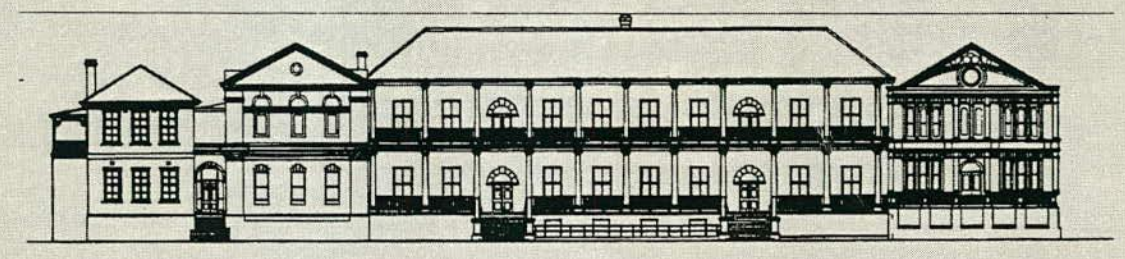
P. Hamilton

PUBLIC ACCOUNTS COMMITTEE

LEGAL SERVICES TO LOCAL GOVERNMENT: MINIMISING COSTS THROUGH ALTERNATIVE DISPUTE RESOLUTION

Discussion Paper



Report No. 22/51 **November 1997**

[No. 112]

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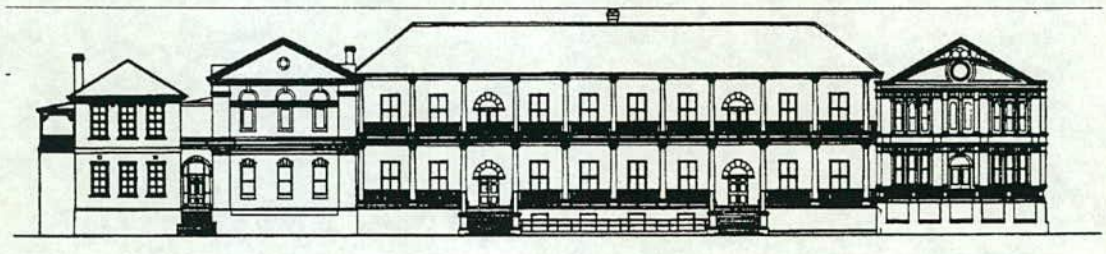

Report No. 22/51 **November 1997**

[No. 112]

New South Wales Public Accounts Committee

Left: Ray Chappell MP, Gerry Sullivan MP, Terry Rumble MP (Chairman),
Joe Tripcdi MP, (Vice-Chairman), Ian Glachan MP

MEMBERS OF THE PUBLIC ACCOUNTS COMMITTEE

Mr Terry Rumble, FCPA, MP, Chairman

Terry Rumble was elected Labor Member for Illawarra in March 1988. Before entering Parliament he qualified as an accountant and was employed in public practice and in the coal mining industry. He has served as a member of the Regulation Review Committee and is the Chairman of the Premier's Backbench Committee on Treasury, Arts and Ethnic Affairs. Mr Rumble was elected Chairman of the Committee on 24 May 1995.

Mr Joe Tripodi B.Ec. (Hons), MP, Vice-Chairman

Joe Tripodi was elected to Parliament in March 1995 as the Labor Member for Fairfield. Before entering Parliament he worked as an economist with the Reserve Bank of Australia and as a union official with the Labor Council of NSW. He has been a Member of the Committee since May 1995 and was elected Vice-Chairman in September 1996.

Mr Gerry Sullivan, B. Comm., FCPA, MP

Labor Member for Wollongong since 1991, Mr Sullivan has served on numerous parliamentary committees, including the Standing Committee on Public Works, the Public Bodies Review Committee and the Parliamentary Library Committee. He is actively involved in many community organisations particularly in the fields of health and sport. Mr Sullivan has held many elected positions within the ALP since 1961. Mr Sullivan became a Member of the Committee on 24 September 1996.

Mr Ian Glachan, MP

The Liberal Member for Albury since 1988, Ian Glachan has had a varied background. He served five years at sea as a marine engineer, was a farmer for ten years, and operated a newsagency in Albury for 18 years. Mr Glachan is also a past president of the Albury-Hume Rotary Club and a Paul Harris Fellow, an active member of the Anglican Church, and was the Legislative Assembly member on the Board of Governors of Charles Sturt University. He is a former Chairman of the Public Accounts Committee.

Mr Ray Chappell, MP

Ray Chappell was elected National Party Member for Northern Tablelands in May 1987. He has worked in university administration and in the building and retail industries, and he served four terms as an alderman on Armidale City Council. During his Parliamentary career Mr Chappell has served as Minister for Small Business and Minister for Regional Development, Shadow Minister of various portfolios, Chairman of several Select Committees and member of the Board of Governors of the University of New England. Mr Chappell served as a Vice-Chairman of the Public Accounts Committee from July 1991 to May 1993 and was reappointed to serve on the Committee in April 1996.

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TABLE OF CONTENTS

CHAIRMAN'S FOREWORD

When in 1991 the Public Accounts Committee tabled a report in Parliament on *Legal Services to Local Government*, it expressed a concern about the high level of legal expenditure incurred by local councils. Today, that expenditure remains high and amounts to an extra allocation of $4M of public funds to legal costs since 1993. These high costs translate to an added burden for ratepayers and, in many cases, could be minimised through the efficient and effective use of alternative means of dispute resolution.

The Committee is conducting an inquiry aimed at constructively identifying the continuing causes of these high costs and the reasons why the cost effective processes of alternative dispute resolution (ADR) have not been embraced more wholeheartedly by some local government bodies. This Discussion Paper is an integral part of the inquiry process. In it we have addressed the issues as they appear at this stage of the inquiry. We welcome your views and this Discussion Paper is intended to draw as many responses as possible.

We extend an invitation to all organisations or individuals who hold views or have ideas about the issues raised in this Discussion Paper to forward them to the Committee. All views and ideas will be carefully considered and debated by the members.

The Committee believes that if it simply brings to the attention of councils the significant benefits of ADR, it will have made some progress in encouraging modification to some of the less efficient, effective and economical procedures currently employed by local government.

Terry Rumble

Terry Rumble MP
Chairman

A. THE CURRENT STATUS OF LEGAL EXPENSES AND ALTERNATIVE DISPUTE RESOLUTION (ADR) IN COUNCILS

In Public Accounts Committee (PAC) Report 57, *Legal Services Provided to Local Government,* a wide range of procedures and practices were identified within local councils, which, if modified, would reduce the high levels of legal expenditure incurred by councils throughout NSW.

Those suggested modifications were directed to a broad range of operational categories:

- the legislative framework in which local government functions;
- the practices of planning and environmental assessment;
- aspects of local government decision making;
- the Land and Environment Court;
- the conduct of Commissions of Enquiry;
- legal actions involving elected members;
- legal services to local government;
- reporting on legal matters and accountability; and
- alternative methods of resolving disputes.

The PAC is currently following up aspects of Report 57 in its contemporary context. In order to gauge the status of the implementation of the recommendations in that Report, all councils in NSW were asked to complete a survey distributed in May 1997. The initial findings of the PAC survey suggest that, whilst many councils have made considerable progress in reducing their legal costs, some have maintained comparatively high levels of legal expenditure. The *Comparative Information on NSW Local Government Councils 1994/5* reveals that planning and regulatory legal costs in local councils across NSW increased from $10M to $14M between 1993 and 1994/5. It was found that one council with strong development pressures attributed 60% of its planning and regulatory costs to its legal expenses, another, just under 50%, and a handful of other councils attributed just under 40% of their costs to legal disputes. Eleven councils attributed in excess of 20% of their planning and regulatory expenditure to legal costs in 1994/5 compared to 10 councils during the 1993 period.[1]

[1] Comparative information on NSW Local Government Councils 1993 & 1994/5

The PAC acknowledges the increasing pressures imposed upon local council decision makers. Resistance to urban consolidation and the conservation-based trend toward the preservation of parks, trees and historic buildings reflect the desire of local communities to protect and preserve their amenities, environment and quality of life. Expressions of interest in greater involvement in the decision making process demonstrate a trend toward greater community concern for the future development of local community life and a need of communities to participate in the shaping of that future.

While greater demands are being placed upon councils and their planning systems, local communities appear to be confused about the system and how decision making in NSW proceeds. In its 1996 Report entitled *Dispute Resolution in Local Government - Strengthening Local Economic Capacity*, the Australian Commercial Disputes Centre (ACDC) has stated that the merit based planning system in NSW is considerably misunderstood by the public [2].

Councils face complex challenges. On a daily basis they are forced to confront the difficulties of balancing the needs and expectations of the local community at large, the specific needs of individual developers and applicants and the requirements of the Local Government Act 1993.

These pressures warrant council's consideration of, not only more effective and efficient procedures and practices, but also their whole approach to problem avoidance and problem solving in matters where the interests of particular developers, and/or, the council, conflict. In its 1996 Report, the ACDC concluded that mediation and/or facilitation was the best way to relieve those pressures, resolve misunderstandings and reconcile competing demands.[3]

Some councils need to recognise that they now need to make a culture shift towards the adoption of more efficient and effective solutions in the management of disputes. Some also need to review the implications of recourse to the court system in difficult or controversial matters and devise ways of maximising the benefits of an effectively integrated system of decision making whose framework allows for greater consensus and by implication, greater efficiency in dispute resolution.

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2 ACDC Report entitled Dispute Resolution in Local Government - Strengthening Local Economy Capacity 1996 p. 4

3 Ibid p. 4

In its 1995 Annual Report, the NSW Ombudsman highlighted an over reliance on legal advice and legal process by local councils. In its 1996/7 Annual Report the Ombudsman claimed that this problem continues largely unabated. It stated that:

> Legal advice, whether from in-house professionals or private practitioners, is expensive - at times horrendously so. There should be good reason for seeking it. Our ultimate test of whether seeking legal advice is 'reasonable' (within the meaning of the Ombudsman's Act) is whether it was in the public interest to do so. Public authorities often confuse or seek to claim personal and/or organisational interest as synonymous with the public interest, when plainly they are not.[4]

The Ombudsman's report justified resort to legal advice when significant uncertainty surrounds an issue. However, the Report claims that often legal advice is sought where no real uncertainty exists; that resort to such means can be 'a delaying tactic or an avoidance tactic where the public authority wants to offset blame for a controversial decision; - councils want to be able to say: "*the decision was based on legal advice.*" '

The Ombudsman's report noted that sometimes the quality of legal advice received by councils was found to be compromised by competitive pressures imposed on lawyers. It was suggested that this had the effect of promoting resort to litigation. In a 1997 Issues Paper prepared by the NSW Law Reform Commission entitled, *Circulation of Legal Advice to Government,* the problem was encapsulated in the following terms:

> While every legal practitioner has a duty to advise impartially on the law, there is a practical and understandable tendency for some private practitioners, who are competing for the client's business, to present advice in ways which are as conducive as possible to the interests of the client. The pressures of competition for some practitioners may not be entirely consistent with the obligation to give advice which the client may not welcome'.[5]

The Law Society believes that the legal profession shares an interest with local councils and the community at large in its promotion of ADR. Its activities since 1987 reflect that view. It has developed its own mediation program and has initiated a forthcoming interactive seminar and workshop on ADR in local councils.

Comparative statistics from the Department of Local Government graphically represented below indicate that some councils still rely on costly litigative practices to resolve disputes that commonly tend to arise in the building and planning areas of council operations:

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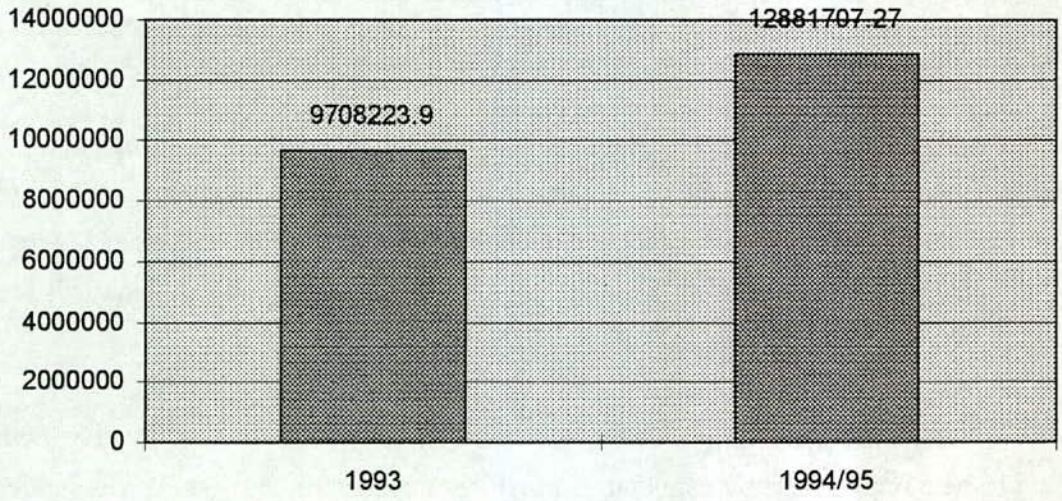
4 NSW Ombudsman Annual Report 1996/7 p. 67

5 Ibid p. 68

TOTAL PLANNING & REGULATORY LEGAL EXPENDITURE - ALL NSW COUNCILS



Source: Comparative Information on NSW Local Government Councils 1994/5

The results of the 1997 PAC survey indicate that councils can further improve their performance, minimise disputes and lower their legal costs by implementing change through :

- more comprehensive and consistent training and education of councillors and staff;
- more effective and efficient practices associated with planning approvals;
- the formalised monitoring and reporting of legal expenses;
- improved consultative practices with the local community;
- qualitative changes to annual reporting practices; and
- the formal incorporation of both an ADR performance indicator and alternative dispute resolution policies based on best practice.

The results of the 1997 PAC survey indicate that many councils have not embraced ADR- its philosophy and its specific practices. In marginalising this activity many councils continue to experience high levels of disputation with members of the local community, who have lodged, or, intend to lodge, development and building applications. Frequent attendance in the Land and Environment Court indicates currently preferred practices and the high legal costs associated with such practices. The number of cases that local councils have taken to the Land

and Environment Court has steadily increased from 30 in 1990/91 to 90 between 1991 and 1993/4 to 160 in 199/45.[6]

The ACDC 1996 Report found that mediation and facilitation could benefit councils in a wide variety of ways. They could:

- provide councils with a practical and flexible dispute resolution system;
- ensure the integrity of the council's role as the decision making body;
- encourage the early resolution of objectors and applicants' concerns;
- save council resources;
- keep cases out of the Land and Environment Court and;
- ensure the faster passage of contested applications.[7]

A survey conducted in 1995 for local government authorities entitled *Mediation and the Resolution of Town Planning Disputes* by Gretel Purser [8] revealed that 39% of councils had not introduced a mediation programme into their operations with 25% of these respondents claiming that it was not a priority.

The PAC recognises a correlation between the formal incorporation of ADR philosophy and practice and reduced levels of expenditure in the resolution of legal disputes. In Report 57 the Committee viewed the principle alternative approach to litigation in the process of mediation or mediated agreement.

The Purser survey demonstrated that correlation. It found that 79% of local government authorities had experienced a reduction in legal costs through the use of mediation with 36% of these respondents claiming a "very significant"[9] reduction in costs and 36% indicating a "moderate" reduction in costs.

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6 Purser, Gretel., Survey of Local Government Authorities Conducted in 1995, March 1997 Report for Local Government Authorities: Mediation and the Resolution of Town Planning Disputes. Figure 1.10.

7 ACDC Report p. 5

8 Purser, Gretel., Survey of Local Government Authorities Conducted in 1995, March 1997 Report for Local Government Authorities: Mediation and the Resolution of Town Planning Disputes.

9 Respondents were asked to indicate whether the reduced costs were "very significant" or "moderately significant".

Fourteen per cent of respondents believed that mediation had not reduced their legal expenses. A significant number of these respondents described mediation as "not very effective" with 14% of all councils claiming that they were unable to assess the effectiveness of their mediation programmes. This would suggest the need for three things:

- the introduction of best practice guidelines for the use of mediation;
- the introduction of performance indicators to measure the effectiveness of mediation programmes; and
- a fresh approach to mediation by some councils which are currently not maximising the benefits of mediation.

Mediation or mediated agreement as a principle alternative to litigation has the potential to render many significant benefits. However, responses to the PAC survey indicate that the true meaning of mediation has been confused by some councils and that, as a consequence, some councils have become disillusioned with ADR.

Due to the numerous terms associated with ADR it is important that, as a starting point in realising the benefits of its processes, various terms are distinguished from each other and defined in a way that sufficiently clarifies the true purpose of each process in question.

This definition of mediation by the Australian Commercial Disputes Centre conveys the general principle underlying the process:

> ...a process directed to enabling the parties to resolve their dispute by agreement. A neutral third party may be involved, but his endeavours will be to encourage an expeditious settlement forged by the parties themselves. There is no "decision". [10]

The intrinsic nature of the process precludes the application of rules but rather aims to reach agreement on a disputed matter. By taking control of their dispute, parties are empowered to resolve the dispute thereby facilitating greater communication than would be normally available within a litigative framework.

Both time and money are saved through mediated settlement of disputes. The Australian Commercial Disputes Centre commented in 1991 that, of the 200 disputes resolved at that

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[10] ACDC Mediation Training Manual 1991 page in PAC Report entitled *Legal Services to Provided to Local Government* Report 57 1991 p. 114.

time using mediation, conflicts were resolved for a significantly lower cost than that of litigation or arbitration, and furthermore, disputes were resolved within one or two days of meetings. Settlements were also binding in 90% of cases.[11]

In ACDC's 1996 publication, *Dispute Resolution in Local Government Planning - Strengthening Local Economic Capacity,* it was reported that cost savings can amount to tens of thousands and even hundreds of thousands of dollars that would otherwise be spent on legal fees as well as staff time. The Report argued that ADR represented a far more efficient, effective and economical way of managing and ultimately resolving disputes than any other method inherent in the traditional adversarial approach. The average cost of dispute resolution in planning matters is $1500 which includes the cost of the mediator /facilitator and case management time.[12]

Traditional contemporary methods of dispute resolution in councils involve the conduct of informal meetings, public meetings and conciliation conferences. ACDC noted that these processes do not allow input from objectors and other interested parties and they are often reduced to forums for protest rather than constructive discussion. [13] The very fact that during 1995 a significant number of councils spent over 20% of their planning budgets defending their decisions in court suggests the inadequacy of current procedures in some councils, particularly those practices which inevitably result in action in the Land and Environment Court.

The ACDC found that ADR simply 'works'; that it has the potential for enormous cost savings; it reduces tensions and anxieties in a community and it provides politically attractive and acceptable solutions to often irreconcilable demands on Council.

But what actually is ADR and why is it such an effective and attractive option? It is important to clarify the different but associated components of ADR processes in order to determine their relevance in local government disputes.

ADR involves a significantly different approach from litigation in many important respects.

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11 Mr D A Newton Secretary General, Aussat Commercial Disputes Centre Dispute resolution Services Information Paper Dec 1990. SEE PAC 1991 p. 115

12 ACDC Op. Cit. p. 11

13 ACDC p. 13ff.

Characteristically, ADR is a non-adversarial approach involving the active co-operation of disputants in the search for a mutually satisfying solution to their problem. Unlike outcomes of a court adjudicated system, there is no winner and loser, as such. Outcomes are determined by the parties themselves rather than by a third party. As Pears states:

> It is a process which is designed to allow the real interests of the parties to be identified and the satisfaction of these interests to prevail over forms, procedures, precedents and legalism.[14]

ADR is a term which encompasses a number of different approaches to dispute resolution, from negotiations that are directed by the parties themselves, to various forms of mediation involving a third independent party. In the latter case, this third independent party will assist disputants in reaching agreement but will not impose any decisions with respect to that agreement.

Conciliation can be distinguished from mediation by the fact that:

> ...the conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice or likely settlement terms and may actively encourage the participants to reach an agreement."[15]

Facilitation is another process which is commonly referred to in mediation practice. ACDC defines the process of facilitation as a meeting of objectors, the applicant and other concerned parties, which might include representatives from the Council, for example. The meeting is chaired by a neutral third party, otherwise known as a facilitator. The meeting is driven, not by a resolution to settle the matter, as is the case with mediation, but rather to:

- identify stakeholders in the dispute;
- identify and clarify the issues under dispute;
- minimise adversarial attitudes;
- articulate the facts of the dispute; and

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14 Pears, Gordon., *Beyond Dispute : Alternative Dispute Resolution in Australia* Corporate Impacts Publications Pty Ltd. Sydney 1989. p. 2

15 National Alternative Dispute Resolution Advisory Council (NADRAC) definitions March 1997 ACT p. 7

- provide stakeholders with an opportunity to have their say.[16]

The National Alternative Dispute Resolution Advisory Council (NADRAC) defines facilitation as:

> "...a process in which the parties (usually a group) with the assistance of a neutral third party (the facilitator) identify problems to be solved, tasks to be accomplished or disputed issues to be resolved. Facilitation may conclude there, or it may continue to assist the parties to develop options, consider alternatives and endeavour to reach an agreement. The facilitator has no advisory or determinative role on the content of the matters discussed or the outcome of the process, but may advise on or determine the process of facilitation".[17]

A facilitation is usually conducted when large and complex matters involving many objectors comes before the Council.

Mediation can be distinguished from the different processes above by the fact that it is simply assisted negotiation. It is a voluntary process in which a neutral third party helps the disputing parties to negotiate their own solution by helping them to 'isolate the issues, develop options and reach agreement by ascertaining their interests and needs.[18]

NADRAC defines mediation in the following terms:

> ... a process in which the parties to a dispute with the assistance of a neutral third party (the mediator) identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.[19]

The three processes identified above all fall within a broader category of definitions generally described as facilitative. They all "involve a third party providing assistance in the management of the process of dispute resolution. Generally, the third party has no advisory or determinative role on the content of the dispute or the outcome of its resolution, but may

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16 ACDC *Dispute Resolution in Local Government Planning - Strengthening Local Economic Capacity* October 1996 p. 6

17 Op. Cit. NADRAC p. 8

18 Ibid p. 5

19 Ibid p. 5

advise on, or determine, the process whereby resolution is attempted."[20]

The above forms of alternative dispute resolution could be said to be genuinely "alternative", by their non co-ercive nature, because decisions are not handed down by a third party but rather outcomes are determined by parties negotiating their own solution.

The essential characteristics of mediation are defined by Pears as :

- non adversarial with the underlying objective being to resolve the dispute rather than establish a winner and a loser by legal or other means;
- a resolution achieved co-operatively by disputants themselves with the third party assisting them but not imposing a solution;
- a process which is agreed in advance by all parties and which defines roles and guides the negotiation;
- a process involving a trained skilled mediator;
- proceedings which are confidential and which can be terminated at any time without the risk of subsequent legal action;
- proceedings which are not legally binding as such but which have the capacity to become legally binding through the drawing up of a contract, for example.[21]

B. THE CASE FOR ADR

Alternative Dispute Resolution has many benefits which essentially stem from its inherently significant capacity to render satisfying outcomes for all involved in its various processes. From allowing disputing parties to meet in person, to generating greater responsiveness to local communuity concerns and issues, conflicting parties are empowered to resolve differences among or between themselves with the result that their conflict will be resolved

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20 Ibid p. 5

21 Pears G. Beyond Dispute: ADR in Australia Corporate Impacts Publications Aust. 1989.

early, quickly and most importantly, in a far cheaper way than would be the case using the court system. ADR increases the chances that matters will not result in court action, that there will generally be reduced community conflict and improved public confidence in the development assessment process. This inevitably amounts to savings for the development industry, council and the community at large.

In a range of case studies presented in the ACDC Report, positive outcomes were achieved in each case. Importantly, the Report identified the ability of ADR to strengthen local government capacity through dispute resolution in planning disputes. Proficiency in ADR techniques, strategies and principles has the capacity to improve the competency of those involved in local economic development so that they may be able to resolve potential disputes before they escalate and, in the process, save Local Government and industry considerable time and money.

The Report highlights two fundamental benefits of ADR - qualitative and quantative improvements in the involvement of the community in decision-making processes. All participants involved in the ACDC Report agreed that they viewed the processes of ADR as highly favourable. For developers, the process allowed them to negotiate with residents prior to an application being considered by Council and as having a sometimes controversial application approved in a comparatively shorter period of time than would normally be the case. Community participants appreciated the opportunity to improve communication with Council staff, Councillors and developers.

The findings of the Purser survey support the case for ADR. Respondents ranked the following benefits of introducing a Mediation Programme:

a. Reduction in costs (legal/court/monetary 18% + time 13% + staff 13%) 40%
b. Process (issues explored, participation of the parties) 20%
c. End result (win-win, satisfactory to all parties, ownership of the dispute) 16%
d. Public relations benefits and improved feedback 9%
e. Third party and community participation 7%
f. Avoidance of the Land and Environment Court 4%
g. Improved standard of amenity 2%

h. Education (increased awareness of mediation and development standards) ..... 2%[22]

The Purser Report also surveyed the benefits of mediation offered in the Land and Environment Court and found the following:

a. Cost savings (monetary 17% + staff 12% + time 6%) 33%
b. Authority of formal surroundings 11%
c. Process (informality) 28%
d. Willingness to participate 11%
e. Use as determinant to further dispute resolution 11%
f. Minor compromises may be made in the Land and Environment Court ..... 6%[23]

The survey also identified problems with the processes of litigation. They included:

a. Costs (monetary 21% + time 19% + staff time and stress and losing 14%) 54%
b. Process problems (adversarial nature, competitiveness, limited evidential rather than merits based, too lenient) 18%
c. Decision makers (bias, inconsistency, lack of knowledge of town planning and environmental issues) 20%
d. Dissatisfaction with the outcome 4%
e. Lack of consideration of community/local issues ..... 4%[24]

The survey indicated that 65% of councils believe that litigation was "moderately effective", only 13% thought it "very effective" with 13% claiming that it was not very effective at all.[25]

C. THE CASE AGAINST ADR

ADR has attracted some criticism in recent years and indeed, there is a strong case to argue that if ADR and particularly the practices of mediation are not carried out according to a set of

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22 Purser, Gretel., Report for Local Government Authorities *Mediation and the Resolution of Town Planning Disputes: Survey of Local Government Authorities conducted in 1995.* March 1997.

23 Ibid

24 Ibid

25 Ibid Figure 1.6

best practice guidelines the process of mediation can be ineffective, inefficient and leading to imbalances in the balance of power structure underpinning the success of the mediation process.

Whilst much of the current momentum involving mediation is directed towards solving disputes of a commercial nature, significant interest has recently been focussed in the area of the environment. The PAC commented in Report 57 that the mediation of environmental conflicts in councils is a far more complex issue than mediation of commercial disputes. Unlike commercial law, planning and environmental law is essentially a branch of public law and involves decisions of public authorities made in the public interest rather than on a commercial basis. For this reason, there is no guarantee that the public interest will always be represented at the mediation table in these types of disputes.

The Committee recognises that best practice needs to be applied to council's mediation program if the decision-making authority, usually the council, is to avoid putting itself in a somewhat awkward position in mediation. If it is a party to mediation, it is quite likely that it may also have the dual role of being final arbiter further down the line. If it acts as mediator itself, it may not be recognised as being sufficiently impartial. Whilst mediation techniques have a significant role to play in the prevention of escalating planning and environmental disputes, best practice needs to be developed and adopted.

In Report 57, the PAC stated that, for ADR to be truly effective and efficient, a number of pre-conditions needed to exist. There needed to be a willingness to negotiate on both sides as well as sufficient delegation of authority. As Mr J Mant, solicitor, claimed:

> In order to have a successful mediation, both parties have got to be prepared to do a deal, or to try to do a deal, and if a deal is stitched up, to agree to it then and there. If you have to go back to a Council meeting in two weeks time, it is very hard to run a mediation. That is one of the issues that has to be sorted through.[26]

As current statistics indicate, a significant number of councils do not delegate sufficient authority to officers attending mediation sessions to facilitate efficient and effective outcomes.

Other factors contribute to the efficiency and effectiveness of ADR and mediation in council disputes. For example, the mediation itself should occur on neutral territory and, in so doing,

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[26] Minutes of Evidence 8 November 1990 p79 in PAC Report p.121

provide parties with the confidence that the process is being conducted impartially. Mediators should be independent or external to councils, as mentioned, and mediators should be qualified by an accredited body to conduct a mediation or facilitation session. For those staff appearing in merits appeals in the Land and Environment Court, adequate and appropriate training needs to be conducted. It is, of course, imperative that staff attending mediation sessions need to be thoroughly conversant with the particular policies of their council.

The case against the use of ADR also involves issues associated with access to justice. One school of thought which advocates the use of litigation rather than ADR, proposes that ADR, particularly if enshrined in legislation or even policy, while not ultimately robbing the individual of his or her day in court, can prolong access to the courts if the case does not fit into the category of those cases easily mediated. In this way, the cost of justice can become greater than would normally be the case if the matter was directed initially to the courts. It is apparent that some cases will inevitably end up in the court system, particularly generated by applicants who have the financial resources to resolve their dispute in that arena and who have significant financial stakes in a settlement that does not entail any modifications to their building or development application.

It has also been said that ADR has the capacity to prevent aggrieved parties from finding facts essential to their cases; that it can conceal important information of broad public concern and can keep the individual disputant, even if victorious, from sometimes obtaining a completely satisfying outcome.[27]

In a supplement to the Coastal Development Inquiry Report (Volume 1), the Legislative Council's Standing Committee on State Development (1991) compounded these deficiencies and argued that, as a general rule, ADR lacks enforceability, the ability to compel participation or the power to induce settlement.[28]

The Purser Survey examined the advantages of litigation in the Land and Environment Court. Respondents saw the advantages in the following terms:

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27 Nader, Ralph & Smith, Wesley, *No Contest : Corporate Lawyers and the Perversion of Justice in America*

28 Legislative Council Standing Committee on State Development *An Alternative Dispute Resolution Primer* Supplement to Report 4 September 1991 p. 6

a.	Neutrality/non political	21%
b.	Finality of the decision, evidential nature	17%
c.	Formal process, independence of the Court and court's preparedness to convene locally if required	24%
d.	Enforcement of the decision made	10%
e.	Legal nature of the process	10%
f.	Percentage who felt there were no advantages	7%
g.	Council delegation often given to officers	7%[29]

The Report also surveyed council's views on the disadvantages of mediation in the Land and Environment Court. It found disadvantages in the following:

a.	Costs (monetary 13$ + time 12% + staff time 6%)	25%
b.	Success of outcome or decision (ie.enforcement)	13%
c.	Limitations of the process	19%
d.	Need council delegation	6%
e.	Overpowering environment of mediation	6%
f.	Role of lawyers	6%
g.	Process Limited - too late	6%
h.	Decision makers (perception of councils - strong direction, need to indicate decision)	6%
i.	Formality of Consent Orders	6%
j.	Not adequately promoted by the Land and Environment Court	6%

The nature of these disadvantages suggests that unless mediation operates using effective and efficient processes it can function to the disadvantage of its users. Moreover, the survey found that mediation occuring in the Land and Environment Court was decidely less frequent than that occuring at the council level. Less than 5% of mediations occur in the LEC while 23% occur in councils. Purser attributes this trend to the lack of promotion and various problems associated with mediation in the LEC and supports the trend toward mediation occuring earlier in council proceedings rather than later in the LEC.

[29] Op. Cit. Purser, Gretel., Survey of Local Government Authorities.

Problems associated with poor mediation programmes

The Purser survey has identified a number of problems experienced with mediation by some councils. The findings do not necessarily support the case against ADR, but rather highlight the need for councils to implement an effective and efficient mediation programme, one ideally, established according to recognised benchmarks. The survey identified the following problem areas in existing mediation programmes in councils:

a. Parties attitudes/unwillingness to participate/inflexibility of councils/ lack of delegation of authority 59%
b. Procedural (introduced too late in dispute, identifying of the issues sometimes difficult, cultural issues, personal agendas, outcome inconsistent with council recommendations, problems with enforcement) 21%
c. Time involved in the process and delays in decision making process 15%
d. Miscellaneous - lack of understanding, education, experience, lawyers become involved ..... 6%[30]

The survey suggested that many councils were uncertain about the effectiveness of their mediation programmes. Whilst 36% indicated that they believed their mediation programmes to be "moderately effective" and 7% "not very effective", 14% did not know how effective their programmes actually were.

[30] Ibid

D. THE ISSUES

1. THE FORMALISATION OF ALTERNATIVE DISPUTE RESOLUTION POLICIES IN COUNCIL PROCEDURES

There has been growing interest amongst both professionals and the community in methods other than litigation to resolve disputes. In 1990 the Law Society of NSW recognised the limitations of the traditional adversarial system of justice in terms of its capacity to cope with an increasingly litigious society. It acknowledged the need for a faster, less formal, more accessible and less expensive alternative concerned "not with legal niceties, but with practical business-type solutions to stand alongside it."[31] The 1997 PAC Survey revealed that resources still needed to be re-directed from legal expenditures to the formal incorporation of ADR procedures in councils.

In 1995 the Purser survey revealed a growing awareness amongst councils of the importance of mediation in the resolution of town planning disputes. Responses indicated that 35% of councils considered mediation "very important" and 29% believed it to be "extremely important". Thirty six percent indicated that it was "important". No council responded that they believed that mediation was not important. [32]

In its 1996 Report the ACDC noted that only one council participating in their project had a facilitation and mediation procedure as part of its building and development application (DA/BA) process. Others used a variety of procedures including formal council meetings, public meetings held by council and conciliation conferences. In each case ADR is not initiated as standard practice but used on an ad hoc basis.

At present councils may convene informal meetings between their planning officers and applicants to discuss the aplication and its potential impact. However, whilst the informal nature of this procedure allows the applicant to guage how the planning department of the council will regard the application, it remains an informal procedure governed by the ad hoc

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[31] The Law Society of NSW submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into Cost of Justice, quoted in PAC Report into Legal Services Provided to Local Government 1991 p. 113

[32] Purser, Gretel., Op. Cit Figure 1.9

nature of decision making at this stage of the process. The processes of ADR are not a requirement of the DA/BA process. Current procedures do not allow input from objectors or other interested parties who may ultimately object to the development application and no opportunity exists to avoid a dispute if one seems likely to occur.[33]

The nature of public meetings held by councils show little commitment to ADR processes. As a general rule, these public meetings are convened only if the application is likely to be contentious. As the ACDC points out, this means waiting until the application has caused considerable anxiety and anger within the local community. Current pratices tend to encourage public protest as the objections become exaggerated and attract media attention.[34] The lack of communication between applicant, council and the local community gives rise to, and exacerbates, the problem. The ACDC recommends that the formal provision for mediation or facilitation in the DA/BA process represents the only solution to extended and expensive disputes.

It is also important to remember that the adoption of best practice is crucial for the success of outcomes. The ACDC has found that unless public meetings are properly facilitated they have the potential to become forums for public protest rather than constructive discussion. This supports the case that having taken the decision to embrace ADR in councils, the adoption of best practice is mandatory in maximising the real benefits of ADR.

Conciliation conferences are where officers from the council's planning department assist applicants and objectors in finding solutions or conditions upon which approvals may be handed down by council and which enable objectors to air their views about the application to the applicant. Here again, unless best practice is followed, this process may be seen to be lacking impartiality while the council officer acts as facilitator. Also, unless the confidentiality of ADR proceedings are maintained, individuals will be reluctant to take part in the process.

In Report 57 the PAC found that there were three areas in which utilisation of ADR techniques may be considered in the approvals process:

- prior to the submission of the application;
- during the assessment stage prior to Council's determination; and

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[33] ACDC p.13

[34] Ibid. p. 14

- subsequent to Council's determination but prior to the commencement of an appeal.

At the pre-lodgement stage, the PAC saw the importance of well trained personnel to provide information services and lend negotiation skills in dealing with potential applicants and other interested parties. It was apparent to the Committee that, from the outset, a proposal showed some likelihood of causing conflict. That conflict could arise at a neighbourhood level or extend across the wider local community. It was suggested to the Committee by Mr W Henningham that:

> ...a trained facilitator should conduct a facilitation between a Council, the developer, interested members of the community, action groups and anyone who has an interest in or concern with the issue with the objective of achieving a development application that is compatible with the local environment and also compatible with the needs of the local people.[35]

At the pre-determination stage the PAC argued that mediation of a dispute at that stage can provide an effective, economic and efficient outcome.

The Committee also recommended that a determination of the precise role of council in a mediation is important. The Committee believed that the mediator must be seen by all parties as impartial, and to this extent, an external qualified mediator should be sought. The Committee was of the view that Councils should generally restrict in-house activities to negotiation and facilitation rather than mediation. Mediation should occur outside the parameters of the Council. One NSW council has developed the concept of a 'legal precinct' within the local community district. This precinct is dedicated to the provision of various forms of infrastructure for the purpose of processing and resolving local community legal matters. That council has developed ways of making more efficient the utilisation of existing facilities surrounding the courts and has, in the process, found that it could incorporate separate facilities for mediation sessions in this area, now collectively termed the 'legal precinct'. In this way, mediation sessions have become integrated into the administration of the local community's legal infrastructure as well as providing neutral territory for the conduct of such sessions.

At the pre-appeal stage mediation or conferences can occur prior to a hearing in the Land and Environment Court where appeals are heard in which the council has attached a condition(s) to the development consent or where the application has been refused. The Purser survey

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[35] Minutes of Evidence 8 November 1990 p.154

indicates that mediations at this stage, and in this arena, are not as frequent as those carried out in council.

The results of the 1997 PAC survey indicate that, of those councils which responded on the subject of a formal policy on mediation, 89 claimed that they had no formal policy in place and 38, that they did have a formal policy.

Amongst those councils which had a formal policy many did not indicate whether such a policy was accompanied by specific guidelines for the application of the policy. Some respondents commented that, whilst no formal policy existed, mediation was practised and promoted. It is noteworthy that whilst many councils responded that they did not have a formal policy, many provided staff with training in mediation. Close to half the respondees stated that they provided no training in mediation to any staff members. Of the 38 who claimed that they had a formal policy, the majority indicated that the mediator used was not a person independent of the council.

Of significance, some of these 38 respondants indicated that mediation was part of the DA/BA process. Some responded that the public did not fully understand the policy or that they did not know that mediation was an available option.

Responses to the 1997 PAC survey generally varied on the question of a formalised mediation policy. One council's response reflected the fact that it did not fully understand the concept or practice of mediation. It advised the Committee that it saw mediation as an opportunity for the applicant to simply put his or her views forward rather than to actually resolve the dispute through a process of mediated negotiation. Other councils, on the other hand, reflected an accurate understanding of mediation and had formally instituted such mechanisms as a Development Control Unit which met with potential developers before the lodgement of the application in order to remove many points of conflict early in deliberations.

The ACDC 1996 Report states that a dispute resolution administrator constitutes a critical component in the success of an ADR program in council. The Report identified the importance of an administrator :

- in being responsible for the program;
- in understanding how mediation works;
- in the expertise generated from their expert training;

- in their determination of cases that are suitable for dispute resolution;
- in their capacity to evaluate each mediation and facilitation that is conducted;
- in their capacity to evaluate the overall program employed by the council;
- in their role of encouraging parties to participate in the process;
- in their role as advisor to parties attending mediation/facilitation;
- in sending parties information and answering queries.[36]

The Report states that the administrator is pivotal in the success of a council's dispute resolution program in that this person would ensure that the program was administered properly and operates efficiently. In Report 57 the PAC identified the need for the recruitment of a person whose role would be dedicated to legal functions within the council. The ACDC's recommendation for dedicated ADR personnel mirrors this need but broadens it now to include the suggested functions of an incorporated standard ADR policy in councils.

Discussion Points

1. **In what specific ways can ADR be formally incorporated into council procedures to allow a dispute to be resolved:**
   - **prior to submission of application?**
   - **during assessment stage prior to council's determination? and,**
   - **subsequent to council's determination but prior to the commencement of an appeal?**

2. **What ADR guidelines should be formally incorporated into council policy?**

3. **If ADR is to be formally incorporated in council procedures and policy should it be qualified by certain provisions with respect to such things as, for example, the use of external mediators and venues for mediation or attendance at accredited mediation training courses?**

4. **What role can the Department of Local Government play in encouraging the formalisation of ADR in council procedures and policies?**

5. **How can members of the public become more aware of the option to mediate a dispute in council? What benefits may be derived from a promotion of this resource with local communities?**

[36] ACDC p. 7

2. TRAINING AND EDUCATION OF COUNCILLORS AND STAFF

The results of the PAC survey indicate that the Department of Local Government, the Local Government and Shires Associations, tertiary associations, the private sector and individual councils provide training programmes for councillors on legal aspects of local government. Courses are now widely available through the Local Government Shires Associations, various universities, the Department of Local Government and various municipal institutes.

The results of the survey also indicate that, whilst many Councils have encouraged the participation of councillors in such programmes, many have not. It was found that only 48% of councillors have received some form of education on legal matters, whether it be in the form of an in house briefing or through external courses. Some councils provide councillors with legal training as part of their orientation programme during the induction process while others responded that they relied on a bulletin for councillors which was circulated monthly. In other cases, where an in-house solicitor had been employed this person acted as an information source for legal matters arising from council operations.

It is noteworthy that, whilst some councils have taken action to improve the information bases of councillors, in most cases, this precluded instruction on mediation, negotiation or alternative dispute resolution. One council indicated the issue areas that were being addressed as part of its training included integrated development, professional indemnity, provision of information/advice to the public, information on the Trade Practices Act, planning and development issues, expert witness training, the roles of the Councillor, the Mayor and the General Manager. Whilst these are necessary and valuable components of any legal training package, and in the interests of greater efficiency, effectiveness and economy, the training and education of councillors could be expanded to include units in mediation and alternative dispute resolution.

The results of the PAC survey indicated that some councils train their staff in house rather than send them to a professional independent training course. Others indicated that only senior members of staff were trained in mediation; others provided training for certain departments within the council.

Some councils had developed an Education and Training Policy which reflected the importance placed on the on-going education and training of council staff. These councils showed initiative in sometimes joining forces with other councils to conduct training. Some

less innovative councils provided staff with no training in negotiation or conflict resolution.

The results of the survey also revealed some inconsistencies in the type of training staff received. In some councils all staff were trained in customer relations more than dispute resolution techniques. In other councils only higher level executives received training in dispute resolution techniques. Some councils left it open for those staff members who wanted to attend training to formally request such training whilst other councils made it compulsory as part of the staff development programme.

DISCUSSION POINTS

6. **What are the best means of training? Should councils adopt a formal policy that training be conducted through external means only rather than in house means whereby one staff members trains others?**

7. **What staff members should receive training in legal issues and ADR?**

8. **What are the areas in which councillors need training?**

9. **What are the areas in which staff need training?**

10. **What might be considered to be an adequate and appropriate level of training for councillors? For example, should a one, two three etc. day course serve as a minimum level of training?**

11. **What might a standardised training package consist of ? Should it include legal training as well as training in ADR?If ADR is to become part of a standard training package, could it be formally incorporated into a policy on training and education in councils?**

12. **How frequently should councillors and staff have their training needs reviewed?**

13. **Should training in ADR become mandatory? Should attendance at training sessions be incorporated into job descriptions?**

14. **Should councils introduce into their policies and practices standard provisions for the ongoing training of councillors and staff?**

15. **Should a provision be included in council's training plan to ensure equitable access to training for all staff members?**

16. **Should all councils introduce a standard training and education policy for council staff and councillors?**

2. AN EFFECTIVE PRE-LODGEMENT SERVICE FOR APPLICANTS

In Report 57 the PAC commented that it believed that greater attention needed to be given to the provision of information services, particularly at the pre-lodgement stage. It was argued that with regard to the actual assessment of proposals, more emphasis was needed on the development of negotiation skills and dispute resolution techniques. Furthermore, it stated that

public consultation needed to occur more frequently.

The results of the 1997 PAC survey show that particular emphasis still needs to be given to, preferably, the avoidance of conflicts, or at best, their early resolution, rather than a reliance on the court system to hand down decisions on difficult building and planning issues or resolve disputes already underway in those areas.

The PAC views the pre-lodgement stage as an appropriate stage for councils to take control, before the application reaches the point of rejection by council and results ultimately in an appeal. In its Management Overview Reports the Department of Local Government suggested that one council did not impose a charge to applicants for a 30 minute consultation, however, a rate of $75 for each additional 30 minutes for subsequent consultations may be appropriate. The Department believes that councils need to develop their own pricing policy, one which can be applied to the specific conditions and requirements of their pre-lodgement activities.

In Report 57, the PAC suggested that councils adopt an approach oriented towards servicing clients rather than administrative convenience. Associated with this finding the PAC concluded that there was a need to limit the inherent complexity of the planning system in NSW which made it necessary for land owners, developers or casual enquirers to consult a library of documents to find out what planning controls and rules applied to certain blocks of land. The recommendation was based on the added assumption that a one plan system had the potential to be adapted to computer systems. The recommendation for a "one stop shop" aimed to simplify procedures for users by avoiding confusion, error and ultimately conflict and legal expense. It was recommended that:

> ... the Minister for Local Government and Minister for Planning investigate the consolidation of the various levels of environmental planning instruments in New South Wales into a form which provides one comprehensive planning document for each parcel of land.[37]

The Management Overview Reports compiled by the Department of Local Government reveal that some councils have not implemented the above recommendation. The Department believes that the 'one stop shop' should be considered in conjunction with the consolidation of planning instruments. It views the integration of the functions of planning, building and development as an important part of effective customer service delivery. It found that, in some councils it reviewed, opportunities did exist where a new corporate approach would

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[37] PAC Report on Legal Services Provided To Local Government Report 57 May 1991 p. xv

necessarily mark the introduction of 'one stop shops' for the processing of building and development applications which are currently administered, in some cases, by three separate divisions.

The Department concedes that there is a strong tendency in local government to allow a multi-disciplinary approach to problem solving so that single professional viewpoints are minimised. The benefits of 'one stop shops' are to be found in reduced clerical costs, an enhanced ability to provide comprehensive and consistent advice, less file handling and administration, greater autonomy to area-based teams and better linkages achieved between control and compliance. It also is consistent with the 1993 Local Government Act and parallels changes made in the Environmental Planning and Assessment Act 1979 which provide for the integration of local applications.

The PAC also found that an effective pre-lodgement service for residents would be aided by the experience of the staff behind front counters. The first point of contact with the Council for most residents and applicants is the front counter of the council. In Report 57, the PAC found that enquiry counters were generally attended by officers who were relatively inexperienced or who were located at the lower levels of the staff hierarchy. This, it was argued, could easily lead to frustration and antagonism on the part of the public and may well have found ultimate expression in subsequent legal action. The Report stated that:

> In the first place, inexperienced staff can give advice which is imprecise, misleading or wrong. The potential for legal conflict is obvious. The Committee is aware that some councils place notices at their enquiry counters warning members of the public that the council denies liability for verbal information given. The Committee regards such a device as an unsatisfactory solution to placement of junior staff at the enquiry counter.[38]

Furthermore, the Committee found that senior staff were needed at counters to answer non routine questions, that enquiry counter staff needed to have adequate knowledge of planning and building systems and that junior enquiry staff had lacked sufficient skill in public relations or negotiation techniques. It was the Committee's view that councils needed to adopt a new approach to the provision of information and service at the pre-lodgement stage.

At that time the Committee recommended that councils rationalise the provision of their information services and employ senior rather than junior officers to attend to public enquiries.

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[38] Ibid

The Report also recommended that:

> ... each council set up an appropriate mechanism for pre-lodgement development and building enquiries wherein potential applicants can receive, by appointment, on-the-spot advice from appropriate senior officers.[39]

The 1997 PAC survey responses were, generally, varied. On the issue of the provision of a pre-lodgement service, some councils indicated that they used trainee staff at front counters, or the receptionist to refer callers to certain qualified people in the council. Other councils indicated that only professionally trained and qualified personnel manned customer counters and provided pre-lodgement advice.

The results of the 1997 PAC survey indicate that the majority of councils operate a roster system whereby professional staff are available to assist with prelodgement enquiries either during certain hours only, usually being from 8:00 am to 9:30 or 10:30 am, and 3:45 pm to 4:30 pm daily. Alternatively such staff were available by telephone, or generally available on an as-needed basis.

A small number of councils have instituted new, improved and formalised processes for pre-lodgement of applications. At one council that process entails a meeting to be booked with the Senior Planner of each of the council's three Area Teams. The meeting is documented and all participants sign off on what matters have been discussed at the meeting. A triplicate recording pad is used with one copy given to the applicant, one filed and one kept in a register. This system now employed by that council resulted from one of the recommendations of the Quality Systems Review of Development Services procedures which was the subject of another question included in another PAC survey.[40]

Another council has introduced a "one stop shop" staffed by specially trained officers. The important feature of this "shop" is that it is located adjacent to the Development Assessment Team's offices where a duty planner is also located.[41] This council has considered the logistics of having qualified personnel close to the service counter.

Another council offer a 'development advisory meeting' which addresses queries at the pre-

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39 Ibid p. xvii

40 PAC Survey results 1997

41 PAC Survey results 1997

lodgement stage. Present at that meeting are three supervisors of the building, engineering and planning divisions of the council.

No council indicated that they had formally considered the inclusion of policies of mediation, dispute avoidance or alternative dispute resolution techniques at the pre-lodgement stage, however, one council advised the PAC that it had incorporated a new mediation policy into its pre-lodgement meetings.[42] Some councils responded that they utilised a consultation process thereby focussing on enhanced community participation at this early stage of the application.

The PAC suggested in Report 57 that councils encourage potential applicants to consider the option of participating in a mediation conference with potentially adversely affected parties prior to the lodgement of the application, to be conducted by a suitably qualified and impartial person. [43] Whilst many councils have not introduced such arrangments, some have introduced formal processes embodied in such things as 'Development Management Units' which hold pre-lodgement discussions with clients.

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42 PAC Survey results 1997

43 PAC Report 57 Op. Cit. p. xix

Discussion Points

17. **Should council charge applicants a fee for pre-logement advice? How much advice should be free?**

18. **What information is currently conveyed to applicants at the pre-lodgement stage? Is it adequate?**

19. **What should a standard pre-lodgement service provide to the public? What are potential applicants asked to do or to submit to council.**

20. **Should a standardised pre-lodgement service provide intending applicants with a checklist of things to do, supporting documents which need to be provided and instructions and advice for the payment of fees etc.?**

21. **What is the optimum level of customer service at the pre-lodgement stage? How do councils see this being achieved? What might constitute an optimum level of service from the applicants point of view?**

22. **Is it feasible to have the offices of fully qualified personnel located next to the service counter for ease of accessibility?**

23. **Should mediation policies or alternative dispute resolution techniques be formally incorporated into the processes of pre-lodgement stage?**

24. **How could this be done and what might be the components of this model of pre-lodgement service?**

25. **Through what mechanism could the community provide its input at this early stage of the application?**

26. **Should professional staff be available to the public for only during certain hours of the day? Is it sufficient for them to be only available by phone?**

3. MONITORING LEGAL EXPENSES: THE LEGAL SERVICES COMMITTEE

In PAC Report 57 it was recommended that:

> "... each Council establish a legal services committee or subcommittee to:
> a. Review the standard and cost of external legal services;
> b. Monitor budgeting on legal services;
> c. Review and monitor both internal and external legal costs on a case by case basis; and
> d. Report to council accordingly.

As an adjunct to that recommendation the Committee also recommended that councils with high legal costs consider the conduct of a legal audit of their policies, practices and procedures

which would be overseen by a special committee, namely the legal services committee and assisted, where appropriate by specialist lawyers.

In addition, the PAC saw great merit in the legal services committee or subcommittee submitting monthly reports to the council, together with appropriate recommendations, specifying the overall legal costs for the year to date, a breakdown of such costs and a summary of current or recently finalised legal actions in terms of costs, progress and outcomes.

Furthermore, the PAC recommended that any reporting of legal costs to Council's legal services committee or subcommittee or the full Council specify both direct and indirect costs, with indirect costs relating to staff time.

The 1997 PAC follow up survey indicates that the overwhelming majority of councils have not introduced a legal services committee or subcommittee. Only 9 councils had instituted a dedicated legal services committee. Of those councils which had introduced such a committee, one council, for example, had nine councillors who were voting members of the committee with a solicitor attending each meeting which was held every month. This committee had delegation to deal with all legal matters involving the council, across all areas of council operations. All legal matters are reported to this committee each month, including environmental (BA's and DA's), property, compliance and industrial matters.[44]

One council has introduced a comprehensive legal services committee which meets every 6 to 8 weeks. The committee comprises the Mayor and all interested councillors with an elected chairperson. The function of the committee in this council is to formulate and review policy and to monitor legal proceedings including judgements involving the council and costs. Council's solicitors attend such meetings to give briefings, to answer specific questions and to review current appeals. Statistical returns are submitted to this committee.[45]

As part of another council's policy is a provision within its articles that any person with a dispute with the council may request in writing that a matter be brought before the Dispute Resolution/Legal Services Committee for consideration. This committee acts as more than a body which monitors the legal expenses of the council. It is a body dedicated to, not only

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[44] PAC Survey results 1997

[45] PAC Survey results 1997

controlling legal costs, but, at the same time, minimising those costs by incorporating dispute resolution as part of its terms of reference. This committee requests that potential disputants identify in writing the grounds for the dispute, the issue to be resolved and the desired outcome(s) from the meeting with the committee.

This committee also manages court proceedings and ensures that a timetable for dispute resolution has been prepared in liaison with Council solicitors. In the event that court proceedings have not been initiated and/or where applications have been undetermined, the committee will review the application and determine whether it is suitable for dispute resolution, call for necessary information, invite the applicant and any third parties to participate in the dispute resolution process and obtain agreement from the applicant not to commence any court proceedings in a matter which is before the Dispute Resolution/Legal Services Committee until the procedure has been exhausted or the applicant withdraws the matter from the committee. This committee also holds discussions on a "without prejudice" basis and makes the status of the meeting clear to the applicant at the commencement of the meeting.[46]

It is noteworthy that the legal services committee implemented by this council incorporate dispute resolution mechanisms in the committee's objectives and operations and that the community is encouraged to participate in the work of the committee.

Another council identified in the PAC survey incorporates into its legal services committee an external solicitor who provides specialist advice.The terms of reference of the committee include an assessment of the ramifications for the public interest if legal action were to proceed. Such an assessment included consideration of the option to take no further action, to commence proceedings or to consider alternative courses of action. A further assessment of those options are made by this committee with respect to the costs incurred by each option and the likehood of success if council proceeded in defending its position.[47]

Where councils have instituted a legal services committee, some do not meet formally but rather prepare current matters and convey these matters to other members of the committee on an as needed basis.

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[46] PAC Survey results 1997

[47] Ibid

Where some councils have not set up a dedicated legal services committee they may have a Finance or General Committee which deals with a schedule of legal services. Others use Building and Development Committees for land use appeals, and Works and Services Committees for service provision issues. Others use an interdepartmental Legal Services Review Working Party which meets on a programmed basis when council undertakes a review of its contracted legal services provided by individual solicitors and law firms. Some others refer legal matters to a General Purpose Committee which meets monthly. In most cases the Committee of the Whole considers legal issues as required or they are delegated to individual staff.

The PAC 1997 survey found that most councils do not have a legal services committee but simply utilise officers to administer the council's legal matters.

The aim of establishing legal services committees in local councils is to introduce an effective mechanism for monitoring the legal affairs and the legal costs of council matters. The Legal Services Committee should have set objectives and should operate according to a set of best practice guidelines. One particular Management Overview conducted by the Department of Local Government indicated that in that Legal Services Committee, no formal mechanisms were in place to obtain feedback from the Committee or no formal strategies for reductions in legal expenditure. In addition, that Overview showed that matters that were brought before the Committee for decision did not appear to be clearly delineated which ultimately prevented the recommendations of the Committee or observations of the Land and Environment Court from being transformed into action, action that would result in a reduction in legal expenses.

Prompted by a concern for the quality of legal advice provided to local councils the NSW Ombudsman's 1996/7 Annual Report recommended that legal processes used by public authorities should have transparency and integrity built into them. In this way also public confidence in the process could be maintained.

The Report drafted some general effective and workable principles aimed at avoiding the abuses identified in its survey of legal advice provided to public authorities generally and councils, in particular. Those that have application for the legal service committee or the use of in-house solicitors or external lawyers, were those which stated that:

- wherever possible, instructions should be written and accompanied by supporting material;

- all phone conversations regarding legal advice should be properly recorded in file notes;
- communication between lawyers and clients should focus on clarifying instructions and supporting factual material;
- providing draft advice to clients is acceptable if it is for the purpose of clarifying instructions and supporting factual material;
- if further advice is required, or if the advice provided misconceives instructions or misinterprets supporting material, wherever possible, this should be dealt with by further written instructions requesting supplementary advice;
- public authorities are entitled to wave privilege and must carefully consider whether and to what extent it is appropriate to provide all or some of the advice when requested to do so by third parties;
- considerations relevant to the decision as to whether it is appropriate to waive privilege include: whether to do so would damage the legitimate interests of the public authority: whether to do so would breach privacy: whether to do so is in the public interest; and
- public authorities should not misrepresent their legal advice by, for instance, being selective about what the advice says or concealing or misrepresenting the context in which it was given.[48]

The terms of reference of those Legal Services Committees currently operating in councils tend to be restricted to matters of pending or actual litigation. These Committee can broaden those terms of reference and embrace ADR and, in so doing, act as a reference point for the use of ADR in all relevant and appropriate council procedures and processes. Councils currently share the opportunity to integrate ADR into a Legal Services Committee thereby not only broadening the scope of this group's work but also as a means of promoting, implementing and monitoring the use of ADR in councils.

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[48] NSW Ombudsman's 1996/7 Annual Report OP. CIT. p. 71.

Discussion Points

27. **Why have the majority of councils chosen not to introduce a dedicated Legal Services Committee?**

28. **What should be the powers of the Legal Services Committee? Should it act as an advisory body or should it be delegated full authority to resolve disputes?**

29. **Should dispute resolution become a standard part of the legal services committee's policy and approach as well as its ongoing training? Should a dispute resolution administrator become part of that Committee?**

30. **How often should the Legal Services Committee meet?**

31. **What should its terms of reference be? Might such terms of reference include referrals for mediation?**

32. **How should it be structured?**

33. **How might its role be defined with respect to the global objectives of councils? For example, should it go beyond the provision of such things as advice, evaluation, information to matters of comment on policy and policy direction?**

34. **Should it submit individual reports to the full Committee on progress it is making in reducing councils legal costs and should its performance be measured through appropriate performance indicators and reviewed on that basis?**

35. **How can ADR be incorporated into the legal services Committee's structure and agenda?**

36. **What council members should sit on the Legal Services Committee?**

37. **To whom should the Legal Services Committee report and how often?**

38. **What procedures would facilitate the subsequent formal enactment of the Committee's resolutions?**

4. SUFFICIENT DELEGATION OF AUTHORITY

In Report 57 the PAC stressed that, in order to be successful, Councils must be prepared to delegate sufficient authority to their representatives attending meetings to enable them to reach agreements, if possible, with the other party. To this effect, the Committee recommended that:

> ...Councils delegate sufficient authority to their officers attending mediation and issues conferences in the Land and Environment Court to enable them to reach agreements with the other party, if possible, which would be satisfactory to the council.[49]

At that time the Committee stated that problems may arise in Councils being reluctant to delegate sufficient authority to persons attending mediation conferences. However, the Committee stated that, if a council was serious about the incorporation of mediation into council operations, it was essential that it gave careful thought to the various means of implementating mediation. At the very least, the Committee felt that it was, and continues to be, important that the person attending these conferences have clear instructions, a signed certificate of delegation and sufficient authorisation to negotiate towards a real agreement. The Committee endorsed the following advice contained in the LEC's practice direction:

> It is expected that persons appointed to act on behalf of any of the parties to a mediation will have the authority to authorise a resolution of the dispute. If a party does not have theat authority it will substantially weaken the mediation process... (In class 4 conferences) it is requested that the parties have present a representative who is authorised to settle the matter at the conference or who can obtain instructions at short notice as to whether an agreement to settle on a particular basis is authorised.[50]

The Committee also suggested that agreements reached between parties in mediation conferences in terms of conditions imposed in a development consent or building approval should be made binding.[51]

The 1997 PAC survey found that there was a distinct need for more extensive use of delegated authority in the areas of building and development applications and that such should form part of an integrated strategy by councils in the resolution of disputes.

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49 PAC 1991 p. 96

50 LEC Practice Direction:Mediation and Issues Conferences in PAC 1991 p. 96

51 PAC Report 57 Op Cit p. 97

The 1997 PAC survey asked Councils whether their staff attending mediation and issues conferences in the Land and Environment Court had sufficient authority to enable them to reach an agreement with the disputing party without referring back to the council.

Approximately half the respondents indicated that they did provide their staff with sufficient authority to reach agreement. The remaining half indicated that no authority was vested in staff members attending such meetings. In some cases where authority was delegated, it was in the form of either qualified delegation or specific delegation which meant that council authorised staff or solicitors attending meetings to only act within prescribed parameters.

When asked whether council had a policy on the delegation of authority, 11 councils indicated they did not. Most indicated they reviewed their policy regularly and made it publicly available.

It is noteworthy that some councils actually delegated authority but did not have a formal policy governing delegated authority while others had introduced a dedicated unit for implementing and documenting the processes of delegated authority within council.

The results of the PAC survey also suggest an important trend. In those councils which asserted their preference for mediation and alternative dispute resolution, delegation of authority occurred more frequently and with less qualification.

Discussion Points?

39. What are the common reasons why councils do not delegate full authority to council officers in resolving disputes?

40. Can matters be successully resolved using qualified or specific delegation? What outcomes have resulted from such incomplete forms of delegated authority?

41. Have councils considered how they might delegate more authority to staff in LEC matters or in mediation sessions?

42. What should a policy on delegated authority include?

43. What are the reasons for not having a policy of delegated authority? What are the benefits of an ad hoc approach to this practice?

6. MEETING COMMUNITY NEEDS THROUGH GREATER COMMUNITY ACCESS, SERVICE AND PARTICIPATION

The PAC views the general principals of ADR as having an important role to play in helping to reconcile the complex demands imposed upon council decision makers with the needs of the local community. ADR is primarily geared to achieving such a balance.

From the community's point of view, enhanced involvement by the community at select stages in the decision making process, and a better type of involvement by the community, are the natural outcomes of a less conflictual and more consensual approach to decision making in local community planning matters. To this extent, the PAC views the incorporation of ADR into all aspects of council operations as necessarily benefiting both the council and the local community at large.

The current problem is that, as the ACDC 1996 Report points out, an ad hoc or informal process for community involvement does not necessarily allow stakeholders to have access to all information or the same opportunity to find mutual solutions. Objectors must be involved in the DA/BA process in order to understand the limitations imposed on councils in their decision making. As the ACDC points out unless stakeholders have the opportunity to discuss issues and under circumstances where discussions are seen to occur in an atmosphere of impartiality, such things as zoning requirements, for example, inevitably culminate as issues for protest and dissent.

The Department of Local Government's Management Overview Reports indicate that the poor planning performance of some councils tend to rob local residents of the opportunity to contribute to the future of their local community. The Department found that one council's major planning instruments were so anomolous and inconsistent that they tended to be the major cause of chronic disputes for that council. Amendments were suggested to currently ambiguous definitions of such things as floor space and gross floor space as well as more consistent forms of height control. These changes would be part of a general improvement city wide in development standards. The Department believes that it is essential in the preparation of the new controls that consultation with the community is extensive to ensure that all those affected are given an opportunity to contribute to the future of their local community. The introduction of a City Enhancement Plan (CEP) in 1993 by one innovative council enabled the community to join in partnership with council to achieve the community's vision of its future.

Other ways in which councils can satisfy community needs by embracing ADR is through the more effective management of complaints. A more community focussed operating style would entail greater use of a complaints management tracking system suggested in a particular Departmental Practice Note. The Department believes that effective complaints handling goes to the heart of customer service.

One of the most basic principles underlying the processes of ADR is openess and transparency in decision making and particularly community members involvement in their own matters before the council. Moreover the Local Government Act 1993 (Chapter 4, Part 1, 10(1) states that:

> Everyone is entitled to attend a meeting of the council and those of the committees of which all the members are councillors, except as provided by this section.

The Act makes provision for closed meetings under certain circumstances under sections 10 (2). However the Department's Management Overview Reports indicate that some councils have breached the Act by resolving that meetings are closed to the public in cases where issues being discussed are controversial and where the community should judge determinations made by councils. The Department also reported unacceptable practices in closed sessions where councils discussed simple issues relating to the duties of various officers or the minutes of previous meetings. The accountability of council decisions is closely linked to participation by the community in issues and matters of public interest.

The Committee views access to council officers as sufficiently important for council officers to review their hours of availability. It has been shown that the introduction of flexible working hours in some councils has increased accessibility for local residents to council facilities especially when administration centres often close at 4 pm.

The ACDC Report highlights one of the most complex problems councils face - the inherent fear of change within local communities. The Report identifies a correlation between a generalised fear of change within local communities and the lack of formalised ADR processes in councils. It states that:

> An ad hoc or informal process encourages fear of change, as there is no recognised place for discussion between all parties in the application process, away from political pressures. The lack of contact between the parties leads to growing mistrust and widens the gap between positions.

This lack of trust also infect participants' views of the council and its decision making process.[52]

7. ENHANCED DISCLOSURE IN ANNUAL REPORTS

In Report 57 the PAC examined the general availability, or otherwise, of valuable information concerning local government legal expenditure. More specifically, the Committee considered the question of the availability of sufficient information for both decision makers in local government and those interested parties within the community.

The Committee concluded at that time that the reason why so many councils had difficulty providing the Committee with details of their legal expenditure was that those figures were simply not available. The PAC expressed its concern about the insufficiency of readily available information about how councils were spending ratepayers money in legal matters. The Committee concluded that councils had lost control over their legal costs. It considered that only well compiled and accurate information would allow councils to regain their control over those expenditures.

In the PAC's Report 57, Mr D McSullea, Acting Secretary of the Local Government and Shires Association, expressed the view that most councils were not breaking down their legal costs sufficiently. The 1997 PAC survey found that still today costs incurred by councils through attendance in the Land and Environment Court are not being broken down by the majority of councils. One hundred and eighteen (118) councils indicated that staff involved in preparation for legal action and in court appearences do not make a separate account of the time spent on these activities. Eight (8) councils indicated they did individually itemise their time. Some councils indicated that such an itemisation would be very useful in recovering costs. Some made use of a process of estimation on the basis that it usually took 2 working days to prepare a case in the Land and Environment Court for a staff member who was already familiar with the case and and extra 2 or 3 days for someone unfamiliar with the case. Some councils indicated they would be introducing a system of individual accounting in accordance with National Competition Policy or that they would be considering restructure to accomodate the objectives of this policy. Some councils indicated that the number of legal matters they were involved in did not warrant such a system while others stated that, whilst their involvement in legal disputes was low, time-costing did, nevertheless, assist them in assessments of their performance.

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[52] ACDC Report p. 16

Reporting these breakdowns of time and money spent on legal issues in the annual reports of councils is a critical mechanism to assure both council, and the community to which it is accountable, that the costs allocated to solicitors fees and those in the Land and Environment Court are justified by the results achieved.

Whilst some councils itemise their legal costs, many fail to provide this information in their annual reports. The importance of adequate and qualitative information has prompted the Department of Local Government, as a matter of standard practice in its ongoing compliance checks, to remind councils of the need to comply with all aspects of annual reporting requirements under the Local Government Act 1993.

The most accessible reporting mechanism for local communities to judge the effectiveness of councils legal costs is the councils annual report. Section 428 (2) (e) of the Local Government Act 1993 requires Council in its annual report to contain:

> ... a summary of the amounts incurred by the council during that year in relation to legal proceedings taken by or against the council (including amounts, cost and expenses paid or received by way of out of court settlements, other than those the terms of which are not to be disclosed) and a summary of the state of progress of each legal proceeding and (if it has been finalised) the result;

The Department of Local Government holds the view that the mandatory reporting of legal expenses constitutes a significant contribution to the accountability of councils to their local communities.

The PAC believes that as a general rule, costs regarding full hearings before the Land and Environment Court and major issues of law or planning principles which council is defending should be disclosed in annual reports. In addition, costs regarding Section 34 Conferences entered into by council should also be reported and costs generally incurred by councils where council has rejected the recommendation of its staff officer and proceeded to either a Section 34 Conference or a full hearing of the Land and Environment Court which has then overruled the determination of council, should also be reported.

The Department also regards the submission of internal evaluative reports to Committees of council from council staff in the area of building and development, as important. Such evaluations may include comment on the associated effectiveness of decisions to incur costs and suggestions for improvement. The Department views internal reporting as extremely useful in measuring the performance of council in the area of building and development. The

Departments performance indicators should provide councils with a means for self evaluation.

Discussion Points

44. Do members of local communities conside the information contained in annual reports of councils to provide adequate indication of the council's performance?

45. If not, what additional information should be reported?

46. What information would be considered sufficient information?

47. Would local community members be interested in receiving information on legal expenses incurred by councils or ADR?

48. How can councils become generally more accountable in their annual reports?

49. Should councillors be required to provide reasons for their decisions and reasons why staff recommendations were accepted or rejected in annual reports?

8. PERFORMANCE INDICATORS

Key performance information enables local communities and each council to compare trends relative to other councils.

The Department of Local Government is committeed to the implementation of best practice in local government operations so that every local community can receive the most efficient and effective delivery of services. Since 1990 the Department has published a large range of performance indicators which have been designed to monitor the performace of all councils in NSW across their diverse spectrum of activities.

The current set of performance indicators developed by the Department for the purpose of accumulating valuable information about the performance of councils are:

- the level of council's residential rates

- degree of dependence on alternative sources of revenue
- sufficient liquidity to meet short term obligations
- the impact of debt service on operating revenue
- staff numbers
- per capita expenditure for library services
- library loans on a per capita basis
- relative charge for waste management and recycling
- efficiency of waste collection
- effectiveness of recycling service
- effectiveness of waste minimisation
- cost of maintaining urban sealed roads
- cost of maintaining rural sealed roads
- costs of maintaining unsealed roads
- level of sewerage accounts
- cost of providing sewerage
- level of water accounts
- cost of providing water
- speed with which DAs are determined (mean turnaround)
- speed with which BAs are determined (mean turnaround)
- speed with which DAs are determined (median time)
- speed with which BAs are determined (median time)
- level of disputation in planning and regulatory process
- cost of environmental and health services
- cost of recreation and leisure services
- cost of community services.

The Purser survey indicates that some councils are in doubt about the effectiveness of their mediation programmes. Seven per cent (7%) responded that they considered their programmes to be " not very effective", whilst 14% responded that they were unable to assess the performance of their mediation programmes.

Whilst a performance indicator currently exists to evaluate the level of disputation in the planning and regulatory process, it may be appropriate for the Department to consider the development of a performance indicator for the purpose of evaluating the use of alternative dispute resolution. The introduction of this indicator would have the effect of formalising the incorporation of ADR practices in council standard procedures as well as encouraging

councils to consider and adopt best practice in their use of ADR techniques. The indicator may be configured in the following equation:

$$\frac{\text{Mediated and resolved disputes}}{\text{Total resolved disputes judicial or mediated}}$$

An additional financial indicator may be developed for the purpose of measuring cost performance. It may take the form of the following:

$$\frac{\text{Average cost of mediated disputes}}{\text{Average cost of judicially determined disputes}}$$

Because poor mediation programs have the tendency to undermine the whole process of ADR in council operations there is a case to argue that individual performance indicators should be considered and developed for application to the very specific components of an ADR policy based on best practice. The ACDC have suggested areas for consideration. These may include, for example, the appropriate personal and professional characteristics of a mediator or facilitator - whether that person is respected by the community, has no vested interests in the outcome of the mediation/facilitation, is accepted by the parties as impartial or neutral, is trained by an accredited training organisation and is sufficiently conversant with the DA/BA process to effectively manage the resolution of the dispute.[53]

Other performance indicators may reflect consideration of who would attend a mediation session. The ACDC have suggested that these sessions be attended by the applicant, anyone the applicant requires to discuss the plan (the architect, builder, solicitor), all the objectors and their advisors and if appropriate council staff to answer technical questions.[54]

In a similar way, ACDC has suggested that a facilitation be attended by all of the above as well as a broader group including councillors and other interested observers.

Questions arise about whether or not councillors should attend mediator or facilitation. ACDC

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[53] ACDC Report p. 9

[54] Ibid p. 9

argue that, for DA/BA mediations, the Council is not a party to the dispute and as a consequence, should not not be involved in the decision making process. The ACDC found in its case studies that involvment by the council had both advantages and disadvantages depending upon the nature of the particular case. It was recommended that a decision to either include or exclude council staff was appropriately made by the person managing the case.

The provisions discussed by the ACDC indicate the need for the development of best practice guidelines as well as certain performance indicators. Amongst its more general objectives, this discussion paper seeks to promote the use of best practice guidelines for ADR in NSW councils.

DISCUSSION POINTS

50. Would the incorporation of an ADR best practice guidelines and performance indicators encourage more councils to embrace ADR than is currently the case?

51. What form should the performance indicator take? Should it focus on measuring the level of consensus reached on disputed matters, with the view to providing managers with feedback about the extent to which they are satisfying the development needs of the community, or should it be structured in a way that permits a measurement of the financial position of the council with respect to its legal expenses thereby providing management with the means to make certain judgements about its approach to cost reduction or minimisation? Are both indicators required?

52. Should a standard set of best practice guidelines on ADR be developed by the Department of Local Government and should those guidelines act as benchmarks in the Department's measurement of the future performance of councils?

53. Should performance indicators be audited to measure their ongoing appropriateness?

E. SENDING IN YOUR VIEWS

You can send in your views by mail to:

The Director
Public Accounts Committee
Parliament of NSW
Macquarie Street, Sydney NSW 2000.

By Fax to (02) 92302831
By E-Mail *to aimrich@parliament.nsw.gov.au*

Responses would be appreciated by April 30, 1998.

Free copy of this publication from
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APPENDIX

Report No. 57 - Legal Services to Government

The following questions relate directly to the recommendations contained in each report:

IF THERE IS INSUFFICIENT SPACE ALLOCATED, PLEASE ATTACH STATEMENTS.

1. For those Councils who have legal expenses which exceed approximately 20% of their regulatory and planning costs in the last 5 years, have specialist legal staff been employed? In addition or alternately, has there been a permanent Legal Officer position created within the Council's staff? If not, please state whether these options have been considered.

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2. Do Councils have legal service committee/sub-committees? If so, could you briefly outline how they function i.e. objectives, activity, frequency of meetings etc.

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3. Do Council Officers involved in legal action make a separate account of the time council staff allocated to this duty?

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4. Has the Council been involved in the provision of training in negotiation skills and meeting procedures for those officers dealing with building and development applications? Please provide any relevant details.

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5. Does the Council have a policy which advocates holding mediation meetings between applicants and disputing parties? If so, is it frequently used and what type of location is selected?

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6. Does the Council have a policy on the delegation of authority to Officers who determine development applications? Is this policy reviewed regularly and is it made publicly available?

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7. Does the Council have training programs for professional and technical Council staff conducting merit appeal cases for the Land and Environment Court?

8. Do Council staff attending mediation and issues conferences in the Land and Environment Court have sufficient authority to enable them to reach, if possible, an acceptable agreement with the disputing party without referring back to a superior in the Council?

9. Does the Council have a policy whereby residents/organisations with potentially controversial approval applications are encouraged to participate in mediation conferences?

10. Has the Council run or participated in any training programs for locally elected representatives which outline legal aspects associated with local government?

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11. Has the Council adopted a plain English approach to its planning documents, including development control plans and advisory documents?

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12. Does the Council adopt a similar approach in its written correspondence with applicants who are refused a development application or other complications as under Section 92(2) of the Environmental Planning and Assessment Act 1979? Is there a standard format for such communication?

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13. Does the Council have an established list of consultants in environmental assessment and other fields who can assess development applications when Council resources are unable to adequately carry out this task?

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14. Has the Council organised any training programs in planning and environmental assessment for its building staff? Please provide details.

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15. Has the Council undertaken any reviews of its development and building processes in the last few years? If so, could you outline the conclusions drawn and what, if any, measures were implemented?

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16. How many staff, and at what level, are allocated to information services? Has this changed in the last 5 years?

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17. Is the Council able to provide adequate facilities to conduct informal and formal meetings involving planning and other matters?

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18. Does the Council offer a service w hereby customers can get on-the-spot advice from the appropriate senior officer on pre-lodgement development and building enquiries?

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19. Does the Council have a specific policy on advertising and/or notifying the public of development applications that include public consultation? If so, please answer the following: Is this policy provided free on request to customers?
Is it subject to frequent review?
Is this policy also part of development control plans?

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20. Can the Council please provide a complete pay scale for its employees?

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Report No: 53 - Auditing of Local Government

1. Have any training courses on the role of the auditor and interpretation of financial reports been offered to elected members of Council?

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2. Does the Council present its annual budget estimates in the same format as its annual accounts to allow ratepayers to readily assess Council's performance?

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3. Does the Council have a Reserve Fund to accommodate the funding of long-term goals?

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4. Does the Council have an Audit Committee and if so, could you outline its role, objectives, composition and whether it comments on the funding of proposed future activities?

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5. Does the Council draw up an audit contract with its external auditors and if so, what format does this take?

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6. What requirements does the Council insist upon in its selection of an external auditor?

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7. What dismissal procedures would be utilised by the Council if it wished to terminate an auditor's appointment and what mechanisms of redress are available to the auditor?

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8. Have the Council's auditing systems been subject to peer review?

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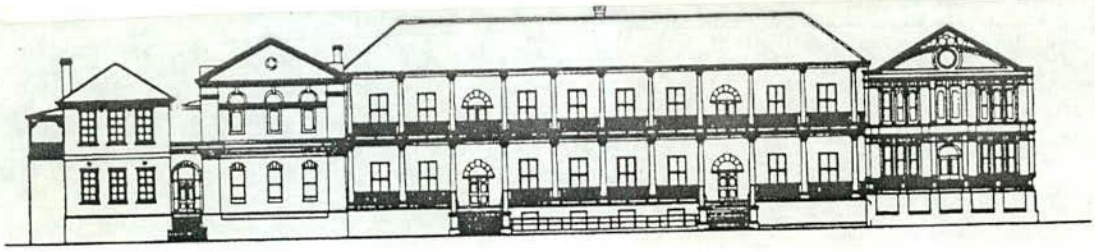
PUBLIC ACCOUNTS COMMITTEE

LEGAL SERVICES TO LOCAL GOVERNMENT: MINIMISING COSTS THROUGH ALTERNATIVE DISPUTE RESOLUTION

Discussion Paper



Report No. 22/51

November 1997

[No. 112]

SENDING IN YOUR VIEWS

You can send in your views by mail to:

The Director
Public Accounts Committee
Parliament of NSW
Macquarie Street, Sydney NSW 2000.

By Fax to (02) 92302831
By E-Mail *to aimrich@parliament.nsw.gov.au*

Responses would be appreciated by April 30, 1998.

Copy free on request:-
Yael Larkin 02-9230-2630