



Environment Court of New Zealand
Mediating Commissioner Minute

Court-assisted mediation for Plan appeals - Remote access

Introduction:

Court assisted mediation is provided to parties to assist in the achievement of a mediated settlement of their appeals. If settlement is not reached, the mediation will refine and identify the issues in contention, and scope of evidence which will be brought forward to hearing. The objective being to achieve resolution of differences efficiently within the auspices of the RMA. For this reason, parties must be prepared with information to support their positions at the mediation.

The Court's Practice Note should be read in conjunction with this minute which provides additional information to assist with remote attendance at mediations.

Since the COVID-19 pandemic, the Court has been able to continue to provide mediation (ADR) assistance to parties by providing for remote attendance via audio visual link (AVL).

Face to face mediation preferred:

While not the preferred method of attendance, AVL attendance can be appropriate where travel arrangements are problematic (particularly where a participant is based overseas) or where any participant has a medical vulnerability. This may also be appropriate where different parts of the Country are in different COVID-19 Alert Levels.

If Parties seek to attend via AVL, they should contact the Court Registry as soon as they receive the Notice of a mediation, with their request and reason they require AVL attendance. It will be at the mediating Commissioner's discretion as to whether their request can be accommodated.

AVL method:

Usually, if remote mediation attendance is contemplated it forms part of a mediation which is also accommodated on a face to face basis. This "hybrid" arrangement requires certain facilities to be in place at the venue where the face to face participants are located, and technology residing with the party attending remotely.

The Court's Registry works with the relevant Council to ensure premises for the face to face mediation is appropriately equipped.

The Microsoft TEAMS software is used by the Court. This does not require a remote participant to have the software on their computer.

It operates by way of an electronic calendar invitation sent by the Court Registry to the remote participant via email. That invitation provides a link, and when that link is followed by the participant, software will automatically be downloaded to their computer to facilitate the AVL meeting.

Minimum requirements for remote attendance at mediation:

- A quiet room in which only the person in attendance is located (note confidentiality requirement for mediation)
- A computer with a relatively up to date operating system
- A built-in microphone and camera in the computer or those items configured to the computer.
- A strong WIFI/internet signal/connection

Due to the complex nature of managing a mediation where there are remote participants, the number of participants should be kept to a minimum.

This can be achieved in the case of where more than one person is representing a party, one person is nominated as spokesperson with others on standby to be brought in when required. In some cases, it may be possible to locate representatives together in a room and participate as a group though one connection. This will require the appropriate video camera, screen and microphone equipment.

Attendance notification:

Due to the complexity of set up, the Court Registry requires written confirmation with email address for calendar link, telephone number and personnel details, a minimum of 4 working days ahead of the mediation date where AVL is agreed.

If a party is unfamiliar with remote access they should contact the Registry well ahead of the mediation to arrange a test for connectivity.

Key things to remember once in the mediation:

- The Court Practice Note still applies
- Remember to put your microphone on mute when you are not talking
- Take advantage of the “raised hand” function on the screen to notify the meeting organiser that you wish to speak.
- Take advantage of the “messaging” function on the screen to send a message to the organiser.
- Have a phone ready as an alternative form of communication (Mobile phones are useful as they can be used for text messaging as well as voice calls)
- Make sure the registry has the telephone number you will use as backup in the information you provide to the court setting out attendance details.
- Only identified persons can be present at the mediation, so this information should be provided to the registry as set out above, with all names, position, email for link, and telephone contact.

The Court Direction timeframes for preparation and circulation of documents and pre-mediation discussions are to be adhered to.

The Court encourages pre-mediation discussions as this has often led to settlement before mediation and at the very least, should lead to a refining of the issues and clarity of differences to be mediated.

For Plan mediations, a draft agenda is set by the Council and pre-circulated ahead of the mediation. The mediator will address the agenda upon commencement of the mediation, to promote efficient topic flow and discussion.

All parties who have indicated they will attend a mediation (this means representative if there is to be more than one connection for a single party), should be present a few minutes before the start time to ensure connectivity.

The face-to-face mediation sessions will take place in accordance with the Court's usual guidelines (see Practice Note).

It is expected that all participants will have read the Court Practice note (particularly Section 5 and Appendix 2), which is found on the Environment Court web page: <https://environmentcourt.govt.nz/>

Completion of mediation:

At the completion of each mediation, there is to be a written Mediation Agreement. This reflects the outcome of the mediation; both matters agreed and disagreed, and records settlement actions and those matters to be brought to the Court's attention to be set down for hearing.

In face to face mediation, this document is to be signed by a representative of each party with appropriate authority at the mediation. Where a party is in attendance via AVL, they will receive an email of the agreement and must reply by return email with their authentication of the Mediation Agreement. This must all be completed before the mediation is concluded.