

**POLICY NAME**

Negotiation and Consensus Policy

**REVIEW DATE**

1 May 2021 – currently under review

**POLICY TYPE**

Council Policy

**RELATED DOCUMENTS**

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**DATE ADOPTED**

19 November 2001

**COUNCIL MINUTE NUMBER**

ORD 6/ PRC 166

**RESPONSIBLE DEPARTMENT**

Legal and Governance

**Purpose**

This policy aims to provide structured, consensus-based approaches to assist parties to resolve disputes that have arisen, and which involve Council in some way.

**Policy statement**

Policy starts on the next page.

**Scope**

This policy applies to all staff.

## INTRODUCTION

Council is responsible for providing a range of facilities and services, and for making decisions on land uses and development. In carrying out its responsibilities, Council can become the focus for conflict that has developed over a land use proposal, a specific development activity, or some other matter. Disputes over such issues can involve Council, government, developers, businesses, residents, interest groups and community organisations.

Council has recognised the need to implement a policy that will enable such disputes to be managed in a consistent, fair, and timely manner. The policy seeks resolution of disputes through a range of consensus-based approaches, which can assist participants in working through issues, exploring options and developing solutions. Council will have regard for any consensual outcomes when it makes a decision.

The policy first reiterates Council's commitment to early consultation and community participation, a process through which potential conflicts may be avoided. This approach is encouraged as a means of establishing partnerships with proponents, interest groups, community organisations and individuals, as well as Council.

The policy describes the consensus-building processes (conciliation, facilitation and mediation), and the necessary administrative procedures. It also outlines Council's role in assisting with the consensus building processes, and defines its statutory, decision-making responsibilities.

## OBJECTIVES

This policy aims to provide structured, consensus-based approaches to assist parties to resolve disputes that have arisen, and which involve Council in some way. The objectives of the policy are to:

- minimise the potential for escalation of conflict
- deal with disputes in a timely manner, and at the earliest opportunity
- assist participants in identifying issues, exploring options, and developing solutions
- build consensus and achieve agreed solutions
- build on partnerships between Council and its communities, individuals and other stakeholders
- facilitate a change in community and Council attitudes to conflict
- achieve a best practice and consistent approach to dispute management
- reduce staff stress, and
- control legal costs.

## DEFINITIONS

### Dispute Resolution

**Dispute** - where there is a disagreement between two or more people about an activity, proposal or application

**Consensus** - achieving agreement from all parties about the issues, options and possible solutions

**Consultation** - a process where information about a proposal is provided to all stakeholders, so that early discussions can identify and address potential issues before a conflict emerges

**Conciliation** - a process, managed by Council, where separate meetings with the assessing officer are held with the stakeholders, and the proponent, to discuss the proposal, identify issues and explore options that may lead to resolution through consensus

**Facilitation** - a process, managed by Council, where the disputing parties meet together with a senior Council officer to discuss the proposal, identify issues, explore options, and develop possible solutions through consensus

**Mediation** - a process, managed by Council, where the disputing parties meet together with an independent mediator to discuss the proposal, identify issues, explore options, and develop possible solutions through consensus

### Procedural

**Assessing or Project officer** - the Council officer who has been delegated to consider and evaluate the application or proposal

**Case Manager** - the Council officer who is responsible for managing the dispute resolution process

**Council** - Penrith City Council

**Parties** - all people or groups involved in the dispute resolution process, including the proponent and all stakeholders

**Process** - each of the dispute resolution methods outlined in this policy, and the relevant, accompanying procedures

**Proponent** - a person who has submitted an application or proposal to Council for consideration

**Stakeholder** - any person or group that has taken a public position on the application or proposal.

## PRINCIPLES FOR DISPUTE RESOLUTION

### Application of the Policy

This policy applies to situations where a dispute has emerged through Council's regulatory or service provider activities. It may not be appropriate where complex legal issues are involved, or where there are regulations that Council cannot vary, and must apply. Council will determine whether or not a dispute is suitable for the dispute resolution processes outlined in this policy.

The policy does not apply to matters that do not involve Council (eg. disputes over fences, or issues involving neighbours or families). Parties involved in these types of dispute will be encouraged to seek assistance from the local Community Justice Centre, or other community dispute resolution agencies.

### Suitability of Matters

Dispute resolution processes are not suitable for all cases, and some matters may not be resolved. The Manager of the relevant Council department, in conjunction with Council's Legal Officer, will determine whether the matter is suitable for conciliation, facilitation, or mediation, and will make the decision to initiate Council's dispute resolution processes. They will also appoint the case manager.

The principles for identifying matters suitable for dispute resolution include where -

- maintaining relationships or community cohesion is a priority
- time spent identifying the issues is beneficial, even if the matter is not ultimately resolved, and
- a strict application of the law won't necessarily resolve the issues.
- Dispute resolution processes are not suitable where -
- public scrutiny of the full process is required
- the issues in dispute are about Council policy
- a key stakeholder won't participate or negotiate
- a precedent, legal or otherwise, is required
- an allegation of fraud or criminality is involved
- parties are not prepared to enter into genuine negotiations, or are not prepared to genuinely participate in consensual problem solving, or
- insurmountable hostility exists between the parties, or violence is threatened or perceived.

## Withdrawing from the Process

Council may withdraw from the dispute resolution process if it considers that it is not in the community interest to continue, or all parties are not genuinely participating in, and committed to, the process. The parties, or the mediator, may withdraw from the dispute resolution process at any time.

Council has a separate policy that details its consultation and community participation processes. Consultation regarding any activity, proposal or application is about providing information to all stakeholders, and encouraging early discussions that can identify and address potential issues before a conflict emerges.

It is a formal process, generally carried out by the assessing or project officer, where individual letters of notification, and local advertisements, will provide initial information about the proposal.

Council seeks to encourage this early collaboration and participation between all the parties, as a means of establishing effective and continuing partnerships. This first step may be seen as a preventative measure, which may avoid the need for any further involvement in the formal processes of dispute resolution.

## COUNCIL'S DISPUTE RESOLUTION PROCESSES

### General

Council cannot delegate its decision-making responsibilities to external parties. Decisions on activities, proposals and applications are made by Council officers, or by the elected Councillors in a formal Council meeting. A proposal must still be determined by Council, even where solutions are developed through a consensual process of dispute resolution, and agreed by all parties.

Council officers have some decision-making responsibilities for activities, proposals and applications. Where the Council officer conciliates a minor dispute, and agreed outcomes are achieved, a decision on the proposal may be made by that Council officer. Where disputes are more complex or involve facilitation, a senior Council officer will make a decision on the proposal, or it will be referred to Council.

Where a Council officer is involved in a dispute resolution process, and subsequently involved in a decision related to the matter, then the Council officer will ensure that the conciliation or facilitation sessions are conducted in a manner which will not compromise their independence or impartiality in decision making.

Councillors have the final decision-making responsibilities for these matters. Councillors should not participate in a dispute resolution process as a representative, adviser, or assistant to a party, because of their statutory decision making role. Their participation may compromise their ability to make an independent decision about the matter before Council. Councillors should also not attend conciliation, facilitation or mediation sessions as it may encourage lobbying, and compromise the consensus-seeking focus of the process.

In some circumstances, disputing parties will seek to discuss issues with individual Councillors to raise support for their position. In their role as elected community representatives, these discussions about disputes are acknowledged. In their role as decision-makers, however, Councillors will not be involved in Council's formal dispute resolution processes.

There are circumstances, however, where a Councillor is involved in a dispute in an individual capacity, or as a member of the Board of a company that is involved in a dispute. In these circumstances, it is acknowledged that a Councillor may be involved in the mediation session in a private commercial capacity, or as a member of the Board of a company.

All conciliation, facilitation or mediation sessions are private, and will be attended only by the relevant parties, Council officers, and independent mediators where appropriate. Public meetings, which involve not only the parties, but other members of the public, interest groups, and often Councillors, may be held separately but are not considered suitable as a forum to seek consensual solutions, as they often lead to parties' positions becoming entrenched and not open to negotiated solutions.

Council will generally undertake to bear the costs of the mediation fees and administration costs. However, any advice from independent experts chosen by the parties, is to be paid for by the parties themselves.

Council will demonstrate its commitment to these dispute resolution processes, and this policy, by –

- meeting the administrative and management costs, and the cost of employing the external mediator, and
- by having regard for the identified solutions and agreed outcomes, and incorporating those outcomes in the decision.

## **Conciliation**

This is the first formal step in Council's dispute resolution policy. Council's conciliation process is less formal than the following facilitation and mediation processes.

When a dispute first emerges (and Council considers it is suitable for conciliation) Council's assessing or project officer will be the case manager. The officer will arrange a conciliation session with the stakeholders, and a separate conciliation session with the proponent. This provides a forum where the details of the proposal can be examined and concerns raised without pressure. There may be issues identified, and possible solutions discussed, without individuals feeling the need to defend their position in front of other parties.

Council's officer, in the role of conciliator, will discuss issues, and any solutions that emerged through the separate conciliation sessions, with the other parties and seek consensus. Where consensus is achieved, the assessing or project officer will make, or recommend, a decision on the proposal that incorporates the agreed outcomes.

## **Facilitation**

This is the second formal step in Council's dispute resolution policy. When a dispute has emerged and has not been resolved through conciliation, Council must consider its suitability for facilitation. Some matters may be referred for the facilitation process without first being conciliated.

Council will appoint a case manager for all facilitated disputes. The case manager may be the assessing or project officer, or another Council officer. The officer will arrange a facilitation meeting with all parties, including the stakeholders and the proponent.

A senior Council Officer (eg. Manager or Director) will facilitate the meeting, with relevant Council officers attending to provide technical advice. The senior Council officer will be trained in facilitation techniques, and will possess an appropriate understanding of the issues involved in dispute resolution.

This provides a forum where the details of the proposal can be discussed, and concerns raised. The focus will be on identifying issues, exploring options, and developing possible solutions through consensus. Where consensus is achieved, the senior Council officer will make, or recommend, a decision on the proposal that incorporates the agreed outcomes.

## Mediation

This is the final step in Council's dispute resolution policy, to be implemented where Council considers it is appropriate, and all other avenues for dispute resolution have not been successful. The focus of the mediation session will still be on bringing the parties together to discuss their issues, and seeking consensual outcomes.

Council will appoint a case manager for all mediated disputes. The case manager may be the assessing or project officer, or another Council officer. The officer will arrange a mediation session with all parties, including the stakeholders and the proponent. An external, independent mediator will be appointed by Council to mediate the session, with relevant Council officers attending to provide technical advice.

Council officers may be required to attend a mediation meeting to provide information and technical advice where relevant. The mediator may request the assistance of Council staff to advise on matters of law or Council policy to ensure that any agreed outcome is lawful and practical. Their role is to provide substantive information only, and not to participate in the mediation itself.

The mediation session will provide a formally structured forum where the details of the proposal can be discussed, issues identified, options explored, and possible solutions developed through a consensual process. Where consensus is achieved, Council will make a decision on the proposal that incorporates the agreed outcomes.

## The Mediator

The role of the mediator is to assist the parties to reach a satisfactory understanding of the issues, and help them develop solutions. The mediator has no authority to make binding decisions on behalf of the parties, or Council. The mediator is authorised to conduct joint and separate confidential meetings with the parties, and may end the mediation whenever, in their opinion, further efforts will not contribute to a resolution of the issues between the parties.

Mediators will be impartial (ie. with no vested interest in the outcome of the dispute) and will adhere to recognised ethical standards. Council will appoint an external mediator where required, from either –

- a panel of external mediators, established by Council
- external organisations specialising in dispute resolution services, or

- a register of accredited mediators (eg. the Law Society of New South Wales, or the Community Justice Centre).

## **AFTER THE DISPUTE RESOLUTION PROCESS**

### **Where the consensus is achieved**

If all parties reach agreement in a conciliation or facilitation session, a Council officer will summarise the agreed outcomes for consideration and inclusion in the decision for the proposal.

If all parties reach agreement in a mediation session, the mediator or the parties will draft and sign an agreement that summarises the agreed outcomes. In the case of planning and development matters, the mediated agreement may also include the parties' concurrence to withdrawal of their previous objections, conditional upon the mediated agreement being implemented in the development approval.

Any agreement reached in these matters is still subject to consideration of the application or proposal by Council, and does not affect the statutory power of Council to make a decision that may be contrary to that outlined in the agreement.

If proceedings have been commenced in Court, the parties may need to file certain documents with the Court relating to the mediated agreement. This is the responsibility of the parties themselves or their legal representatives.

### **Where consensus is not achieved**

In disputes where the parties do not resolve the dispute, but wish to express their views to the Council, a Statement of Outcome may be drawn up. The Statement of Outcome generally includes

- the parties' agreed outcomes for the issues that were resolved, and
- the parties' views on the outstanding issues.

## **Education and Awareness of the Consensus and Negotiation Policy**

### **Community Information**

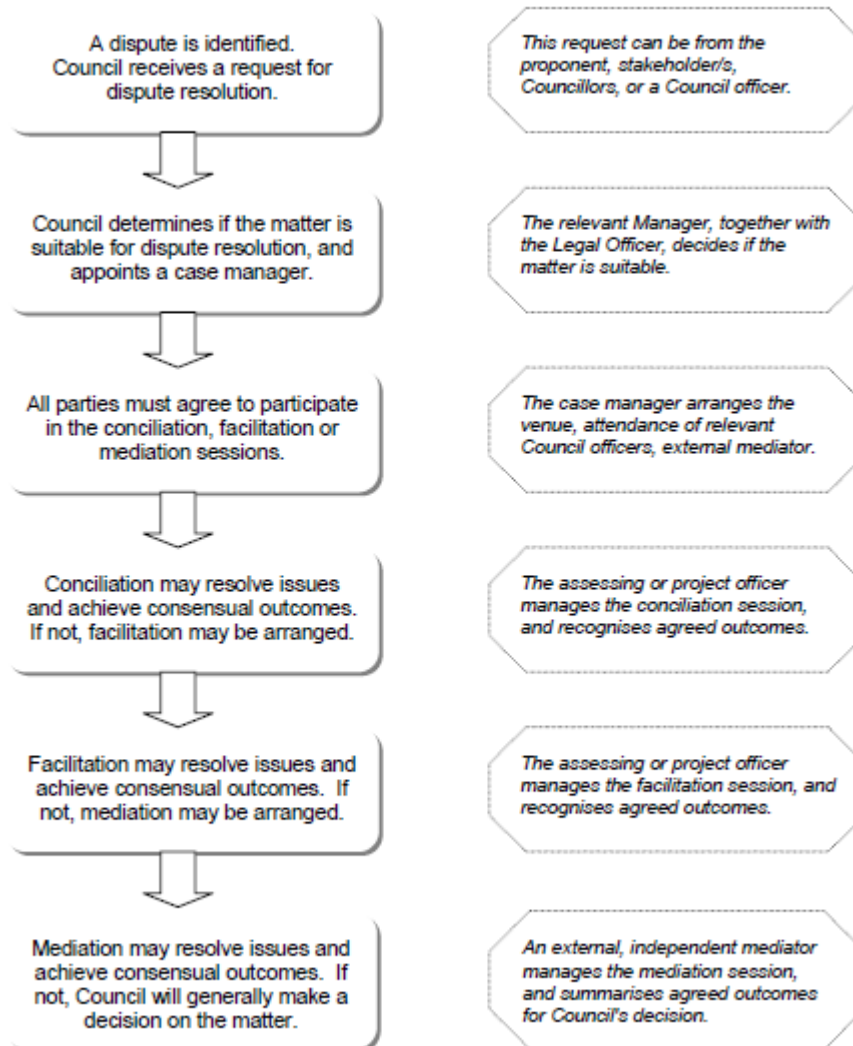
Council will seek to inform its communities about this policy by making the policy generally available. Council will also distribute information about the policy when a dispute first arises, to ensure all parties are aware of the different processes that are available to assist in identifying issues and seeking consensus.

### **Skills and Training**

Council staff will be advised of the policy and assisted in integrating its processes in their daily tasks. Staff training in negotiation, conciliation, and facilitation techniques will focus on ensuring that officers can effectively manage disputes when they first arise, and when more complex issues emerge.



## COUNCIL'S DISPUTE RESOLUTION FRAMEWORK



### DOCUMENT CONTROL

Policy History	Date
The policy is under review	June 2023