

NOOSA PLANNING SCHEME POLICY 21— ALTERNATIVE DISPUTE RESOLUTION

Introduction

Noosa Council recognises that there will be instances where its decisions on development applications are not accepted by applicants or members of the community.

In some cases, the difference between Council and the applicant or a concerned member of the community will be irreconcilable and an appeal may be lodged and determined by the Appeal body following a hearing.

In many cases differences can be reconciled. This policy advocates that in development disputes where a mutually acceptable outcome is possible, then positive measures be employed to achieve that outcome in a timely manner and without recourse to litigious processes.

1. Cases Where Policy Is Unlikely To Apply

While Council hopes for a positive view on the resolution of development disputes, there will be cases where the respective views of the parties are widely opposed. Such cases are likely to include—

- a) Development of a nature that is in significant conflict with Council's Planning Scheme;
- b) A development that has prospects of significant environmental harm;
- c) A development application that has occasioned widespread community opposition and that Council has refused;
- d) A development that is likely to occasion significant impact on the amenity, health or economic circumstances of the community and such impacts are unreasonable and cannot be mitigated;
- e) A development that will lead to impacts on community infrastructure that are substantial and cannot be corrected or accommodated by physical improvements.

2. Cases Where the Policy Can Apply

- 2.1 Generally all disputes other than those listed in the previous section may be considered for resolution by ADR procedures.
- 2.2 The Policy can also apply to appeals involving third parties. For the purpose of this Policy, the term "Appellant" refers to any party to an appeal.

3. Procedures for Alternative Resolution

- 3.1 As a practice, Council encourages early conferences of the parties.
- 3.2 Either Council or an Appellant may nominate they consider the dispute has prospects for an agreeable resolution. Council has established a Case Management Working Group to

oversee appeals and this group will implement aspects of this Policy. (Council will still determine any settlement outcome.)

- 3.3 All parties need to agree to embark upon mediation and should only enter into these steps with a fair-minded approach. Council will still be mindful of its preferred planning outcomes in its decision making about entering into mediation.
- 3.4 An initial step is for all parties to jointly agree to an independent reviewer to conduct a “reality check” of the alternative positions on the development application. Such an agreement needs to address—
- a) Profession of reviewer or reviewers if more than one is required;
 - b) Who will undertake the review (ie. Consultant/s acceptable to all parties);
 - c) Cost sharing;
 - d) Who will brief the reviewer and with what material; and
 - e) Other matters as determined. (Over time Council may establish a panel of potential reviewers).
- 3.5 It is Council’s position that a reviewer would be ineligible to give evidence on behalf of any party in the event of a subsequent trial.
- 3.6 The reviewer reports to all parties leading to clarification of the issues in dispute.
- 3.7 Before proceeding further to mediation, all parties need to carefully review the issues.
- 3.8 Engagements of a mediator are to be acceptable to all parties. (Over time, Council may progress to establishing a panel of mediators)
- 3.9 Communication back to the Appellant and Council and reconsideration of positions as necessary are to be carried out, including on any amendments to the proposed development.
- 3.10 Period for reflection of the issues is to be allowed for.
- 3.11 Final decision making by Council and appellant is then made. (Until this stage all discussions are “without prejudice” and parties still have ongoing recourse to their legal entitlements associated with an appeal.)
- 3.12 Reference to the Court is then made for effecting the agreed outcome.
- 3.13 The above steps are conducted with a view to reaching an early conclusion.

For independent information about dispute resolution practices, contact the Brisbane Dispute Resolution Centre within the Queensland Department of Justice – Ph: 1800 017 288.

POLICY HISTORY

PSP21 adopted by Council on 15 December 2005 and effective 3 February 2006