



**CITY OF
BALLARAT**

Mediation Policy

Statutory Planning

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1 DOCUMENT CONTROL INFORMATION

DOCUMENT CONTROL

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2 POLICY STATEMENT

Introduction:

Ballarat Council has for some time adopted a process of undertaking mediations for planning permit applications which attract written objections.

Council's Statutory Planners have undertaken various forms of training in mediation to give themselves a knowledge and understanding of this process and to improve their conciliation skills.

What is Mediation?

From a statutory planning perspective, a mediation is a meeting of stakeholders involved in an application for planning permit process and usually includes an applicant (may also involve applicant representatives), objector(s), a Council Town Planner(s) and the relevant Ward Councillor/s (if available).

The Purpose of Mediation

The main purpose of mediation is to bring the applicant and objectors together in the presence of Council Officers to enable them to explain their views and issues, and to be heard by the other party. It is also a forum whereby issues of concern can be thoroughly explored and if it is evident that there is common ground between the parties, mutually satisfactory outcomes can be negotiated.

It is an important opportunity for an applicant to explain their proposal to objectors and to respond to objector concerns. Equally, it is an important opportunity for objectors to expand their written objections and an opportunity to ask questions regarding a proposal to both the applicant and to the Council Planner(s).

Mediation can also be of significant benefit to Council Officers whereby they can gain a greater first hand understanding of the issues generated and raised by an application. It should be noted that there is no decision made on an application for planning permit at mediation, however, sometimes resolutions do occur between the parties.

The mediation also provides an opportunity for all parties to be aware of their rights and obligations and the processes for how Council will finalise the assessment.

The City of Ballarat Mediation Process

A mediation is required to be undertaken for all applications for planning permits that receive one or more objections, except for applications in the following categories which are exempt:

- applications where a mandatory referral agency directs refusal; or
- an application which departs significantly from Council policy, and despite repeated Council Officer correspondence highlighting that the application will not be supported by Council, the applicant continues to pursue it in an essentially unchanged form. In these circumstances, as determined by the Manager Statutory Planning and Building, the application may be refused without a mediation.

There are no other exemptions from mediation. In instances when an applicant advises that they will not attend, a consultation opportunity must still be offered to objectors, albeit only between objectors and the Council Officer(s) and when relevant, Ward Councillor/s.

Where there are referral agencies with concerns about the proposal or who wish to respond to objector concerns then these agencies will also be invited to the mediation.

Where are Mediations Held?

Most mediations will be held at Ballarat Town Hall or Phoenix Building. However, some larger mediations may be conducted “off site” where suitable premises can be arranged.

Scheduling a Mediation

The trigger for the Planner to organise mediation is when an objection has been received during the advertising period (unless an exemption as detailed above applies). Where possible it is preferred that the mediation be arranged within fourteen (14) days from the close of the advertising period.

Applications subject to three objections or less:

- Date, time and venue may be agreed between the officer, applicant and objector(s) on an informal basis (e.g. telephone or email);
- Written notification shall be sent to all Ward Councillors advising of the date, time and venue;
- If an agreed time is reached with all parties the mediation can be held at any time during standard office hours at Council offices;
- If agreement is not reached with all objectors and the applicant, a date shall be agreed with the applicant and written notification confirming the details shall be sent to the applicant and objectors not less than five working days prior to the mediation date (excluding the day of the scheduled mediation). The mediation shall be scheduled on a Monday, Tuesday or Thursday between 5pm and 7pm.

Applications subject to four or more objections or a petition:

- Date, time and venue shall be agreed between officer and applicant;
- Written notification confirming date, time and venue shall be sent to Ward Councillors and to the applicant and objectors not less than five working days prior to the mediation date (excluding the day of the scheduled mediation);
- Mediation shall be scheduled on a Monday, Tuesday or Thursday between 5pm and 7pm.

If in any instance the applicant does not wish to attend the mediation, the date, time and venue is to be determined at officers’ discretion.

The Heritage Advisor will be invited to attend mediations where heritage issues are likely to be of particular interest and the issues have not been resolved prior to the conference.

Planner Preparation for Mediation

In terms of preparation for mediation, the planner must:

- i) Notify Ward Councillors;
- ii) Book a suitable room;
- iii) Ensure they have a prepared agenda of issues;
- iv) Ensure they are familiar with the content of written objections, the subject site and the specifics of a proposed development and/or use, and relevant Council policy; and
- v) Prepare an attendance list.

Conducting a Mediation

Each mediation must have a nominated Chairperson. For the majority of mediations the “Chair” will be the Council Planner. On some occasions it will be necessary to engage an “independent” person to chair/facilitate a mediation, specifically when an application is particularly controversial and/or involves a large number of objectors and other stakeholders. Approval from the Manager Statutory Planning and Building is required to engage an “independent” chairperson/facilitator. In some instances Councillors may also request an “independent” chairperson/facilitator. When this occurs discussions between the Councillor(s) and the Manager Statutory Planning and Building will be undertaken and a decision made in respect to the engagement or otherwise of an independent facilitator.

The Council Planner present at the mediation is available to provide technical advice on Council Policy and the Planning Scheme.

For some larger and more involved mediations, a second Council Planner or other staff member should attend to assist with the process.

At the commencement of each mediation, the Council Code of Conduct for conducting mediations must be conveyed to those present. The Code of Conduct consists of the following key points:

- i) The agenda prepared should be followed in an orderly fashion;
- ii) Respect others around you and their opinions;
- iii) Do not talk over others, or interrupt those speaking;
- iv) Refrain from being derogatory to others;
- v) Unruly or threatening behaviour will not be tolerated and will result in the termination of the mediation;
- vi) If you do not understand something that has been said, please ask for assistance and/or clarification; and
- vii) Keep to the issues and not unrelated matters.

The Chairperson will open up the mediation and proceed through the prepared agenda calling for discussion on each item listed.

At the conclusion of the mediation, the Chairperson shall provide a summation of the issues raised and discussed, and any resolutions/agreements made between parties; if applicable.

The Chairperson will then advise what the next steps are for the Application for Planning Permit, i.e. for decision by formal Council, or decision by council delegate.

Role of Councillors in Mediations

Councillors attend mediations essentially as observers and will ask questions and seek to understand the views of applicants and objectors as input into future decision making processes. Councillors will not present any view on the merits of an application in the mediation.

3 OWNER

The owner of this policy is the Chief Executive Officer. All enquiries regarding this policy should be initially directed to the Manager Statutory Planning and Building.

4 APPLICABILITY

This policy applies to all Mediations undertaken.

5 DEFINITIONS

Definitions are as per the Planning and Environment Act.

6 PROCEDURE AND GUIDANCE NOTES

Included in Policy Statement above.

7 COMPLIANCE RESPONSIBILITIES

The Manager Statutory Planning and Building is responsible for all aspects of the compliance within this policy.

8 CHARTER OF HUMAN RIGHTS COMPLIANCE

It is considered that this policy does not impact on any human rights identified in the Charter of Human Rights Act 2007.

9 REFERENCES AND RELATED POLICIES

	Include - Name, Reference and location of reference
Acts	PLANNING AND ENVIRONMENT ACT, 1987
Regulations	
Related Policies	POLICY FOR REFERRAL OF PLANNING DECISIONS TO COUNCIL

