Ministry for the Environment
Manatū Mō Te Taiao

AN EVERYDAY GUIDE TO THE RMA > SERIES 6.2

You, Mediation and the Environment Court

SERIES

Series Overview

Contents

Introduction

Mediation can help you to *clarify issues, resolve conflicts* and *reach agreement* without needing to go to court. This guide provides a practical summary of the mediation process to help you participate in and prepare for mediation in the Environment Court.

This guide defines mediation and other commonly used terms and explains how mediation sits within the framework of the Resource Management Act 1991 (RMA). It is intended for anyone who is a party to an appeal in the Environment Court. It explains how you can become involved in mediation, and how you can decide whether mediation is right for you.

The guide also covers:

- how you should prepare for mediation
- what you can expect at mediated meetings
- what is expected of you and other parties in terms of appropriate behaviour and conduct
- what happens once the mediation process ends
- where you can go for further information.

What is mediation?

Mediation is a process to resolve disputes. People get together with the help of a mediator to isolate issues, develop options, consider alternatives and reach an agreement everyone can live with, rather than having a settlement imposed on them by a formal body such as a court.

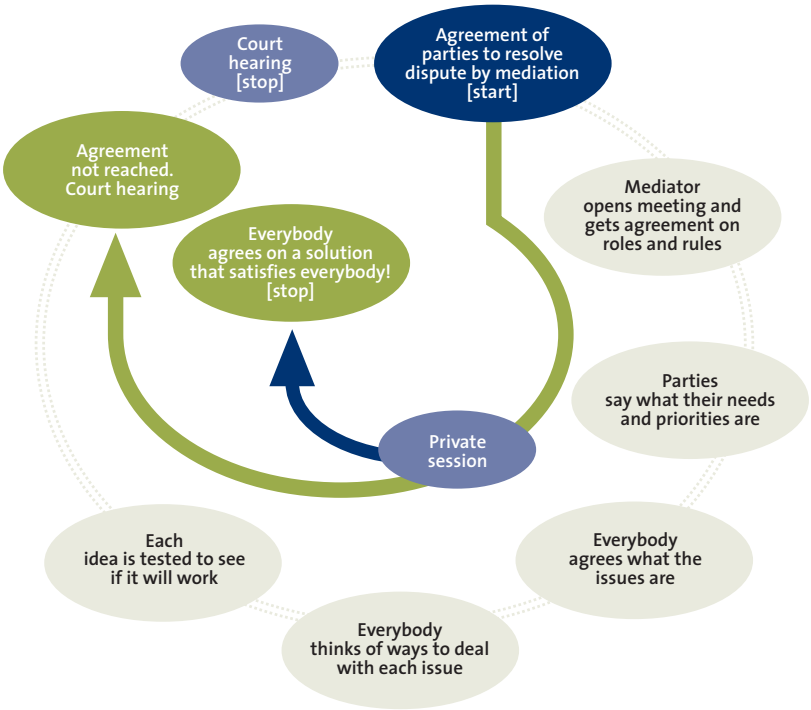
Mediation should not be considered an easy option. You will need to work hard and be willing to compromise.

Mediation can help parties 'get unstuck' from the stalemate of their dispute. It provides an alternative to traditional methods of resolving disputes, like going to court. Parties work together to find solutions by looking at their interests, rather than focusing on their 'legal rights'.

Mediation allows people to explain how they see the problem and how they feel about it. Initial discussion at mediated meetings focuses on what people

value and need, rather than the positions they may hold or what they demand. By taking a step back from those positions, parties can share and gain an understanding of each other's opinions and the values that underlie their attitudes to particular disputes. In this way, disputes can be looked at afresh. The principles of mediation are closely related to those of *manaaki*, which recognises the values that all parties bring to the table, and provides for those parties to treat each other and their ideas with respect. As mediation is a face-to-face consensus decision-making approach, it also sits comfortably with Māori decision-making processes.

The stages of mediation



Advantages of mediation

- Parties often develop and agree upon creative, constructive, achievable, workable and mutually acceptable solutions.
- Mediation can be much cheaper and far more satisfying than litigation or arbitration. Often mediation eliminates any need for formal court appearances.
- Even if mediation doesn't result in agreement, the process of isolating issues and agreeing undisputed facts can be helpful if an appeal has to be heard by the Environment Court.
- Mediated discussions often help to restore happier relationships, as well as resolving the issues at hand.
- Confidence can be gained and goodwill developed.

Mediation basics

Voluntary involvement

Mediation can be initiated by the parties themselves, or offered by the Judge. Any party may end the process at any time. You shouldn't feel pressured to be or stay involved.

Active participation in good faith

Effective mediation is conducted face-to-face. Active participation, with good communication by all parties, is essential if you are going to reach an effective agreement. Mediation requires good intentions on the part of all parties.

Driven by you

Mediation assumes that the parties are competent, informed and able to reach agreements that suit their needs. Each party must have at least one representative who is consistent in that role throughout the mediation process. Control of the dispute and the terms of settlement remain in the hands of the parties to the mediation. The representative of each party must be fully authorised to participate, and a resolution will only occur if the parties agree.

Independent and impartial mediator

The mediator acts as a facilitator, communicator, motivator and scene-setter, creating the right environment for the process to be effective. He or she must be independent of both the parties and the Environment Judge who will review any agreement you reach.

The mediator must not give legal advice, offer opinions or coerce parties into agreement.

The mediator does check that all parties fully understand what they are agreeing to.

Mutual respect

The process allows the parties (including the mediator) to develop trust and confidence in themselves, in each other, and in the process.

Flexible outcomes

If you want, you can discuss matters apart from the appeal during the mediation process – for example, you might want to talk about your business or personal relationships with the other parties. This openness can increase the chances of a satisfactory resolution and even achieve outcomes that the Court itself is unable to secure (such as formal apologies or the recognition of effort).

Confidential process

All discussions that take place in mediation must be completely confidential. In Environment Court mediations no formal record is kept, except an agreed decision (called a consent order) that is approved by the Court and forms part of the public record.

The mediator may meet separately with any party or parties, and may be offered information that must be kept confidential from other parties.

What goes on in the mediation process cannot influence or be referred to in other Court proceedings – if the process is not successful, anything discussed or offered during mediation can't be raised when the dispute goes to Court.

Finality of agreements

Where agreements are reached through mediation, they are final and seen as binding on the parties who have agreed. However, participation in mediation does not prejudice the existing legal rights of the parties.

Fairness and equity

All parties must be given a fair hearing and have equal access to information.

What does the RMA say about mediation?

The RMA allows conflicts to be addressed informally through mediation as a way of reducing or avoiding unnecessary litigation. All parties to proceedings before the Environment Court are entitled and encouraged to join the mediation process. This includes appellants and respondents, the original applicants for resource consent, and submitters to a resource consent application or a proposed plan or policy statement. If you are a submitter, you need to have notified the Court that you want to become a party to the proceedings in accordance with section 274 of the RMA.

In addition, the RMA allows people with an interest greater than the public in general to join an appeal (and thus take part in mediation), unless their concerns relate to trade competition. People who meet this definition must notify the Court in advance.

Mediation to resolve the dispute can be initiated at any time after the appeal or other court proceedings are lodged. The Court may ask one or more of its Environment Commissioners to conduct mediation, but all parties must agree. The Court cannot force parties to enter into mediation: it is a voluntary process.

Where the parties agree to mediation by an Environment Commissioner, the service is free. But you may wish to hire a private mediator instead, in which case you have to pay their fees and expenses (these costs can be shared between the parties). If you want a private mediator you should tell the Court as soon as possible.

Any agreement reached in mediation is normally written up by the parties as a draft consent order. This spells out the terms of your agreement, which are enforceable under the RMA. All draft consent orders must be reviewed and approved by the Court (unless you withdraw your appeal), which will make clear that the order cannot be changed by anyone. The RMA allows Court-provided mediators to review the agreements, but in practice, Environment Court Commissioners don't act as decision-makers at a later stage. Instead, an Environment Judge who didn't hear and can't be influenced by the private discussions that took place in mediation properly checks any agreement.

If you don't reach an agreement, then your dispute may go to Court for a hearing. If you choose not to go into mediation the Court will not hold this against you when deciding the case or whether to impose costs on any of the parties. You shouldn't seek to recover any costs incurred as a result of mediation from any other party, as a mutual and genuine attempt to try and settle issues has been made.

What triggers mediation?

Mediation may be initiated in a number of ways. In most cases, the Court will ask all parties to report on the steps they have taken previously to negotiate and/or mediate, and what the outcome was. An Environment Judge may then suggest that you consider mediation. If all parties agree to Court-assisted mediation, then a time and venue will be set by the Registrar of the Court. All the information about the appeal and its background is forwarded to the Environment Court Commissioner who will conduct the mediation. Mediation can only be arranged once the statutory period for interested parties to join has ended, and all parties agree.

Any of the parties to an appeal can also request mediation at any time. The earlier you make such a request, the better it is for everyone involved and the more likely it is that an agreement will be reached. You certainly shouldn't see it as an option of last resort.

Is mediation right for me?

Consider these benefits and limitations before deciding whether to enter mediation.

Main benefits	Main limitations
The process is confidential and avoids undesirable publicity and attention. Sensitive cultural and commercial information can be shielded.	Sometimes seen as more time consuming and costly in the short-term.
The atmosphere in meetings is informal and topics for discussion can be as wide as necessary. This allows people to get 'things off their chests' and move beyond narrow or extreme positions in a face-saving way. It can result in creative and flexible solutions.	It is not helpful in situations where the parties view the dispute as a heroic battle, or have become extremely irrational.
Mediation can start any time after appeals are lodged. You can wait considerably longer for a Court hearing date.	There are no guarantees that Court action will be avoided. You may consider that some of your interests and values and values are non-negotiable. Some of the issues raised in an appeal may be unsuccessfully addressed at mediation and may need to be revisited in Court hearings.
The process can help get negotiations started, without fear of showing weakness.	The greatest level of resource investment is 'upfront'. You need time to prepare and go to meetings. You need to be ready and willing to understand the other person's point of view.

Main benefits	Main limitations
Mediation is often cheaper than Court appearances. Disputes can be resolved or narrowed sooner.	Participation can be reactive if you have not clearly identified your needs, the way the meeting(s) will be run and how best to participate.
Gives you control over resolving your dispute and a sense of 'ownership' in the outcome.	
Meetings can be tailored to suit your needs. If need be, they can reflect tikanga Māori.	

A successful outcome relies on the goodwill of the parties and the skills of the mediator.

Examples where mediation can be successful

Mediation can be successful in a wide range of situations. Some examples of resource management disputes where mediation may be appropriate include:

- questions over the extent and integrity of consultation by councils with iwi
- how sites of particular value should be managed in district plans, such as heritage places, wāhi tapu and stands of indigenous vegetation
- the allocation of water rights in catchments with a small or heavily used resource
- the appropriateness of conditions attached to a resource consent
- the granting of resource consents for infill housing close to neighbouring properties in residential areas
- the granting of resource consents for major projects in rural areas such as landfills, lifestyle block subdivision and sawmills.

Should I agree to mediation?

Think it through

Bear in mind that if the Registrar has written to you about mediation, then the Environment Judge thinks that mediation is suitable for your case. But it is up to you to decide whether the process is right for you. Talk is not always productive. You may want to ask yourself the following questions:

- Do you have an important relationship that you wish to protect or improve (ie, with a neighbour)?
- Do you know what the real issues and interests are?
- Do you have enough knowledge to have some influence over the outcome of mediation?
- Do you think enough goodwill exists to try and reach an understanding? You must not see mediation as a means to delay or obstruct, to attract support or membership, to secure leadership, or to establish a 'principle'.
- Do you have the emotional resources to participate in activities such as airing differences, active listening and problem solving?
- Do you think the issues are tangible enough for practical solutions to be found?
- Would a compromise solution be acceptable to you?
- Is a safe and confidential environment needed to explain your values (and kaupapa Māori)?
- Do you want to avoid adverse publicity or attention?
- Would you gain or lose anything by entering into mediation, such as the sharing of sensitive commercial or cultural information (within the confines of a mediated meeting)?
- Is the timing right? There must be enough time for meetings and follow-up action such as the preparation of consent orders.
- Will litigation serve your real needs and interests? How?

Getting ready

Mediation can be flexible and the process, timing and location can be adapted to meet the needs of all parties. Attention to these details can keep the process on the right track and help ensure an outcome that suits everyone. Good preparation by all parties is vital for effective mediation.

Who should represent you?

It is most important that as a party to an appeal, you attend mediation yourself. You must make sure you have at least one consistent representative throughout the mediation process (this may be you: after all, you know about your needs, values and priorities). Think carefully about representation at meetings. Where you appoint a representative to attend mediation, ensure they have full authority to settle the dispute or issues at stake.

Moral support

Take friends, relatives or whānau with you if it will make you more comfortable. They can help to point out options and generally offer moral support. But remember, people can't just wander in and out of the mediation.

TIP: Tell the mediator who the members of your group are.

Legal representation

Mediated meetings are informal. Legal advisors are not present as advocates, although they can be very useful. Their role is simply to assist and advise you and, potentially, to draft the terms of any settlement reached.

Reporting back

If you are represented by lawyers, consultants, kaumatua or some other person, make sure they report back to you and get your agreement before proceeding to the next stage.

Status of representatives

If you need a representative they should have the authority to make on-the-spot judgements and decisions, and to formulate agreements on behalf of the parties they represent. Any pre-determined limits on authority may deny such people the opportunity to fully explore options for resolution. Senior representatives of corporate parties should be prepared to make a personal commitment to mediation.

Mana whenua

It is for iwi to establish who has mana whenua and the right to attend mediation.

Sharing your intentions

To prevent surprises or imbalances in representation, make sure you make the other parties aware of who will be attending.

Trained mediators

Mediating is often demanding, and the mediator will need to demonstrate a range of skills and attributes. All Environment Court Commissioners are experienced and trained in mediation. If a private mediator is preferred, all parties have the right to select one. They should ensure the mediator is:

» a good listener
» confident in dealing with a wide range of people
» independent
» sensitive
» able to command respect
» impartial
» trustworthy
» able to create a comfortable atmosphere
» able to deal with tense moments
» able to focus on what the parties need
» able to ask the right questions.

Crucially, the mediator must have *sensitivity* to such matters as legal process, environmental legislation, scientific and technical issues, local government and business culture, and Māori protocol. Such sensitivity may be more important than a demonstrated *knowledge* of these matters.

In addition, iwi may need a mediator who is:

» skilled at encouraging iwi power sharing
» bicultural or able to work with kaumatua
» familiar with tāngata whenua protocols, tikanga and Māori structures.

Preparing your approach before meetings

The Registrar will make arrange the time, date and venue for the mediation. The date will be set according to the Commissioner's availability, not that of the participants. However, the Registrar will provide good notice (at least 15 working days) of the mediation so that

you can make arrangements to attend. If you can't attend or have someone represent your interests, any requests to defer the mediation must be made in writing to the Registrar. You must also copy your request to all of the other participants. The Commissioner will then decide whether your request is warranted.

Before mediation begins, make sure you have answers to the following:

» Are you happy you understand the process?
» Will there be additional costs (eg, for research or document preparation)?
» Do you have all the information you need to represent your interests?
» Do your support persons know their role and how they can assist the process?

Preparing what to say at meetings

Develop objectives

What would make you feel the mediation was successful? List these objectives: they might offer a range of settlement possibilities.

Identify your needs and concerns

Examine your own position to discover what your real concerns, interests and needs are. It may help to prioritise these needs or at least work out what values (rather than positions) you would not be prepared to compromise.

Identify the other party's needs and concerns

Think about what the other party's real concerns, needs and interests are. Without compromising your fundamental needs, what can you offer to help the other party meet something of their needs?

Gather information

Gather information to help explain your views. Work out whether enough information is available or whether further research is required. Decide whether your information can be shared at a meeting, bearing in mind that all mediation discussions remain confidential. Alternatively, work out whether access to the

information could be restricted in some way (eg, by communication between trusted individuals with the outcome reported to the meeting).

Expert information

Decide whether particular issues require specialist input (eg, engineering, archaeology or ecology). Think about who should be responsible for gathering that information and how (if at all) the costs should be shared between the parties.

Presenting information

Explore presentation options. These might include site visits, visual representations (photos, diagrams, plans) and verbal records.

Identify options known at this stage

Start this list to use and add to later in the process. Aim to avoid being locked into particular solutions at the beginning of mediation. Solutions could be symbolic as well as tangible.

What can I expect at mediated meetings?

This can vary: a mediator always tries to gauge the 'feel' of the meeting and run the process accordingly. The actual discussion can sometimes go back and forth, although the aim remains to work through the steps outlined below.

The Environment Court Commissioner arrives before the other parties. The mediator may use a whiteboard to record points made during mediation. These notes are a helpful reminder to the parties during the meeting, but do not form part of the public record.

More than one meeting may be required, depending on the size and complexity of the issue. The mediator will try to ensure meetings start and end as promptly and efficiently as possible. They will aim to conclude the mediation in one session if possible; the consent of all participants is needed before additional sessions can be arranged.

Private meetings

The mediator may wish to meet each party privately during a break-out session to help explain and weigh up the options. Mediation is adjourned while private meetings take place. Here, parties may raise facts that might bring the dispute closer to a resolution but which they don't want to disclose in open session. The mediator will respect any confidences. The mediator will also make sure all parties have the same access to him or her if they require it.

While the way mediation meetings are run will reflect the style and preferences of the parties and the mediator, they will generally involve the following steps:

» Step one: getting started

Description

The mediator:

- May open the meeting with a prayer or karakia if the parties consider that this would be appropriate.
- Will welcome everyone, introduce him or herself, check that all the parties are there and invite them to introduce themselves.
- Will make a short statement explaining what mediation is all about and their own role, and ensure that the parties are willing to enter freely into the spirit of mediation.
- May invite agreement on guidelines for conduct.
- May ask whether a site inspection would be appropriate.
- May advise the parties of the possible outcomes and the potential costs if they choose to proceed with court action.
- Will find out if the people present have signing authority, and whether they have to report back to any wider group they represent.

Main goal

To gain agreement on the protocol and process of mediation, and to begin to establish trust in the process and the mediator.

Tasks for participants

» Check you agree on the agenda.

» Ensure you, and others, understand what to expect from the mediation.

» Ensure you have memorised the names of everyone present (take notes if necessary).

» Aim to agree on the protocol and ground rules for mediation.

» Step two: information gathering

Description

The mediator may invite each party to give an overview of how they see the issues today. Interruptions are discouraged.

Main goal

For everyone to get a feel for each other's needs, concerns and aspirations.

For participants: how you can contribute

» Express your concerns and feelings in an overview; you want others to understand your perspective.

» Explain what you think you might need if the future is to be better than your past experience with this dispute.

» Step three: confirming the issues to be understood or resolved

Description

The mediator identifies the points of agreement and dispute between the parties. He or she may explain technical matters for the benefit of parties who do not have access to legal advice.

Main goal

To agree on a list of issues that will help provide a new way of viewing the dispute and give a focus for the discussions. This stage helps identify what is common ground for all parties.

For participants: how you can contribute

» Check that the list of issues covers the areas you need to discuss.

» Step four: discussing the issues

Description

The mediator will facilitate discussion between the parties over the issues. The mediator may discourage discussion about potential solutions for the time being, to allow all issues to be comprehensively dealt with. While resolution may seem remote at this stage, a good airing of the issues means that the next stages usually proceed quite rapidly.

Main goal

To ensure everyone understands each other's views on the issues.

For participants: how you can contribute

» Explain what is important to you, and what you are trying to achieve through these discussions.

» Listen to what is important to the other parties and what they are trying to achieve.

» Ask and allow questions of each other, and discuss any areas of misunderstanding.

» Suggest what new information might be required for future meetings, and discuss who should gather it and how. Make sure you are satisfied with what's agreed. Discuss how technical information might be presented so everyone can understand it.

» Be aware that the process may feel 'stuck' at this stage – bear with it. This is quite normal and doesn't mean that mediation isn't working.

Adjourning mediation

At any time during the process, the mediator can adjourn mediation. An adjournment might, for example, allow you to meet and get agreement from the wider group (such as iwi) that you represent, or to gain their approval for the final wording of the agreement to be signed. Mediators will normally set a tight time frame for reporting back after an adjournment to ensure the discussions remain fresh and the process does not lose momentum. Depending on the length of any particular mediated meeting, the mediator will always take the opportunity to break for refreshments to allow the parties to talk informally.

» Step five: identifying the options

Description

The mediator will invite parties to suggest how the identified issues might be resolved. A degree of 'brainstorming' is involved. There may be agreements 'in principle' to be confirmed at this stage.

Main goal

To give everyone the opportunity to raise various options that can be safely evaluated before making any commitments.

For participants: how you can contribute

- Confirm that any options raised now carry no commitments; they are simply ideas to discuss (ie, they are discussed 'without prejudice').
- Put your ideas forward on what might be workable solutions.
- Look for options that will also satisfy the other parties.
- Avoid evaluating options until everyone is confident that all possibilities have been listed.

» Step six: evaluating the options

Description

The mediator helps the parties consider whether the proposed solutions would work in practice and what the implications are. The various options can be ranked at this stage.

Main goal

To assess the options fairly, so the solution that satisfies as many people as possible can be found.

For participants: how you can contribute

- Check options have been found for all the issues.
- Suggest objective and fair ways to evaluate the options raised (eg, that a solution must satisfy as many needs as possible).
- Discuss the options against objective criteria, such as people's needs and legal requirements.
- Ask for a private meeting with your group and/or your mediator if you wish to. The mediator will adjourn mediation so this can occur.
- Ask questions and make sure you understand the implications of all the options.
- Check that it is still a good idea to remain in mediation. If you don't want to remain in mediation, then consider seeking leave from the mediator to withdraw from the discussions.

» Step seven: confirming an agreement

Description

The mediator will help the parties agree (if possible) about the preferred solutions to the issues raised during mediation.

Main goal

To ensure the best solutions are found and that the parties are committed to them.

For participants: how you can contribute

» Be clear about your authority (eg, whether you need your group's approval) to sign the agreement (see note above on private meetings).

» Decide whether in fact agreement can be reached. Unless all the parties agree and are comfortable with the proposed resolution, the mediator will not proceed and may suggest that the process be terminated. In this case, the parties may decide to proceed to litigation (see next section).

» Step eight: writing the agreement

Description

Assuming agreement has been reached, the parties prepare a draft consent order confirming what has been agreed, which will then be presented to the Environment Court for its approval. Agreements and consent orders are usually drawn up and signed on the spot so the parties leave the mediation confident that the dispute has been resolved. The mediator may close the meeting with a prayer or karakia, and will thank the parties for their involvement and their commitment to resolution.

Main goal

To form an agreement that is specific, clear, understandable and workable. It should truly reflect the real needs of the parties.

For participants: how you can contribute

» You (or someone the parties choose) write a draft consent order (see note on consent orders in next section).

» In addition, private contracts or heads of agreement may be entered into (see note on private agreements in next section).

» Check that the draft agreement reflects what you (or your group) are prepared to accept. You may wish to have someone check the agreement for you before signing, such as a lawyer.

» Give feedback on how you feel about the mediation process.

Avoiding common pitfalls

During mediation:

1. Switch off your mobile phone and pager – or at least turn them on to silent mode.
2. Don't assume that you understand other parties and that they understand you. Check for understanding by:
   - » summarising what you think they are saying
   - » asking if you have summarised correctly
   - » asking the other parties to summarise what they thought you said
   - » giving them feedback on whether they heard you accurately
   - » repeating messages until they are clearly understood.
3. Avoid working from different sets of information and knowledge. Agree at the start on a common set of information on technical topics. Agree on who will undertake research and how information will be gathered.
4. Be proactive. People need to know that everyone is participating equally and not simply reacting to what others say.
5. Don't feel forced to stick with mediation. Try not to be pressured. Ask yourself, is the agreement worth making? If another process (for example, a Court hearing) will better achieve your objectives, leave the mediation.
6. Remember the other parties are human too. They are likely to be feeling the same frustrations, anxiety, anticipation and pressure as you may be. Allow them to express their emotions without taking it personally.
7. Respect each other's right to speak without interruption. Don't use personal attacks or put-downs.
8. Be aware of how long and how often you speak so all parties have an opportunity to contribute to discussion.
9. Speak for yourself (for example, say 'I think ...' and 'I feel ...' rather than 'Everyone knows ...' or 'You should ...'
10. Avoid lengthy silence. There is a risk of other parties assuming the worst due to lack of feedback.
11. Recognise the value of both viewing issues holistically and also having a specific focus. Accept ambiguity and check you have understood the basic underlying themes in what has been said.

12. Ask for clarification from the mediator or other parties at any stage.
13. Stay to the end, unless you wish to formally leave the mediation process.
14. If you want to communicate with the mediator outside a mediation session, this can only take place through the Court's Registry and with notice to all parties.

What happens once the process finishes?

Court review of consent orders

A consent order is an Environment Court order that endorses the agreement reached by the parties during mediation. The Court has the power and responsibility to ensure that a consent order is consistent with the purpose of the RMA, any relevant policy statement or plan, and the terms of the original proceedings that were under appeal.

This is a form of 'quality control' that helps to ensure the integrity of the mediation process. It shows that issues have not been dealt with superficially and that no party has been intimidated into agreement.

When a consent order is confirmed by the Court, the proceedings are usually at least partially withdrawn at the same time.

Entering private agreements

A private contract may be entered into by the parties to provide for any aspects of agreement that may not be enforceable under the RMA. Depending on how they are drawn up, they may be legally enforceable as a contract and any disagreements, or breaches, can be referred to a civil court (eg, the District Court).

Resorting to litigation

Where there is no agreement after mediation, or the parties 'agree to disagree,' they may proceed to litigation. This does not mean that mediation has failed. The process may have provided parties with a better understanding of the issues, helped them gain a new perspective on a

dispute, or offered a positive insight into the attitudes of other protagonists. Mediation can also help the parties isolate, refine and narrow the nature of the dispute. All these outcomes can help reduce Court time and hence costs if the parties do proceed with litigation.

A hearing at the Environment Court can be seen as a powerful backstop to mediation, because:

- all the issues originating from the dispute will be reviewed
- the formal presence of a Court setting can motivate people to reach an outcome
- the Environment Judge remains completely independent from the matters that may have been discussed in mediation. The Judge will not be aware of any details of the mediation and no party will be blamed for failing to reach an agreement
- an Environment Commissioner involved in a mediation process that did not completely resolve the issues at stake will generally disqualify themselves from any hearing.

Toolbox

This guide is part of the Ministry for the Environment's series, 'An Everyday Guide to the RMA'. More copies can be obtained from the Environment Court Registries and the Ministry. This guide, and additional information about the Resource Management Act, can also be viewed online at: www.rma.govt.nz/

For details about Environment Court practices and procedures, you should refer to the Court's Practice Notes before lodging any proceedings. They are available on www.courts.govt.nz/courts/environment-court or copies can be obtained from the Environment Court Registrar nearest you (contact details provided over).

Questions about particular cases before the Environment Court, and opportunities for mediation in those cases, should be directed to your nearest Environment Court Registry.

About the Environment Court

The Environment Court operates under the Resource Management Act 1991. It has the same powers as the District Court in the District Court's civil jurisdiction. Parties that lodge proceedings with the Court are generally dissatisfied with a decision made by a council on a resource consent application, proposed plan or other decision (eg, a designation or heritage order).

The Court hears matters that have been considered by councils, and certain matters referred to it by the Minister for the Environment. Environment Court decisions may be appealed to the High Court on points of law only.

The Court comprises Environment Judge and Environment Commissioners. Commissioners have knowledge and experience in such areas as mediation, local government, resource management, environmental science and the Treaty of Waitangi. The Principal Environment Judge can give the power to hear and decide proceedings to an Environment Commissioner. Environment Commissioners often conduct mediation to facilitate the resolution of matters arising in cases before the Court.

For more information about the Environment Court, see 'An Everyday Guide to the RMA' booklet *6.1 Your Guide to the Environment Court*.

Court registries

The Registrar

The Environment Court

District Court Building

49 Ballance Street

PO Box 5027

Wellington

Phone (04) 918 8300 Fax (04) 918 8303

The Deputy Registrar
The Environment Court
83 Armagh Street
Christchurch
Phone (03) 962 4170 Fax (03) 962 4171

The Deputy Registrar
The Environment Court
8th Floor, District Court Building
3 Kingston Street (off Albert)
Auckland
Phone (09) 916 9091 Fax (09) 916 9090

The Environment Court
www.courts.govt.nz/courts/environment-court

About the Arbitrators' and Mediators' Institute of New Zealand (AMINZ)

The Arbitrators' and Mediators' Institute of New Zealand (AMINZ) is a not-for-profit incorporated society that represents the New Zealand profession of arbitration, mediation and dispute resolution generally. The aims of AMINZ include promoting the awareness and use of dispute resolution, and the facilitation of training.

AMINZ can provide you with a panel list of suitably qualified and experienced mediators who are available to help parties resolve their disputes. It can also provide information if you are interested in receiving mediation training.

AMINZ's members include environment mediators who work with the parties to resolve disputes that are on their way to the Environment Court. Panel members' curriculum vitae are available on request. The terms and conditions of engagement (including fees) are negotiable before appointment.

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About Leading Experts in Alternative Dispute Resolution (LEADR)

Leading Experts in Alternative Dispute Resolution (LEADR) is an Australasian non-profit membership-based organisation established in 1989 to promote the use and awareness of alternative dispute resolution. The New Zealand chapter was formed in 1991 and is administered by a National Board and an Executive Officer.

Initially set up by lawyers, it now covers the wide range of professionals working in this area. LEADR NZ has panels of accredited mediators and offers a referral service. It also conducts training in mediation and offers information about alternative dispute resolution generally.

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Additional references

Arbitrators' and Mediators' Institute of New Zealand Inc, *Guide to Mediation (and Conciliation)*, Wellington, New Zealand, 1999.

Carol Powell, *Uses & Benefits of ADR & Environment Cases*, Resource Management News, February/March 1995.

Department of Planning & Development (in association with the Departments of Justice and Infrastructure and the Dispute Settlement Centre of Victoria), *How to Get the Best Out of Planning: A Guide to Facilitating Meetings*, Melbourne, Australia, August 1997.

Jenny Rowan and John Mills (Environment Commissioners), *Mediation: Practice & Principles* (workshop paper).

The Environment Court, *Practice note on alternative dispute resolution, expert witnesses, and amendment to practice note on case management*, March 2005.

The Environment Court. Case Management in the Environment Court. Practice Note (under section 269 Resource Management Act 1991), April 2004.

Ministry for the Environment, *Resource Management Law Reform: Resource Management Disputes: Part B: Mediation*, Wellington, New Zealand, November 1988.

New Zealand Law Society (in association with LEADR), *Introduction to Mediation* (seminar papers).

Office of the Parliamentary Commissioner for the Environment, *Public Participation Under the RMA: The Management of Conflict*, Wellington, New Zealand, December 1996.

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Disclaimer

Although every effort has been made to ensure that this guide is as accurate as possible, the Ministry for the Environment will not be held responsible for any action arising out of its use. Direct reference should be made to the Resource Management Act and further expert advice sought if necessary.

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