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Local government and ADR

Saving the ADR way: the case of local government

Peter Condliffe

Saving legal costs

I was recently reading a Discussion Paper published by the Public Accounts Committee of the NSW Parliament titled *Legal Services to Local Government: Minimising Costs Through Alternative Dispute Resolution*.¹ This Paper quoted figures showing that legal costs to local government in NSW have been rising exponentially in recent times and that between 1993 and 1994–95 they increased from \$10 million to \$14 million. It was found that one council with strong development pressures attributed 60 per cent of its planning and regulatory costs to its legal expenses, another just under 50 per cent, and several other councils attributed just under 40 per cent of their costs to legal disputes.

The Paper highlighted the need for councils to review their dispute resolution practices and to consider seriously the introduction of ADR processes not only in order to save legal costs but also to more effectively involve local communities in planning and development issues.

A recent 'interactive seminar' titled 'Dispute Management in Local Government' brought together a diverse range of people from around NSW interested in these questions.² There now appears to be considerable impetus in NSW to improve the dispute management capacity of this important area of government. I could not find any figures for Queensland although one large council indicated that it probably spent 60 per cent of its legal bill on planning disputes.

The Dispute Resolution Centres in Queensland have had, since their beginning, a

close association with local government. Local government has usually been among the top three referring agencies, along with police and legal services, to the centres, and this indicates the extensive contact they have with local communities. Local government organisations, in common with many private sector and community organisations, have begun to realise that to minimize costs and to increase service effectiveness, particularly client satisfaction, will require a careful analysis of systemic ADR processes.

There is no doubt in my mind that both time and money are saved by the mediated settlement of disputes. For example, the Australian Commercial Dispute Centre commented in 1991 that the 200 disputes resolved at that time using mediation were resolved at a significantly lower cost than that of litigation or arbitration and, furthermore, disputes were resolved within one or two days of the meeting. Settlements were binding in 90 per cent of the cases reported by that centre.³

More recently the same organisation reported that in a facilitated case one council estimated that it saved \$100,000 in legal costs. The facilitation cost \$4,000.⁴

Our own experience indicates the possible savings to government, the public and other agencies from the use of effective ADR processes. I refer to a report we prepared over a year ago which outlined the potential cost to agencies of non-ADR intervention in some typical cases and a copy of the table⁵ developed at that time which I think represents a fair 'guesstimate', follows (see p33). It is clear that well

placed and well resourced mediation services, whether in government or private organisations, will save their clients and the overall community considerable amounts of money and other resources. An added bonus is that satisfaction levels of disputants is also substantially increased.

Integrated Planning Act

In Queensland these considerations will become increasingly critical because of the introduction of the *Integrated Planning Act* (IPA) which commences in 1998. This legislation is a major new initiative, which will provide the framework to standardise the entire planning and development approval process, enabling up to 60 different approval processes to be condensed into a single system. The existing framework of multiple, and often fragmented, approval processes will be replaced with a single uniform system for development approvals known as the Integrated Development Assessment System (IDAS). When the IPA commences, existing planning schemes will become 'transitional planning schemes' and other local planning instruments will be similarly saved and continue to operate under the legislation. The consequential amendments to supporting legislation will be completed, along with amendments to other legislation, over the 12 months following the introduction of the IPA. These developments will no doubt cause some confusion but also pave the way for a review of existing dispute resolution mechanisms within planning schemes. The introduction of similar legislation in NSW later this year will likewise open opportunities for the creative use of ADR processes. ●

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Potential cost to government and non-government agencies of non-ADR intervention in six typical case types: 'a guesstimate'

Typical dispute type	Mediation frequency	Potential non-ADR involvement	Potential cost to agencies and parties
1. NEIGHBOURS Neighbours in dispute and threats made in relation to barking dogs	6.5 per week	<ul style="list-style-type: none"> Police called several times 1-2 hours 	\$1,000 plus
2. FAMILY/HOUSEHOLD - NON SPOUSAL Son who is unemployed and 'given up' has become violent and threatening	2 per week	<ul style="list-style-type: none"> Police Psychiatric Services Local Court (Peace and Good Behaviour Order) Private lawyers 	\$1,000 - \$2,000
3. SPOUSAL Peace and Good Behaviour Order taken out against husband relating to threats of violence against wife. Husband wants to meet wife to discuss property/access details	2 per week	<ul style="list-style-type: none"> Family Court Police Local Court Private lawyers 	\$2,000 - \$10,000
4. WORKPLACE School teachers in dispute with Principal over working relationships	0.5 per week	<ul style="list-style-type: none"> Education Department Union Anti-Discrimination Commission 	\$5,000 plus
5. ABORIGINAL COMMUNITY Community - wide tension resulting in near riots relating to: <ul style="list-style-type: none"> inter-racial relationships provision of services alcoholism vandalism police relations 	5 per year	<ul style="list-style-type: none"> Local government Police Aboriginal Legal Aid Service State Government agencies Community agencies Courts 	\$100,000 plus (most of this relates to savings in police overtime)
6. MAJOR PUBLIC INTEREST AND MULTI-PARTY Convening of interested parties in a dispute relating to provision of major environment facility	3 per year	<ul style="list-style-type: none"> Police Local government Environmental groups Industry groups Private lawyers 	\$100,000 plus potential savings in future litigation, damage to property etc.