ENVIRONMENTAL CONFLICT

IS MEDIATION THE ANSWER?

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**Introduction**

In this article I explore and discuss the opportunities for the use of mediation and neutral facilitation as a means of both dispute avoidance and dispute resolution in the Irish planning and environmental system. To do this, I examine the current Irish planning framework and explore whether mediation and neutral facilitation are possible or desirable, and whether legislation and practice should be changed to accommodate these practices. In addition I outline the work in which C.I.Arb. Ireland is engaged to develop and promote mediation in the Irish planning process.

I was drawn to this subject firstly by my own experience in private practice as an architect for 35 years. Conflict is endemic in the built environment at all levels from planning stage through to construction and handover. Thus, most if not all participants will need to have negotiation and dispute resolution skills whether innate or learned. As a practising arbitrator I was latterly drawn to the Harvard Negotiation Project in the seminal work "Getting to Yes" Roger Fisher & William Ury (1982). The authors state "This book began as a question: What is the best way for people to deal with their differences? and sets out "a practical method for negotiating agreement amicably without giving in". This encouraged me to undertake training and to become an accredited mediator.

It was not long before I turned my attention to the Planning and Environmental sphere. Are the existing dispute resolution systems adequate? Is there a place for mediation? On researching the subject, I was not surprised to find that environmental mediation was already well established in a number of countries, in particular Australia and New Zealand, whilst in the U.K the National Planning Forum had recommended positively leading to the introduction of a planning mediation service.

At an away-day run by The Chartered Institute of Arbitrators Ireland in 2012 I presented the results of my research and suggested that a special interest group be set up to develop and promote planning and environmental mediation in Ireland, following which I was appointed chairman of the group.

The Irish Branch of C.I.Arb now has a panel of specially trained and accredited members who have begun to engage in planning and environmental mediation. The type of mediations undertaken so far include:

Neighbour/developer disputes

Neighbour disputes.

Developer /developer disputes.

In many of these disputes complaints had been made to the planning authority, warning notices had been issued and legal action was imminent. All of these disputes were settled. The panel has

recently completed a major review and report on the public consultation process used by one of Ireland's largest utility companies – Eirgrid.

**Dispute endemic in the planning process?**

Planners will be no doubt be well aware of the potential for dispute in the Planning and Environment sphere. If according to Taylor (2007) the planning process is "[...] to guide and ensure the orderly development of settlements and communities." it is not hard to see where dispute can arise.

Not only does "guiding and ensuring" raise issues of control and compliance but these issues may be complicated where one group has or is perceived to have greater power and resources than another.

Planning is based on the principle of "the common good". Pursuing this often involves a careful balancing of the rights of the individual and that of the wider community. This is a fertile area for dispute.

"Orderly development", in my opinion, implies that there should be a consensus with respect to principles and objectives which in reality may be difficult to achieve where, for instance, there are different social and cultural groups within society who may not share the same values. We see this played out in the letters pages of our newspapers, the internet and on the streets.

Intrinsic in planning disputes is that there is a party who initiates the proposal (a private developer, a public utility, a local authority) and the one who is affected by the proposal (the private citizen, company, community). "Proposal" means, not just a planning application, but all environmental plans which affect others e.g. development plans, local area plans, public utilities, public events. Planners will be well aware that opinions and attitudes can be starkly different between proposer and those affected by the proposal.

In this context the potential for environmental disputes is quite significant, and in fact they are an everyday occurrence in modern society. Indeed at present Ireland seems to be racked with such dispute.

**The Range of Planning Disputes.**

What is the range of disputes which might be amenable top resolution by mediation?

Large infrastructural projects which may include: wind energy, electricity transmission and gas exploration. Two particularly high profile disputes are:

- Corrib Gas Field: In 2005 Enterprise Oil sought to build a refinery to exploit an off-shore oil field of one trillion cubic metres of natural gas. This proposal generated huge local opposition, planning appeals, protest and legal actions including imprisonments. Only now is gas coming to shore.

- Eirgrid: The plans for fulfilling a mandate from Government in respect of electricity transmission to up-grade the National Grid and North-South Interconnector have been greeted with outrage and protest in respect of both the design of the system and perceived shortcomings in the consultation process.

In the context of the need to change our energy consumption and production to take account of climate change, society has an interest in resolving energy disputes in a timely and efficient manner. Historically public utility companies had been given considerable autonomy in how they plan their networks. They were also given the power to compulsorily acquire lands. The individual who sought

to challenge a public utility scheme was faced with confronting an entity which had vastly superior financial and technical resources in a context where legislation was supportive of that utility. Compliance with European Law and Directives has brought a change to this situation. The provisions of the Aarhus Convention require the provision for public participation in decision making and access to justice in environmental issues. Public utilities are no longer exempt from the need to obtain planning permission, for example. The rights of the individual have been substantially expanded and the public is more aware of those rights. The internet has become a forum for sharing of information and comments and for organising protest. Ireland's post-colonial culture of grudging acceptance of public administration and the law is changing. We now have a well-educated and organised community which rightly seeks to be engaged and consulted in respect of any decision which affects it. Taking this into account a consensual resolution of disputes is clearly in the interests of the common good.

Perhaps the most common type of dispute is the third party objector to a commercial development. Typically this might be a community or individual who wishes to be heard in connection with a development (such as a large housing scheme) which they perceive will affect their homes or community. Where a developer pre-consults with the community prior to a planning application being made the likelihood of third party objections can be reduced. But this is quite rare in my experience, the developer preferring a more self-directed approach and quite prepared to battle all the way to An Bord Pleanála. Resultant disputes have huge consequences for the wellbeing of those affected members of the community and the efficient realisation of the development. Legislation now being introduced for large housing schemes will allow for the application to planning authority to be bypassed with direct application to An Bord Pleanála. In my opinion, this is a recipe for disempowerment of the community and will ferment dispute.

On a different scale we see the domestic planning dispute. This type of dispute, although appearing small, can be more personally damaging than the big protest issues. Frequently we see neighbour disputes over planning applications or infringements. These often involve long drawn out expensive legal proceedings which result in personal stress and often permanent estrangement between neighbours. I recently mediated one such dispute between neighbours. The parties disagreed as to how or whether the developer had complied with the planning application with consequent threat of High Court action. The dispute was three years old and both parties were traumatised by the dispute. The mediation settled on the day and was sealed with a handshake and a promise of future neighbourly co-operation.

**What is Environmental Mediation?**

The Scottish Executive, Development Department (2007) defines mediation as being: "a process involving an independent third party whose role is to help parties to identify the real issues between them, their concerns and needs, the options for resolving matters and, where possible, a solution which is acceptable to all concerned"

It is important to differentiate the role of the mediator from that of other "neutral third parties" such as arbitrators, adjudicators and conciliators. The Mediation Bill 2012 has yet to be introduced into law and will codify mediation and the role of the mediator:

- The mediator is completely neutral.
- The mediator's role is not evaluative. Their role is to assist the parties in coming to an agreement.

- Mediation is an entirely voluntary process.
- Mediation is a private, confidential process.
- Mediation is without prejudice. Evidence given at mediation cannot be used in any other forum.

Typically parties will commence the process by agreeing the mediators' appointment and the terms of the mediation. The mediator will meet the parties prior to mediation in order to understand the nature of the dispute and engage the parties in the design of the mediation. The mediation may be a meeting or series of meetings. Typically the mediation will consist of plenary sessions (where all parties are present) and caucus sessions (with parties in private). Parties are free to bring friends and advisors (including legal advisors) but are encouraged to speak for themselves. For it to be effective parties must come to the mediation being "open to settlement" and have "authority to settle" or be able to obtain such authority.

Parties must give the other participants and opportunity to speak uninterrupted and must not engage in threatening or abusive behaviour. The mediator will work to clarify the dispute and identify possible solutions as they arise. In caucus session the mediator will be encouraging the parties to examine the dispute from all perspectives including that of the opposing party. Parties will be encouraged to separate their wants from their needs and to identify what might be the best or the worst alternatives to a negotiated settlement. If successful, the parties will come together to sign an agreement at the end of the process. The outcome may be agreement on a range of issues and agreement to disagree on others. Parties may agree to defer agreement on certain issues and would re-convene at a future date. Even where no agreement has been reached, the issues in the dispute may have been clarified reducing the extent of the dispute facilitating later solutions to emerge.

**Is there a place for environmental mediation in Ireland?**

By environmental mediation I include the role of the third party neutral in public consultation and in facilitation to assist with improving communication, negotiation and consensus building.

In seeking an answer to this question we must keep in mind to the principles that underpin Irish planning and administrative law, which include:

- Openness - that the system be open to all. The rights of "third parties" are rightfully enshrined in the Irish system.
- Transparency - that all parties have the right to information related to the making of policy and decisions.
- Consultation - that all parties have the right to be consulted in respect of public policy and projects.
- The right to appeal generally available in the planning process, and the possibility of judicial review by the Courts

Roeze (2010) in a report commissioned by the National Planning Forum and Planning Inspectorate in the U.K suggests that the many advantages of mediation go beyond issues of time and cost, important though these are and include the contribution that mediation can make to building capacity for dialogue between planners, developers, communities and other stakeholders especially in complex cases such as major development.

**Planning Control**

The opportunity for dialogue between the potential applicant and the relevant planning authority was greatly improved by the provisions of Section 247 of the Planning and Development Act 2000 that a party wishing to make a planning application can be provided a pre-planning consultation with the planning department.

However it is important to note that such consultations cannot to be taken as negotiations but are limited to the giving of advice to prospective applicants. In practice they provide an opportunity to obtain the planners views on the development without any commitment being given. Third parties who might be affected by the application are excluded from the process.

In my view, this limits the effectiveness of the consultation process.

The developer could convene a mediated pre-planning consultation with the community/neighbours in order to clarify potential issues and to fine tune the design. These could be presented as an agreed position at planning application stage.

Could the meeting be widened out to include the participation of the planning officer or other technical officers?

When a planning application is made there is a strict eight-week time limit for giving a decision. Third parties can submit "observations" within a strict 5 week period. In effect these observations are generally objections seeking the refusal of permission or modification of the proposal. The applicant may have an interest in addressing these observations by meeting with the observer and agreeing changes. However, should the applicant meet with the observer and agree to revised the plans there is no provision for submission of "unsolicited additional information". Also, there are only three weeks from the close of the third-party submissions process to the issuing of the planning decision which is often too short a time for negotiation/dispute resolution.

In effect the applicant and a third party objector have neither the time nor the space to resolve any differences between them and are on a collision course to the planning appeal process which will inevitably begin when the planning decision has been made. Thus, the opportunity for mediation at a most critical time is not currently available. The process as currently structured would seem to exacerbate if not create conflict. There may well be the prospect of agreement in substance between the parties (including the planners) but the current system precludes them from exploring common ground or reaching an agreement which would be in the best interests of all. In my opinion, this needs to change.

In the Irish system the planning authority can only "stop the clock" by issuing a request for additional information. Presently, the planning authority only uses the request for additional information system to seek clarification or to seek an amendment to the submitted plans. The applicant is given 6 months to submit the additional information.

Would it be possible to devise a system where the planning authority (as part of a request for additional information perhaps) could suggest to the parties that they could request an extension of time for mediation to take place? This would allow the parties the time and space for mediation. Any agreement reached as a result of the mediation between the parties could be submitted as additional information for the consideration of the planning authority but not binding on it.

**Planning Appeals**

An Bord Pleanála (Planning Board) is generally considered the "court of appeal" against the decisions of the planning authority. Initially conceived as a board comprised of both planners and "laymen" the Board has been given increasing responsibilities and powers as planning law has been developed. Whilst it cannot make policy it is in effect the final authority on planning matters aside from the courts. Because it is charged with resolving appeals it has a duty to act judicially; it must follow established procedures and make decisions based on the facts and the law. A decision by the Board can be the subject of judicial review by the Court. Thus the Board must insure that it has acted in a transparent and judicial manner in coming to its decision. The decision is both non-consensual and is binding. It is in effect a form of arbitration and thus with such certainty come disadvantages of expense, delay and an outcome of which the parties cannot control.

Early on in my architectural practice I was sometimes asked by a client to seek an oral hearing for their planning appeal. The client's intention was that their voice could be heard by the opposing party (the planning authority and/or the other party) under the auspices of a neutral third party. Unfortunately current practice would make this a naive expectation. Oral hearings may imitate court hearings complete with the giving of evidence, expert opinions, legal counsel, and the other elements and trappings of a judicial process. They are essentially adversarial and can be intimidating for the lay participant. They are very expensive and largely outside the reach of the private individual.

We know that there are strict time limits for filing appeals and responses by the parties. Once a party submits an appeal or a response to an appeal they are not allowed to further correspond unless requested by the Board. Thus, there is no effective forum for discussion or negotiation between the parties to an appeal (an applicant and a third-party appellant for instance). This deprives the parties of an opportunity to reach a compromise. Often the decision of the Board when it is finally made may not suit either of the parties! Can we not have a provision similar to what can occur in civil litigation whereby the parties would be free to communicate, negotiate and ultimately resolve their differences and then present an agreed joint position document to the Board? The Board of course would not be obliged to accept parties' agreement but it is difficult to see how it would not be persuasive in the making of the Board's decision. The Board would remain free to consider public policy or the submissions of other parties to the appeal.

The New Zealand Environmental Court which is the equivalent of An Bord Pleanála uses mediation to encourage settlement, to narrow and settle issues within disputes and to reduce complexity in advance of a hearing. This recognises that "success" in mediation in planning is not restricted to finding a complete solution but is also valuable in supporting and simplifying later stages in the process making hearings more efficient.

"Stopping the Clock"

Of the shortcomings in the planning process and the opportunities for mediation that I mention above a common thread is the need to make provision for "stopping the clock". British experience supports this view.

Roeze (2010) states that the results of fourteen interviews with key players in the planning system included amongst its findings that ".....lessons can be learned from mediation processes in other areas of law, where mediation is the default process and it can be decided to "stop the clock" by having an adjournment"

**Planning Schemes**

Quite aside from planning applications there are many other areas where mediation would help to avoid or resolve disputes, for example:

Schemes made under Part 8 of the Planning and Development Act (2000). Where the local authority grants planning permission to itself for its own scheme having "considered" the observations of the public or affected third parties. This is done by written submission and there is no forum for the observer to negotiate and resolve differences with the local authority. Mediation would provide such a forum.

Local area plans and Area action plans. Mediation would provide a forum for negotiation and agreement.

**HOUSING (MISCELLANEOUS PROVISIONS) BILL 2016 - Housing Projects – Applications Directly to An Bord Pleanála**

In response to the current housing supply crisis the Government has published this Bill with the stated intention inter alia: ..... *to give effect to Action 3.6 of the Action Plan for Housing and Homelessness and provide for the introduction of a temporary fast-track planning consent procedure for strategic large scale housing developments (100 units +) which will be determined by a new Strategic Housing Division to be established within an An Bord Pleanála. This new procedure draws on the existing consent procedures for other Strategic Infrastructure development such as major roads, railways and power transmission lines.* -----

Head 37(s) of the Bill requires that the prospective applicant shall first enter consultation with the planning authority ( a procedure which for all other applications is discretionary under S. 247 of the Act) It also requires that the prospective applicant shall enter consultation with An Bord Pleanála. There is provision for the planning authorities views to be notified to the Board and also for *: a consultation meeting pursuant to subsection (1), to be attended by the prospective applicant and representatives of the Board and the appropriate planning authority, or planning authorities as the case may be, shall be arranged by the Board to take place within two weeks of the date of service of the appropriate planning authority' or authorities' records and opinion or opinions under subsection (7)(b) and (c). (9)*

Whereas the Bill states that the purpose of consultation is to facilitate the Board to decide on whether the proposed application qualifies for the direct application process under 37(r) it is clear from the foot note that it is intended to be a full pre-planning consultation process where the merits of the development would be discussed. The foot-note to section 37(s) states : *The purpose of Head 5 is to provide for a focused time-bound mandatory pre-application consultation process in relation to strategic housing developments, between the Board and the prospective applicant with a key input from the relevant planning authority(s). The pre-application consultation stage is designed to improve the quality and the efficiency of the application process and is a vital element of the new fast track procedure. ... The pre-application consultation process would be concluded within a 9 week period...*

What is clearly absent from the consultation process is the voice of the third party who is likely to be affected by the development. Furthermore there will now be provision for the planning authority, Planning board and Applicant to meet and come to a consensus as to the proposed development in the absence of the third party. Coming to such a consensus in advance of the planning application process would surely contravene the Aarhus principles because in effect the a decision in principle

may have been arrived at in advance of public consultation. One solution would be to amend the Bill to allow for the voice of the third party to be heard at this round-table meeting. The prospective applicant would simply advertise his intention to pre-consult and invite interested parties to attend. This could be a mediated forum which would facilitate an open without- prejudice discussion which could lead to a consensus as to the form of the planning application.

Direct application to the Board deprives the third party of the opportunity to make observations to the planning authority. The planning authority will lose the opportunity to seek modification of the plans which the planning authority has very effectively used to address third-party concerns.

The Board retains the discretion to hold an oral hearing. *This Head amends section 134 to provide that the Board may hold an oral hearing in respect of an application for a strategic housing development under new section 37R. However, it also provides that the Board would only consider the holding of an oral hearing in particular circumstances where the Board may consider it is necessary. This is for the purpose of ensuring and maintaining the speed and efficiency of the determination process, particularly in the context of the urgent need to facilitate the delivery of housing as provided for in the Action Plan for Housing and Homelessness.*

Whereas the Bill gives the Board discretion to extend the 16 week time period for giving a decision on an application it is probably the case that the Board would be very reluctant to do so to provide for an oral hearing, given the seriousness of the current housing emergency.

Could the Bill be further amended to give An Bord Pleanála the discretion to offer mediation to opposing parties ?(including the local authority ) Such a mediation could be undertaken in a neutral forum without the presence of the decision maker ( Bord Pleanála). The goal would be to reach a consensus which would then be presented to the planning board for its consideration in the decision making process.

Such a mediation could take place within the defined time period of 16 weeks. The Bill gives the Board discretion to extend the 16 week time period if necessary.

How will those who have feel they have been "short-changed" by the planning process react when an adverse permission is granted? Will be have more "Shell to Sea " protests?

I believe that amending the Bill to include a mediated engagement would facilitate real public consultation and engagement in the process. This could result in the developer and the community identifying areas of mutual benefit in the proposed development which would improve its prospects for being accepted by the community.

**Event Licences**

The cancellation of the Garth Brooks concerts in Dublin is a graphic example of the need for early mediation. In this case a "mediation" took place after an irrevocable decision was made by the local authority.

**Planning Enforcement**

In planning enforcement disputes where it is considered appropriate mediation could be attempted as alternative to litigation.

**Taking In Charge**

Disputes regarding the taking in charge of the roads and services typically involve many competing interests: planners, roads engineers, developer, local residents. Mediation is an ideal forum to bring them together.

**Public Consultation**

In recent times we have seen considerable progress in the promotion and development of the concept of public consultation. In June 2012 Ireland ratified the Aarhus Convention which includes public participation in decision-making.

I suggest that Irish Planning should follow the principles of consultation as set out by Hodgson in a British Court case, R v Brent London Borough Council (1985) and are known as the Gunning Principles:

- consultation must take place when the proposal is still at a formative stage;
- sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;
- adequate time must be given for consideration and response; and
- the product of consultation must be conscientiously taken into account.

Public consultation is now recognised as an essential where large scale works are proposed which affect large numbers of people. These works are often proposed by public bodies or corporations (such as planning authorities, roads authorities, public utility corporations, public/private partnerships etc.) who have extensive financial, technical and administrative resources. Compare their resources to that of those whose lives and property may be affected by the proposal and who may have very little financial or technical resources of their own and very little influence at high levels of administration. The lack of proper public consultation can produce suspicion, disengagement, conflict, outrage and protest. This can leave broken lives and disaffected communities in its wake.

There has been much public criticism of public consultation in Ireland on the basis that it was limited to the dissemination of information and that the canvassing of submissions was little more than tokenism with no real prospect of the proposal being changed in any meaningful way. This points to the need for a "third-party neutral" involvement to:

- Assist all parties in the design the consultation process.
- Facilitate the consultation in a neutral fashion, attending to any power imbalances.
- If required, deliver an unbiased report on stakeholder feedback.

The third- party neutral in this case would be a mediator but with additional training and experience in the skills of public consultation.

Essential to the process will be a commitment to follow the Aarhus and Gunning principles' that the consultation can effect a change to the original proposal, including the "zero option". The mediator would ensure that the design of the consultation process includes this commitment. The mediator will be charged with the responsibility of reporting fairly on the feedback from both parties which is

then published in an agreed forum. This would help to ensure that the feedback is taken into account by the operator.

**Benefits of Environmental Mediation**

The benefits of using mediation in planning include:

- Flexibility - it is not constrained by rules.
- Ownership - the parties take ownership of the process and of the problem. Most importantly revised plans and arrangements can be agreed with the possibility of more creative solutions emerging
- Maintaining relationships - The parties can maintain a working relationship even where agreement is not reached on all matters. This may avoid conflict at the construction stage.
- Resource efficiency. - Mediation is a low-cost, speedy and efficient process which does not necessitate extensive technical or legal advice. Parties with little financial or technical resources are less likely to be disadvantaged and a good mediator will work to balance out any power imbalance.
- Accessibility - Mediations are not held in a court room environment. Often the parties will be involved in designing the process, choice of venue etc. They will be more confident that their voice will be heard.
- Information, shared learning and capacity building - parties can learn from each other. Technical information may be shared leading to more informed choices and decisions.
- Confidentiality - Mediations are confidential to the parties. The information shared at mediation cannot be discovered by the courts.

In my opinion, society would benefit from having a means of resolving disputes through mediation by reducing the number of appeals and the time and cost of reaching decisions.

Research on the potential of mediation to reduce appeals and to effect savings was undertaken by Wellbank (2000 & 2002) concerning the New Zealand Environment Court, which uses mediation. Wellbank found that appeals were avoided in 75% of mediated cases resulting in very significant savings in time and cost.

**Mediation is not a Panacea**

It would be a mistake to assume that Mediation is a panacea for all planning ills. It is not appropriate to every dispute, for instance where deliberate law breaking or criminality is involved or where granting the requested permission would be prohibited by law (such as making a material contravention of the development plan). Rather it is for use alongside the other dispute resolution methods within the planning system. Nonetheless, mediation has been shown to be applicable to a wide range of environmental disputes.

Core Solutions Group in association with Scottish Government in its " Guide to the Use of Mediation in the Planning System in Scotland" (2009) provides examples of how mediation has been successfully employed on a range of planning issues from simple planning applications to large scale community conflicts in Australia, USA, South Africa, Scotland and England.

**Limitations**

In promoting mediation either by way of working within or changing the system we must be mindful of principles which on the face of it would appear to be conflicting. For instance, we need to balance the need for confidentiality within the mediation process with the requirement that the planning system must be open and transparent. I see no issue with an applicant for permission and a third-party objector having a private and confidential mediation where the results of that mediation (the agreed position) are then offered into the public forum (the planning process) as non-binding for consideration.

The right of third party appeal is particularly protected in the Irish system (as compared to our neighbours in the U.K.). This means that the planning process must at all times be open to third party participation. It is difficult to see how any mediation could be (or indeed should be) private and confidential where a planning officer or public official takes part.

Mediation is not a surrogate planning process. Environmental Mediation agreements would not be private. Non-participating parties will still have the right to opt out of the mediation process but the planning authority is still legally bound to consider their views. The planning authority or An Bord Pleanála will still make the relevant decision, taking public policy and the views of all parties into account. If we can fashion a participative system that will foster trust and reduce the delay and costs associated with the current restrictive confrontational model, the economy and society in general would benefit.

**Who pays?**

A frequently asked question is "Who pays the mediator?" More importantly, "Who initiates mediation?"

The answer will depend on the circumstances, for example:

- In a private neighbour dispute the parties may agree to share the cost.
- Where one party has more resources it may propose to pay most or all of the cost e.g. a developer in mediation with a homeowner or community group.
- Where there is a public undertaking it may be in the public interest that the public body would bear the cost.

In New Zealand a free mediation service is provided by the planning authority. Whilst this is unlikely to be the case in Ireland it does not mean that local authorities would never consider financing a mediation. There may well be cases where the planning authority would consider it more economically prudent to engage in mediation as an alternative to litigation, for example: planning enforcement and taking-in-charge disputes.

It is important that the neutrality of the mediator is not perceived to be compromised by one party bearing the costs of the mediation. This can be achieved in two ways:

- Give all the parties a say in the choice of mediator and in the event of disagreement the mediator would be nominated by an independent body.
- Engage the parties in pre-mediation and give them an opportunity to contribute to the design the mediation process. This will enhance the parties feeling of ownership of the mediation process and will encourage trust.

**The prospects for Mediation in Ireland**

In a Report from the Law Reform Commission, "Alternative Dispute Resolution; Mediation and Conciliation" (2010), mediation was considered with a view to its role in the resolution of planning application disputes. In concluding its consideration of the matter, the Commission recommended that "local planning authorities should consider whether a more formal approach to resolving issues in the planning process such as the introduction of a mediation scheme is appropriate".

Mediation is now provided for in the Rules of the Superior Courts and is increasingly being promoted by Government and the European Union as a first resort in terms of the resolution of disputes.

The Mediation Bill 2012 published by Government deals with codifying and regulating mediation in Ireland. Government has included the Bill in its current legislative programme. It is now hoped that the Bill will be enacted before the end of 2016.

In promoting environmental mediation we can point to other countries which provide a template for a new system together with a base of experience from which to learn.

Mediation was adopted by statute into the Australian town planning appeal system in 1994. Their planning system shares may characteristics with Irish and British systems. In Australian system there are two types of mediation provided:

- In-house mediation for disputes before and during the planning application and
- Mediation for appeals of decisions.

We can learn from the promotion and development of environmental mediation by our nearest neighbours Britain and Scotland.

**C.I.Arb. - Planning and Environmental Mediation Project**

We in Chartered Institute of Arbitrators Irish Branch have charged ourselves with lobbying for the introduction of mediation into the existing planning system. We see this as supporting the balanced development of the environment in the interest of the common good. We seek to make the existing planning system more efficient and effective and to encourage public participation based on trust. Through our base in Dublin we offer a mediation and facilitation service through our panel:

- 20 mediators, all of whom have complementary qualifications in the planning, environmental and legal disciplines.
- All mediators have successfully completed specialised training in environmental mediation.
- We operate a Code of Conduct and Complaints Procedure.
- We engage in Continuing Professional development and Learning and Sharing groups.

Since the formation of the panel our members have been engaged on a number of appointments ranging from a planning enforcement/neighbour dispute to a large scale public consultation study. Our immediate objective is to build up a stock of case studies (some of which I have mentioned in this article). We will use these case studies to advocate for change by showing to the public and to Government the very real advantages of mediation in the Irish planning and environmental systems.

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