so without interjection and with others attending remaining silent.
- vii) The mediator may request that a matter be discussed with one of the parties without the other party/parties being present.
- viii) Any objector may request that a matter be discussed with the mediator without the other party/parties being present.
- ix) Comments be limited to those directly related to the application.
- x) Speakers be limited to 3 minutes speaking time or such extended time as granted by the mediator.
- xi) The mediator role is not to resolve the issues but to act as a facilitator of discussion between the parties and to assist the parties to reach a solution.

- xii) Any amended plans or additional information resulting from mediations are to be re-notified to objectors prior to the matter being submitted to Council or determined.
- xiii) There is to be only one mediation meeting per application, unless parties to the first mediation process agree it could be worthwhile to meet again.
- xiv) The mediation can be terminated at any time if, in the opinion of the mediator, the meeting is unproductive. The parties participating in the mediation must advise the mediator of their intentions before terminating their participation in the process.

## **5. MEDIATION PROCEDURE - EXTERNAL MEDIATOR**

Where, in the judgement of the Director Planning and Environment, mediation will be facilitated by the use of an independent external mediator, because of the particular sensitivity of the application, a perceived conflict of interest or other reason, an independent external mediator may be engaged from a panel of accredited mediators.

## **6. CRITERIA FOR THE USE OF MEDIATION**

Mediation is to be conducted in regard to Development Applications:-

- i) Which do not have to be refused due to statutory provisions.
- ii) To which objections on statutory grounds have been received.
- iii) Where Council resolves that mediation shall be carried out.
- iv) When consultations with an applicant cannot be further progressed by negotiation with the relevant officer, such that a recommendation for refusal is likely.

## **7. CRITERIA FOR DETERMINING WHEN MEDIATION WILL NOT BE CONDUCTED**

Mediation will not be conducted:-

- i) When the appointed mediator is of the view that mediation would not be productive;
- ii) When, due to statutory provisions, the application cannot be approved including when a SEPP No. 1 objection cannot be supported.
- iii) When objections to an application do not relate to the statutory grounds that can be considered.
- iv) When the application is deemed to be a sham.
- vi) When matters of difference are adequately resolved in discussions carried out as a normal part of the application assessment process.

When mediation is not conducted, the reason for not conducting mediation be included in reports on the subject application.