

RICHMOND VALLEY COUNCIL POLICY REGISTER

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POLICY:	CONFLICT MANAGEMENT (DEVELOPMENT LAND USE CONFLICTS)
FUNCTION:	Development/Strategic Planning
OBJECTIVE:	To manage conflict issues that may arise managing and working towards the resolution of disputes in relation to development land use and provide a process for conflict resolution between all stakeholders
DIRECTORATE:	ENVIRONMENTAL DEVELOPMENT SERVICES

POLICY:

This Policy aims (**in respect of development land use conflicts**) to:

- (a) Inform the community of Council's decision making role and responsibilities.
- (b) Identify the circumstances in which this Policy would be applied and identify those disputes in which Council would be involved.
- (c) Outline an effective communication and information process that encourages community understanding and participation.
- (d) Ensure the community is provided with opportunities to fully express its views.
- (e) Outline consensus based approaches that will assist stakeholders and participants in resolving disputes that have consensus.
- (f) Ensure Council consideration of relevant issues and consensual solutions within a structured framework and process.

The objectives of the Policy are to:

- (a) Facilitate a better understanding of Council's approach to conflict management and dispute resolution processes.
- (b) Assist participants in identifying issues, exploring options and developing solutions.
- (c) Build consensus and achieve agreed solutions.
- (d) Achieve a best practice and consistent approach to conflict management.
- (e) Minimise the potential for escalation of conflict.

- (f) Deal with disputes in a timely manner and at the earliest opportunity.
- (g) Control legal costs.

1. DEFINITIONS

Council	Richmond Valley Council.
Participants	All people or groups that have taken a position on the application proposed or matter, and are involved in the conflict management process, including the proponent and all respondents.
Proponent	A person who has submitted an application or proposal to Council for consideration.
Respondent	Any person or group that has made a formal submission regarding an application, proposal or matter.
Stakeholder	Any person or group that may be affected by, or has an interest in, an application, proposal or matter (irrespective of submissions).
Conflict	Where there may be differing views about an activity, proposal or application but they are not perceived as incompatible or irreconcilable.
Dispute	Where there is an expressed disagreement between two or more people about an activity, proposal or application.
Consensus	Achieving agreement from all stakeholders and participants about the issues, options and possible solutions.
Consultation	A process managed by Council where a meeting is held to discuss a proposal or matter, identifying potential issues that should be addressed. The relevant Council Officer(s) and the proponent or party that raised the matter, attend the consultation.
Conciliation	A process managed by Council where an initial meeting is held with Council Officer(s) for the stakeholders to identify issues that need to be addressed and a meeting subsequently with Council Officer(s) and the proponent to explore identified issues and potential solutions.
Negotiation	A process managed by Council where all stakeholders and the proponent meet together with Council Officer(s) to discuss the proposal and establish facts, identify outstanding or continuing issues and explore opportunities for consensus, if not agreed solutions. A senior Council Officer will facilitate the information session.

Facilitation A process managed by Council, where all stakeholders and the proponent meet together to discuss the proposal and establish facts, identify outstanding or continuing issues and explore opportunities for consensus, if not agreed solutions.

The facilitation is a formal meeting that allows for further consideration of issues and the amendment of current planning report recommendations, in the period leading up to the Council's Ordinary Meeting.

Mediation A process managed by Council where the stakeholders and proponent meet together with an independent mediator to identify outstanding or continuing issues and explore opportunities for consensus, if not agreed solutions.

2. COUNCIL'S STATUTORY ROLE AND RESPONSIBILITIES

Under the NSW Law, Council cannot delegate its decision making responsibilities to external parties. Decisions on activities, proposals and applications are made by Council or by staff with delegations.

Council Officers have some delegated 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, the proposal will be referred to Council.

Council's existing Policy provides that in circumstances where significant objection is received, then the elected Council should determine the application.

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

Where possible, the Council Officer involved in the conflict resolution process, will not be the same Officer involved in the initial processing of the application.

Council, or in some instances, the Land and Environment Court has the final decision making responsibilities for these matters. Therefore, Councillors should not participate in a conflict management 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' attendance at negotiation of facilitation sessions may also encourage lobbying and compromise the consensus seeking focus of the process.

3. PRINCIPLES FOR DISPUTE RESOLUTION

3.1 Application of the Policy

This policy applies to situations where a dispute has or is likely to merge through Council's decision making, 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 the statutory requirements. 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 (e.g. disputes over fences, or civil 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.

In extreme cases, applicants or other persons may seek to resolve issues through the NSW Land and Environment Court.

3.2 Suitability of Matters

Conflict management processes are not suitable for all cases and some matters may not be resolved. Council or senior staff will determine whether the matter is suitable for consultation, conciliation, negotiation, facilitation or mediation and will make the decision to initiate Council's conflict management processes.

In all cases each party involved in the dispute must be willing to seek a consensus, otherwise the process cannot achieve an acceptable outcome.

This Policy identifies specific processes within a framework of consultation and information and conflict management and resolution. The processes do not have to be applied consecutively and the Council or staff will identify the conflict management approach that is considered to be appropriate for the specific situation or circumstances.

The principle that Council will apply in identifying matters suitable for conflict management include:

- (i) whether consensus outcomes are achievable or whether statutory requirements restrict the potential outcomes.
- (ii) maintaining relationships and/or community cohesion is a priority.
- (ii) whether the matters or conflict issues identified can be easily resolved and addressed through a conflict management process.

Conflict management processes are not suitable when:

- (i) the issues in dispute are related to statutory requirements.
- (ii) a key stakeholder will not participate or negotiate.
- (iii) a precedent, legal or otherwise is required.
- (iv) an allegation of fraud or criminality is involved.
- (v) parties are not prepared to enter into genuine negotiations or are not prepared to genuinely participate in consensual problem solving.
- (viii) insurmountable hostility exists between the parties or violence is threatened or perceived.

3.3 Withdrawing from the Process

Council may withdraw from the conflict management process if it considers that it is not in the community's or individual participant's interest to continue, or all participants are not genuinely involved in, and committed to, the process.

The participants, or the mediator, may withdraw from the conflict management process at any time.

4. COUNCIL'S CONFLICT MANAGEMENT PROCESSES

There are two (2) key elements to Council's approach to conflict management:

- (a) Consultation and Information processes that provide for early identification of potentially contentious issues and establish a forum to share information and advice about those issues before a possible dispute emerges. This process tends to be more informal and occurs on an individual to staff officer level. The majority of potential conflict matters are resolved on this basis; and
- (b) Conflict Management and Resolution processes that seek to effectively and fairly manage disputes when they emerge and encourage consensus based approaches to resolving disputes.

4.1 Consultation and Information (Conflict Prevention)

4.1.1 Community Consultation and Participation

The Richmond Valley Council carries out Public Notification (including neighbour notification) of a Development Application, Development Control Plan (DCP) and proposed amendments to the Local Environmental Plan. This process of providing initial

information to relevant members or sectors of the community includes, where appropriate:

- Letters to adjoining owners/occupiers.
- Letters to affected owners/occupiers.
- Site signs (legally required to be affixed by the appointed Principal Certifying Authority).
- Notice(s) in the local newspaper.

The development application and DCP notification procedures seeks to provide for public participation through the community information process and by inviting submissions. Submissions, or the issues raised, may be referred or discussed with the proponent to encourage examination of reasonable solutions. It is common for any potentially contentious issues to be resolved at this point in the process.

The potential for conflict in relation to some specific proposals generates the need for broader community information, understanding and participation. There are also other activities such as broader land use strategies or rezoning proposals that are suited to more comprehensive or focused consultation.

Early discussions with stakeholders can identify and address potential issues before a conflict emerges. A more focused consultation approach can act as a preventative measure which may avoid the need for any subsequent involvement in the formal processes of dispute resolution. It can be also to provide a greater level of understanding about Council's processes and its statutory parameters for decision making.

This Policy encourages the initiation of early and inclusive community participation, where appropriate, to create a climate of collaboration and resolution between proponents, all stakeholders and the wider community.

4.1.2 Consultation

Consultation between the proponent and Council Officers is recommended prior to the lodgement of a development application (DA) or formal submission of a proposal.

Council has a Development Control Unit (DCU) comprising senior staff which can assist in the consultation process.

Consultation is also a process that is appropriate for identifying other matters with Council, such as complaints about specific activities.

The consultation process enables Council staff to advise of potential issues with the proposal, or the matters raised and recommended possible options or solutions.

Whilst it is a form of exchanging information and advice, consultation at this early stage in Council's formal decision making processes, is also a 'conflict prevention' approach (i.e. issues can be identified and discussed and improvements incorporated in the proposal before a potential dispute with stakeholders emerges).

Council also encourages community groups or private individuals to raise any concerns as soon as possible in an attempt to diffuse any potentially contentious issues at an early stage.

4.1.3 Conciliation

The conciliation process is intended to be flexible and less structured than the negotiation, facilitation and mediation processes.

Conciliation involves the following:

- (a) Council's assessing officer will arrange a meeting with the proponent to discuss the proposal or matter raised and establish facts, identify issues and recommend changes/improvements that may address those issues. This is a normal process which takes place in the staff assessment of all development applications.
- (b) Council's assessing officer or Development Control Unit (DCU) in the role of conciliator, will identify members of the community that may potentially be affected (stakeholders) and arrange to discuss the proposal or matter raised in a conciliation sessions, seeking to share factual information, identify issues and explore possible solutions.
- (c) Council's assessing officer, in the role of conciliator, will then arrange subsequent conciliation sessions with the proponent to discuss the issues, suggestion solutions, negotiate outcomes and seek consensus.
- (d) Where consensus is achieved, the assessing officer will make or recommend a decision on the proposal or matter that incorporates the agreed outcomes.

If the application has not been formally determined and objections have been significant, then the matter would normally be referred to Council for determination. If the application has already been determined by Council, then the applicant may submit an application

under Section 82A of the Environment Planning and Assessment Act for “Review of Determination”.

4.1.4 Negotiation

The negotiation process involves a meeting between all stakeholders and the proponent to discuss a proposal or other matters. Council staff may decide that negotiation, which is more structured than conciliation and less formal than facilitation or mediation, is the appropriate approach without undertaking conciliation. In some cases, negotiation may be appropriate prior to a proponent being irreversibly committed to a project. Negotiation involves the following steps:

- (a) Council’s assessing officer will identify members of the community that may potentially be affected (stakeholders).
- (b) A meeting will be arranged for the respondents, the proponent and Councillors and possibly other government agencies, to discuss the proposal.

This meeting is intended to ensure that all participants are aware of the correct factual information relating to the proposal and provides a forum where issues can be identified and explored and potential solutions developed.

The meeting may be on site, if appropriate, and may be chaired by the Mayor. Other specialist staff may attend to provide advice, if required.

- (c) Councillors may attend, primarily to observe the negotiation process and outcomes and may participate in discussion to elicit information, to clarify issues or to explore potential solutions.
- (d) Where consensus is achieved, the outcomes of the facilitation will be reported to the following Ordinary Meeting, where Councillors may consider the agreed outcomes in making their decision on the proposal or matter.

4.1.5 Mediation

The mediation process will only be implemented where Council considers it is appropriate and other avenues for dispute resolution have not been successful. The Council or the General Manager may direct that a matter should be referred to mediation. It involves a formal and structured mediation session with all participants and an external trained mediator to discuss the participants’ issues and seek consensual outcomes.

The role of the mediator is to assist the participants 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 participants and may end the mediation whenever, in their opinion, further efforts will not contribute to a resolution of the issues.

Mediators will be impartial (i.e. 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 organisation specialising in dispute resolution services; or
- a register of accredited mediators (e.g. the Law Society of NSW or Community Justice Centre).

Mediation involves the following steps:

- (a) The Council or the General Manager determines that a matter should be referred to mediation and seek the agreement and commitment of all participants.
- (b) A mediator will be appointed and the process is initiated.
- (c) Specialist Council staff may be requested to be available for the mediation session(s) to provide professional advice or 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.
- (d) Councillors may not attend mediation sessions.
- (e) Where consensus is achieved, the outcomes of the mediation will be reported to the following Ordinary Meeting, where Councillors may consider the agreed outcomes in making their decision on the proposal or matter.

5. AFTER THE CONFLICT MANAGEMENT PROCESS

5.1 Where consensus is achieved through Mediation

If all participants reach agreement in a mediation session, the mediator or the parties will draft and sign an agreement that summarises the resolution and may also include the participants' concurrence of the

withdrawal of their previous objections, conditional upon the mediated agreement being implemented in the development approval.

If proceedings have been commenced in Court, participants 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 representative.

Requirements may vary dependent upon the legal process (e.g. third party right of appeal).

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

5.2 Where consensus is not achieved

In disputes where the participants do not resolve the dispute but wish to express their views to the Council, a “Statement of Outcome” may be drawn up and will be included in any report on the proposal or matter. This Statement will then be considered by Council.

The Statement of Outcome generally includes:

- the participants’ agreed outcomes for the issues that were resolved, and
- the participants’ views on the outstanding issues.

6. ADMINISTRATION OF THE POLICY

- (a) Council will demonstrate its commitment to the dispute resolution processes and this Policy by:
- meeting the administrative and management costs;
 - meeting the cost of employing an external mediator where required, and
 - by having regard for the identified solutions and agreed outcomes and incorporating those outcomes, as far as possible (within the content of its legislative responsibilities and the current statutory provisions), in its decision on the proposal or matter.
- (b) Council is responsible for determining what matters suit the application of any of the dispute resolution process in this Policy.

- (c) Council will seek to inform its communities about its Conflict Management Policy by making it generally available. Council will also distribute information about the Policy when a potential dispute is identified or a dispute emerges to ensure all stakeholders are aware of the different processes that are available to assist in identifying issues and seeking consensus.

(Council's Customer Service and Development Assessment Staff will be fully aware of the Policy provisions).

- (d) All conciliation, negotiation, facilitation and mediation sessions are private and will be attended only by the relevant participants, Council officers and independent mentors where appropriate. Councillors may attend negotiation and facilitation sessions primarily as observers but may seek information.

Public meetings which involve not only the participants but other members of the public, interest groups and other 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.

- (e) As the final decision maker for many statutory and regulatory matters, Council is responsible for managing its dispute resolution processes effectively and equitably and to ensure all stakeholders' views are heard.

In seeking to involve the community in this process however, Council is also undertaking to pursue consensus based solutions for identified issues, as far as resolution of those issues provides fair and reasonable outcomes for the community as a whole.

In this regard, there may be stakeholders, participants, members of the community, members of interest groups or others who do not participate in consultation or dispute resolution forums in a reasonable manner, or who seek to undermine the spirit of collaboration and consensus building. Council may choose to exclude such groups or individuals from further participation in its dispute resolution processes.

- (f) If any participant chooses to appoint independent experts to provide advice or guidance, that participant is/those participants are, responsible for payment of any associated costs.
- (g) Council staff will be advised of the Policy and assisted in integrating its processes in their daily tasks. Staff training in consultation, conciliation, negotiation and facilitation techniques will focus on ensuring that officers can effectively identify potential conflicts, manage disputes when they first arise and implement appropriate processes if more complex issues emerge.