

# If winning counts, avoiding court really appeals

The art of negotiating a successful result at mediation should be left to the experts.

When a developer and a local council appear before the NSW Land and Environment Court there is usually only one winner. The other side doesn't come second: they lose.

A court appearance is generally the last resort for planning and development law, says Gary Green.

He's a partner with Pikes & Verekers Lawyers, which provides legal advice on litigation, property, commercial, local government and planning matters.

Green heads a team of lawyers with the expertise to help developers achieve the outcome they want for their projects. He says the firm takes the practical approach of "what's the problem, how do we fix it?"

"When a developer lodges an appeal on development, generally the first option you decide on is whether to go to mediation or straight to a hearing, and about 80 per cent of all matters go to mediation. . . I would be very reluctant to recommend to an applicant that they don't go to mediation," Green says.

Of those, "about 70 per cent, over the past five years, will have settled in one way or another without the need to go before a full-blown court hearing with all the associated costs".

The key to success includes preparation. Green says he and his team have a reputation for resolving matters through mediation. Doing so can save a developer tens of thousands of dollars in court proceedings and costs.



Successful mediation includes having insight into all sides of planning and development.

"Successful mediation doesn't just happen, it's not the sound of one hand clapping," says Green. "You can't just go to the mediation in the hope that something positive will happen.

"You have to be prepared with your witnesses, experts and potential alternative solutions, as well as an understanding of

exactly where you can make concessions to get the councils over the line."

Pikes & Verekers also represents about 20 NSW councils. Green says this insight into all sides of planning and development makes for better advice to clients.

"The best lawyers in the Land and Environment Court are the ones who know what

the other side is thinking, or what they need to get out of the mediation or the court process," he says.

Increasingly, Green and his team are becoming involved in the development process at a much earlier stage. "Ten years ago, people would get a refusal from a council and then they would come to us and we'd lodge an appeal," he says. "Now we get contacted to go out to the site to take a look at the potential consequences, the risks and what other issues might arise so that we can guide them through the development process.

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"The developer wants our opinion before they spend another \$200,000 preparing architectural plans and details."

If a problem does arise, Green recommends getting in contact so that a site inspection with the planner and architect can be arranged, a council's concerns can be discussed and a strategy to resolve issues can begin to take shape.

Costs are critical to most developers. Green says many people don't understand that the process involves more than simply lodging the paperwork for an appeal.

"But we run tight on our overheads. As I tell everyone, 'the Monets in reception are all prints'. People are very cost conscious and they are looking to see where the dollars are being spent and how they are being used."



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