

Policy

Title: Conciliation Services

Category: Environment, Planning and Development Control

Date Last Adopted: 26 April 2021

1. Objectives

The objective of this policy is to establish processes that will assist to:

1. Reduce the level of community conflict related to planning applications.
2. Empower the parties in a dispute to take control of their own dispute and attempt to reach a resolution which satisfies the needs and interests of all those involved.
3. Permit the parties the opportunity of informing the Council of any agreements they have reached and or clarification of the issues still in dispute, in order for the Council to take these matters into account in determining the planning application or resolving other matters that are in dispute.
4. To pursue consistency and fairness in the manner in which the Council deals with and resolves disputes.

2. Background

Previous attempts for either conciliation or mediation between parties experiencing conflict in respect to a planning application has been cumbersome and has not in the past achieved any significant result. The adoption of a policy that allows for the City Planning Committee to request parties in conflict over a planning application to enter into conciliation would overcome the shortfalls of Section 57A of the *Land Use Planning and Approval Act 1993*.

3. Policy

A. Purpose:

The purpose of this policy is to provide principles, guidelines and operating procedures for the conciliation service provided by the Hobart City Council in relation to the processing of planning applications.

B. Definitions:

What is Conciliation?

1. Conciliation is the process in which the parties to a dispute with the assistance of a neutral third party (the conciliator) identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement.
2. Conciliation aims to provide a fair, consensus building dispute resolution process in which the disputing parties are empowered to:
 - (i) clarify their needs and interests;
 - (ii) acknowledge the needs and interest of other parties;
 - (iii) become aware of the range of potential solutions; and
 - (iv) negotiate in good faith to achieve an agreement which:
 - (a) satisfies their mutual interests; and
 - (b) is fair and reasonable and is capable of implementation within the existing statutory process and the Council's planning schemes.

C. Application

The policy applies to the following:

1. Disputes arising from development applications and related planning development and land management matters.
2. The following matters will be considered in determining whether conciliation will be applied:
 - (i) It appears conciliation is the best method for dealing with the issues involved.
 - (ii) The parties are willing to participate in conciliation.
 - (iii) There are a large number of participants, they are willing and are able to appoint representatives to attend conciliation on their behalf and agree on their behalf to any outcomes (a maximum of 5 persons is preferred).

3. Conciliation will not be pursued when it is considered that:
 - (i) there are multiple parties involved and they are unable or unwilling to nominate a representative;
 - (ii) one or more of the parties is not willing to participate and negotiate in a genuine effort to reach a negotiated solution;
 - (iii) other dispute resolution procedures may be more appropriate;
 - (iv) the dispute does not involve Council's business or responsibilities; or
 - (v) the nature of the objections are not a reasonable basis for which to conduct conciliation (i.e. "I do not want any more two storey houses in my area" whilst the planning scheme allows two storey houses).

D. Principles

The following are the principles upon which the conciliation policy at the Hobart City Council is based:

- 1 Conciliation is to be conducted by a recognised and independent conciliator who is impartial to the dispute at hand.
- 2 Conciliation will not be treated as a whole as "confidential" (the conciliator or parties may determine that parts of the conciliation should be confidential) This will allow full disclosure of the matters discussed to be presented to the Council.
- 3 Conciliation is a voluntary process.
- 4 Conciliation is most effective when applied as soon as possible after a dispute and stakeholders are identified.
- 5 Where the conciliation is attended by a representative of a group of people that representative should have "delegation" to agree to a particular outcome without reference to the group as a whole.
- 6 Any agreement reached is a decision made by the parties themselves, and is one which satisfies their own needs and interests. Council will however take into consideration such agreement when considering the application but will still need to assess the application under any legislative requirements or the provisions of the Council's planning schemes.
- 7 The Council is not bound to a certain course of action because of an agreement reached at conciliation.
- 8 Conciliation does not prejudice any future action a party may wish to take.
- 9 Aldermen will not be present at conciliation sessions and the Council's officers will only be in attendance to provide technical advice.
- 10 Conciliation will not always be the most appropriate method of dispute resolution available.

E. Implementation

The policy will be implemented through the following process:

- 1 Information of the Council's conciliation service will be provided at the time when the planning application is statutorily notified. The information will include advice that the representor should discuss the planning application with the relevant planning case officer before applying to participate in the conciliation service.
- 2 The representor will apply to the Council to participate in conciliation by completing the "request for conciliation" form (see attached) and lodging it with the Council before the closing date for representations.
- 3 The applicant within 7 days of the close of the representation period can also apply to participate in conciliation by completing the "request for conciliation" form and lodging it with the Council.
- 4 The Director City Planning determines whether an application from a representor or a proponent fulfils the terms of the policy.
- 5 The City Planning Committee or the Director City Planning may request that the relevant planning officer explore with the parties to the application (representors and applicant(s)) if they are prepared to enter into conciliation.
- 6 Any conciliation is contingent on the applicant granting, to the Council, an extension of the statutory time, if necessary, in which it is able to deal with the application.
- 7 Conciliation will then be conducted in accordance with any guidelines adopted by the Council and/or in a manner the Conciliator considers appropriate for the circumstances.

4. Legislation, Terminology and References

Responsible Officer:	Director City Life
Policy first adopted by the Council:	9/3/2010
History	
Amended by Council	12/9/2011
Amended by Council	7/3/2016
Approved by Council	23/9/2019
Biannual Policy Review	26/04/2021
Next Review Date:	April 2023
File Reference:	F16/65269



Guide to Conciliation Service for disputes relating to planning applications

This guide is for participants involved in the Hobart City Council's conciliation program for Development Applications. It is intended to assist you in understanding of the conciliation process and the requirements for Council's Conciliation Policy.

What is Conciliation?

Conciliation is a voluntary process, where people in a dispute can come together to find a solution to their dispute with the assistance of an independent and impartial conciliator.

What are the steps in Conciliation?

If you would like to participate in the Conciliation Program, the following steps are involved:

1. Lodge a completed Application of Conciliation.
2. The Application for Conciliation will be considered and it will be determined if the matter is one, given the issues identified in the application, that can be dealt with through conciliation.
3. If it is considered that conciliation should be undertaken the other parties will be asked if they wish to participate. If all parties agree the matter will proceed. If one party refuses the conciliation will not proceed.
4. The parties and the conciliator then conduct the conciliation at a mutually convenient time and place within 21 days of the receipt of the Application for Conciliation. The conciliation will result in a signed agreement, a partial agreement or no agreement at all.

What is required for residents to attend the Conciliation?

Every person attending the conciliation should be prepared to discuss their needs, concerns and interests; are prepared to listen to the needs, concerns and interests of other at the conciliation; and are prepared to negotiate in a genuine effort to reach a negotiated solution.

What happens at the Conciliation?

The conciliator will conduct a meeting with the nominated representatives and the applicant to discuss their concerns and issues in relation to the development application. The parties will be advised of the venue of the meetings.

The conciliator helps the parties to explore options and assists the parties to reach agreement. The conciliator does not make recommendations or decisions on how the issues should be resolved, and are neutral and independent from Council.

There will be no Aldermen present at the conciliation. Council staff will attend to provide advice and assistance where possible.

How does the conciliation affect Council's assessment of the Development Application?

Council's Development Appraisal Unit, will continue their DA assessment process while the conciliation process takes place. This can include the assessment by other areas of Council including traffic, stormwater, environment, etc. If an agreement is reached and both parties agree, then this information is generally forwarded to the planning officer for consideration in assessing the DA. Any agreement must still comply with relevant Legislation and planning scheme provisions.

If the matter is called before full Council the outcome of the conciliation will be included in the report to Council. One speaker from each side may also be given the chance to address Council's Development and Environmental Services Committee at its meeting. Please contact Council's Council Support Officer on 6238 2734 for further details.

Hobart Council Centre, 16 Elizabeth Street, GPO Box 503 Hobart Tasmania 7001
Telephone: (03) 62382 711 TTY (03) 62382 187 Fax (03) 62347 109 AUSDOC DX109
Email: hcc@hobartcity.com.au Internet www.hobartcity.com.au





**Request for Conciliation
for disputes relating to planning applications**

If posting this application please
address to:

The General Manager
GPO Box 503
Hobart 7001

If you need help lodging your application

Phone us on (03) 6238 2715

or

Come in and talk to us at our offices at
16 Elizabeth Street, Hobart

Part 1 Development Matters

Development matters For all disputes concerning planning applications, lodge this notice with the Hobart City Council. See page 2 for lodgement details. Please consider the guidelines below when completing your application. You must lodge this notice before the closing date for submissions. Please consider:

This form gives notice of a dispute under Council's Conciliation Policy.

This policy establishes a cooperative process for resolving disputes that involve or relate to the Hobart City Council.

For all other disputes, please contact Council for further information.

- * If the objections are a reasonable basis for conciliation - for example, I don't want units in my area (where zoning permit this) is not reasonable
- * If objections can be dealt with via appropriate Council conditions of consent - for example privacy from windows etc
- * If the application is grossly inconsistent with Council's policies and would be rejected anyway.
- * If issues are not related to the business of Council - for example, boundary fencing etc.
- * If all parties agree voluntarily to participate.

Fees

There are no application fees. However, you must pay for all of your own expenses (such as preparing for or attending conciliation sessions.)

Part 1 Applicant Details

Applicant details

Mr Mrs Ms Other

It is important that we are able to contact you if we need more information.

Please give us as much detail as possible.

Full family name (no initials or Company)

Full given names (no initials) (or A.C.N.)

Postal Address

All correspondence to be sent to this address

Phone Number Facsimile

Mobile Email

Contact Person

Only if a company, community group or similar

Part 2 Conciliation Questionnaire

1. Does the dispute relate to a planning application?

Yes

You must lodge this notice with Council prior to the closing date for representations. Before making this notification, have you:

Please tick ALL appropriate boxes

- Inspected the plans displayed at Council or on www.hobartcity.com.au
- Discussed the proposal with the nominated Council Officer
- Discussed your concerns with other relevant officers



Part 2 Conciliation Questionnaire *continued*

2. Details of the proposed development

House No.

Street

Suburb

Application Number

Subject

Closing date for Submissions

You must lodge this notice by this date where it relates to a development application.

3. Details of the dispute

Please state your concerns clearly and succinctly. If insufficient space, attach a written statement

4. Do you have any suggested solutions?

Your suggestions can be very helpful. We encourage you to put forward practical and positive ideas.

Part 3 Applicant(s) Declaration

Your declaration

I/We seek to have the above dispute resolved in accordance with the Hobart City Council's Conciliation Policy. I/We understand that I/We may be required to attend conciliation sessions conducted by neutral conciliators.

Signature

Date

The personal information that Council is collecting from you is personal information for the purposes of undertaking conciliation. The intended recipients of the personal information are officers/agents of the Council.

It will be necessary to release to people involved in the conciliation application process, personal information such as your name, address and issues of concern.

The supply of the information by you is mandatory. Personal information will be managed in accordance with the Personal Information Protection Act 2004.