



Environment Court of New Zealand

Trial of procedure for remote Court-assisted mediation for Wellington Regional Council Proposed Natural Resources Plan appeals

Given mediation is to be conducted remotely in a way that allows for all participants to self-isolate because of the COVID-19 situation it is necessary to trial new methods of working that are still in line with the Environment Court Practice Note 2014 (Part 5 Alternative Dispute Resolution and Appendix 2 – Protocol for Court-Assisted Mediation).

Participants and any support person(s) are **bound by the confidential and 'without prejudice' nature** of the court mediation process and are also to comply with the following **key requirements**:

- **Authority to settle** by being present by phone or video link personally for the duration of the mediation or having a representative present at all times during the mediation with delegated authority to settle.
- **Ability to obtain advice** during the mediation, if required, from any person they wish to rely on, such as a lawyer or consultant.
- **Availability of a telephone at all times during the mediation and preferably also of a computer and email.**
If access to a computer and email presents a problem for participants the Mediator should be advised so consideration can be given as to how to make fair arrangements that do not disadvantage participants.
- **Respectful participation** with points to be made concisely.

The Mediator intends to **conduct the mediation** of each provision (or set of provisions where the parties are the same) in the following way:

- Set times are to be allocated for each provision (or set of provisions where the parties are the same).
- Parties are to advise the Mediator by email of the names, position, email and phone contact identifying all participants in the mediation well ahead of the proceedings. Please give careful thought to the people attending, as the methodology and technology will perform better with fewer people.
- Only the identified participants are to be present at the mediation or in any room from which the identified participant(s) is/are joining the mediation.
- There is to be no recording or note taking of discussions at the mediation.
- Where an internet platform is going to be used an invitation will then be sent that will allow those attending to 'click the link' and join the meeting by audio or video at the set time. For phone conference mediation parties will be advised of contact details.
- The Regional Council is to continue to circulate, at a reasonable time period before the mediation, background material identifying and elaborating on the issues it sees arising from the appeals, proposing any amendments to the provisions to address the issues and suggesting an order for dealing with these issues at the mediation.
- Agenda setting and the mediation will be more efficient if parties indicate in writing well ahead of the mediation their response to the Regional Council's background material

and particularly on the identification of the issues and any proposed amendments to the provisions.

- Participants will introduce themselves and the Mediator will remind participants of the confidentiality and the other key requirements for mediation and seek confirmation that they can comply with them.
- Where any participant may have to confer with people who are not present on the phone or video link arrangements it is expected that participants will have made arrangements for that to occur promptly.
- The Regional Council will be given the opportunity to briefly speak to its pre-circulated background material and any updates to it.
- All parties will be given the opportunity to start with a short opening statement (which ideally should be pre-circulated by email) on the issues for them. Where a party has a proposal, whether in concept or redrafted provisions, it wishes to table at the mediation that proposal is to be pre-circulated so participants have the opportunity to look at it ahead of the mediation. That proposal is to be pre-circulated by 9am one day ahead of the mediation at the latest and preferably earlier.
- Mediation will then proceed with the Mediator ensuring that all participants have a fair opportunity to put their point of view. As with face-to-face mediation there will be need for regular breaks, for example to allow people to confer offline with others before coming back to the phone or video link.
- The Regional Council will produce a complete record of the mediation outcome(s) and circulate it to all parties by email shortly after the mediation concludes. If a party has a concern that the record does not reflect their understanding of the mediation outcome(s), all parties and the Mediator are to be promptly advised.

The above does not prevent parties suggesting a different approach that may be more appropriate.

The Mediator may contact individual parties to clarify matters to ensure an efficient, effective and fair mediation process.

As this is the first set of mediations to be conducted remotely there may be a need for modification of the process as the mediations progress. At the end of each mediation session parties are encouraged to provide feedback on what improvements might be made.

The technology to allow phone and video link to the Mediator and all parties is provided and driven by the Regional Council's team. Prior to the mediation there will be advice on how to join the mediation by phone or video link and times available for participants to try this out in practice.

It is appreciated that there will be a need for patience and tolerance in using an internet platform for visual and audio links as participants work within their wifi and internet speeds and capacity and become accustomed to a new way of working.

Environment Commissioner Kathryn Edmonds

14 May 2020