

THE ART OF MEDIATION

A Town Planner's introduction to Mediation



Introduction

Does the SAT really do mediation?

- ADR, mediation with muscle, facilitation

Do you have to resolve planning disputes?

- Issues can be clarified or narrowed

Most matters are resolved in mediation

- About 75% of case do get resolved or end at mediation
- Participating in mediation should not be perceived as a sign of weakness

Participants

Are you an expert or representative?

- You are always a town planner

Don't send the messenger

- Senior level officers should attend
- Send planners not compliance officers or admin staff

The appointment of consultants or lawyers

- Critical when Council decisions are made contrary to officer recommendations

Format of Mediation



Format of Mediation

Introduction by the member

- Sets the ground rules
- Without prejudice – confidential

Opening

- The parties briefly set out their starting position

Discussion

- Possible alternatives or modifications
- Additional justification

Format of Mediation

Private sessions

- With or without member
- Shuttling

Conclusion – orders

- Section 31 invitation for reconsideration by the Respondent.

Mediation can occur over multiple sessions

- Usually 2 – 3 sessions maximum

Participation of Elected Members

- Participation by individual elected members is encouraged and very helpful
- Preliminary meeting is useful

Third-party Participation

By invitation only

- Limited role, not always appropriate that other parties participate for the entire duration of the mediation
- Preliminary meeting is useful

Reconsideration Report Writing

Confidentiality and decisions being “Behind Closed Doors”

Avoid :

- Extensive summary of mediation discussions
- Generalised advice of possible outcomes/scenarios
- Analysis of relevant case precedent

Final Thoughts

Mediation after a hearing

- Members can sometimes refer a matter back to mediation during or after a final hearing

Don't personalise the application

- Planning assessments should be about the application not the applicant(s)

Human interaction can be effective

- Mediation would never work via correspondence

The Human element

- the participants involved have a bearing on the outcome as much as the issues themselves

The happy ending...

