**The City of Parramatta Council and Newington Community Associations**

**Model Development Application Approval Relationship**

**Discussion Paper**

**Background**

The suburb of Newington is quite unique in NSW in that the entire residential suburb is under a Community Association title which is subdivided into 4 residential Precincts or Development Plans (DPs). Each Precinct has its own Community Management Statement (CMS) and Architectural Standards and Landscape Standards (ASLS). By-laws within each CMS pertain to rules for various matters within each DP, community responsibilities and processes for amendment are among such matters. These matters relate to issues which, *“concern the control and preservation of the essence or theme of the Community Scheme”* (*CMS, Part 1).*

**Community Management Statement**

Whilst the CMS and ASLS of each Precinct may differ slightly due to minor amendments, they are effectively the same, having been drafted at the time of the 2000 Olympic Games in Sydney.

The CMS and ASLS are an integral component of the purchase contract for a Newington residence, either house or apartment. When a contract for purchase is signed, all owners agree to be bound and comply with the CMS and ASLS:

*“The terms of the Management Statement are binding on:*

1. *the Community Association,*
2. *each Subsidiary Body; and*
3. *each person who is an Owner, Lessee, Occupier or mortgagee in possession of a Lot”* (*CMS “Parties Bound”*)

The CMS for each Precinct clearly defines the relationship between the Community Association and the Council, and any other Government Agency when it comes to the approval of building works relating to alterations and additions:

*“3.1 A person must not carry out any Works on any Lot, Community Property or Subsidiary Body Property unless that person first obtains the written consent* *of the Executive Committee.”*

*“3.2 In addition to the approval of the Executive Committee under By-law 3.1, a person must also obtain the consent of:*

1. *the relevant Subsidiary Body; and*
2. *If required, an accredited certifier, the Council or other Government Agency.”* *(CMS, By-laws 3.1 and 3.2)*

The Executive Committees (EC) of the Precincts are also guided on what matters are relevant for consideration in reviewing applications for Building Work alterations and additions:

 *“3.5 In making a decision on whether to consent to an application to carry out Works, the Executive Committee is only concerned to, and must ensure that, the proposed Works* comply with the Architectural Standards and Landscape Standards.” (CMS, By-law 3.5)

Newington was initially designed to house athletes for the 2000 Sydney Olympic Games. It was later sold to the public where it was one of the first areas legislated under a Community Association Title. Newington and the previous City of Auburn Council developed a very close working relationship. This Council noted that all DP’s had “*control and preservation of the essence or theme of the Community Scheme”* as a core requirement of their CMS, whereby change was only permitted through unanimous owner consent on some matters. It ensured that all Building Works Applications were approved by the relevant EC before considering a Development Application (DA) from a Newington owner against its own criterion.

**The Community Association Process**

Each Newington residential Precinct has an EC that holds regular meetings. A component of these meetings is to review and approve applications from residents within their Precinct to amend or alter their lot. Each Precinct looks after its own resident applications and does not ordinarily consult with other Precincts in deciding on an application. However, consultation may be undertaken if there is a question of determination or interpretation that might affect all Newington Precincts.

How resident building works applications are reviewed is an administrative matter for each Precinct to determine. This may be through regular Executive Committee meetings or established subcommittees accountable to their respective Executive Committees.

Resident applications include building works alterations and additions, for which a Council DA approval must occur before works may commence. A resident building works application should include the following documentation at a minimum:

* architectural design plans,
* shadow diagrams,
* a letter explaining what alterations and additions that will occur.

Precincts may additionally ask for assurance from the owner proposing the development that they have consulted with owners on either side and to the rear of the house lot undertaking alteration or addition. This assurance is not a legal requirement, but allows the relevant EC to be assured neighbours have seen design plans and are informed of any possible concerns. This assurance, if requested, will be provided in writing at the Executive Committee.

The EC may ask for additional information in considering a resident application, including but not limited to:

* an applicant’s attendance at the next Executive Committee meeting
* informing and inviting owners on either side and to the rear of the house Lot undertaking the alteration or addition to attend that same meeting where the resident’s application will be discussed
* a visit to the residence to understand more fully the design impact on other residents
* advise the applicant to undertake an Architect Peer Review to ensure compliance with the ASLS.

The EC is empowered to require (at the cost of the party seeking approval) further clarification of relevant matters concerning the proposed application.

*“3.4 The Executive Committee may (at the cost of the Party seeking approval) retain the services of an independent consultant with special skills and expertise in:*

1. *Architecture*
2. *Landscaping; or*
3. *Any other relevant discipline*

*to advise and assist the Executive Committee in performing its powers under this By-law” (CMS By-law 3.4)*

Once the resident building works application has been reviewed for compliance with the CMS and ASLS, the Executive Committee approves the application; asks for additional information; or, rejects the Application. In reviewing and making a decision on an application, the Executive Committee must only concern itself with matters relevant to its jurisdiction. It should not, for example, consider matters which are requirements of assessment under the Environmental Planning and Assessment Act, including compliance with the LEP or DCP.

Decisions of the Executive Committee are minuted in formal meeting Minutes or other formal recording process adopted by an Executive Committee. The key outcome is to ensure that the decision is available to all owners within a Precinct.

If the Application is rejected the applicant may either review the Application with his architect and resubmit, or refer the matter to an expert determinator.

*“3.10 In the event a person disputes that the Executive Committee has properly applied the Architectural Standards and Landscape Standards in making a determination under this By-law, then the matter can be referred to an expert determinator, as appointed by the Australian Institute of Architects.” (CMS By-law 3.10)*

If the Application is approved, the applicant is informed via a formal “Application Approval Letter” and a “Building Works Approval Certificate”, issued by the Community Association managing agent. A copy of a model “**Newington Community Association DP…….. Building Works Approval Certificate**” (BWAC) is attached. It is proposed that this model BWAC will be common across all Newington Precincts and will be used as the formal advice to Council of the relevant Precinct’s EC building works approval. When in receipt of this Certificate, the applicant may lodge their DA with the City of Parramatta Council. The resident’s BWAC should be included in the DA pack of documentation when submitting documentation to Council. Council will encourage all applicants to obtain this approval prior to lodging their application with Council.

**Architectural Standards and Landscape Standards**

The Executive Committee’s review of an application should concern and be limited to ensuring that the proposed building works comply with the Architectural Standards and Landscape Standards (ASLS).The EC will not consider building, engineering, electrical or plumbing standards. This remains the jurisdiction of Council Planning and Engineering departments as does compliance with Environmental Planning Instruments (eg LEPs) and planning policies (eg DCPs).

The Executive Committees do; however, look at design in relation to how it affects residents, by ensuring “*control and preservation of the essence or theme of the Community Scheme”*. The design is specific throughout the entire suburb, and considers:

* **Built form** – two storey, private open spaces, avoiding cross viewing and overlooking of neighbouring dwellings. Paints and colouring are stipulated
* **Windows Placement** – upper storeys generally facing away from neighbouring private space and bedroom windows
* **Roof Design** – may be either pitched, hipped, mono pitched, flat or combination of flat and pitched roof
* **Secondary Elements** – balconies, pergolas, privacy screens, portals, sun shade devices, solar panels

The ASLS is specific when it describes style and language in relation to building works alterations and additions:

*“3.2.3 The designs of the houses are basically modern in style and the language relies on the simple basic forms with added secondary elements in varied compositions to give the individual buildings their identity. Any future alterations and additions to existing buildings must be compatible with the existing established style and language and must not contain reference to styles of Federation, Colonial, Tudor periods and the likes.” (ASLS article 3.2.3)*

Housing in Newington is very dense with many properties located near neighbouring properties. This creates a specific privacy issue for Newington residents concerning resident building applications, especially those where privacy may be potentially further impinged. This may create tension in EC resident building application processes that cause referral to independent processes for final decision (e.g. NSW Civil and Administrative Tribunal).

**Conclusion**

The four Newington Precincts all have procedures for approving resident Building Work Applications. Whilst these procedures differ slightly, they each apply and interpret the pertinent Precinct CMS and ASLS to make their determination. If the building works application is rejected, the applicant can review and amend the design plans and resubmit, or ask for the plans to be reviewed and a determination made by an independent architectural authority. The applicants with an approved building works application receive a “BWAC” from the Precinct managing agent, as authorised by the EC.

In moving forward with City of Parramatta Council, the 4 Newington Precincts propose a model template for corresponding on approvals for resident building work applications. The template provides a consistent approach for reporting on approved resident building work applications with City of Parramatta Council. This process for considering applications (within the realm of ASLS and CMS) remains the jurisdiction of the relevant Executive Committee.

The Precincts will use the model approval template as is, which will be on individual Precinct managing agent’s letterhead and include the Precinct Common Seal. The model template is referred as “**Newington Community Association DP ……. Building Works Approval Certificate**” (BWAC).

Upon an Executive Committee deciding on a resident building works application, the model BWAC will be forwarded to the applicant. The applicant then includes this certificate with his/her DA documentation pack. If not included, the Council will advise that the approval of the executive committee should be obtained. If no such approval is provided, the City of Parramatta Council will advise as part of its determination of the application that approval must be obtained prior to any works commencing.

**Note:**

1. The *CMS and ASLS By-laws referred to in this document are those of DP 270207 (Precinct 2) and may differ slightly to those of other Newington Precincts.*

**Enclosure:**

1. Newington Community Association DP ……. Building Works Approval Certificate” (BWAC).