

SUBMISSION REGARDING STATE SIGNIFICANT DEVELOPMENT
YORKTOWN PARADE AND FITZGERALD AVENUE, MAROUBRA –
AFFORDABLE HOUSING REDEVELOPMENT
PROJECT APPLICATION NUMBER: SSD-71454960

Background

1. This submission is provided from the viewpoint of a member of the public not involved in the planning or development of the Project. I am concerned with the effects of the Project on the wider Maroubra community and the completely unnecessary and self-defeating reliance on non-compliant architecture employed in the Project. I also discuss my particular views on the impacts of the redevelopment with respect to its immediately adjacent property, 38 Yorktown Parade. I am sure others will likewise canvass their concerns about their particular, just as relevant, impacts. In this way an overall balance of views is achieved.
2. My knowledge of the development comes from a review of the project documents. As someone who has devoted a lifetime to the community sector and is a strong advocate for social and affordable housing, you may be assured that my criticisms herein are always constructive and directed to better outcomes.

Brief Relevant Project History

3. The National Housing Accord 2022 (NHA) has commendable ambitious goals to deliver much needed huge levels of housing stock. Unfortunately, this noble endeavour creates a momentum to make decisions and rush through plans that could benefit from further scrutiny. The Project is intended to stand for decades to come so let us make the effort to get it right.
4. In mid 2024, an architect produced first-draft plans for the Project. The plans included 8 three-storey residential apartment buildings: four (1A – 1D) facing Fitzgerald Avenue, and four (2A – 2D) facing Yorktown Parade. Using all possible means to maximise the dwelling total, 144 dwellings could be accommodated.
5. Unfortunately, the Building 2D design was subsequently determined to cause unacceptable overshadowing of the adjacent property so, to correct this, part of the Building 2D design was deleted. This reduced the dwelling total by four.
6. Options to offset the loss of dwellings were explored, and eventually it was decided to relocate these dwellings to become new 4th storeys on Buildings 1B and 1C. This made

Buildings 1B and 1C non-compliant because at 3 storeys they were already at maximum height. Great effort has been expended in designing these new 4th storeys and in arguing the case for non-compliance exemption in order to retain 4 dwellings out of a total of 144 (2.8%).

7. Nowhere in any of the many documents that I have reviewed is the simplest option of all even mentioned, let alone explored. That option is, of course, the compliant option – maintain 1B and 1C at 3 storeys and forget about the insignificant number of additional dwellings that could be added.

The Fallacy of Maintaining 4 of 144 Dwellings

8. The following table gives my responses to certain assertions made in the EIS with respect to the Project's non-compliant architecture.

EIS Assertions (Appendix B, Sect 5.2)	My Responses
<p>The height non-compliances (<i>for example, in the context of the 4th-storey</i>) does not result in any adverse economic, environmental or social impacts.</p>	<p>Incorrect. The height non-compliances, and other non-compliant architecture in this Project, do indeed lead to adverse economic, environmental and social impacts. The sole rationale provided for non-compliance in this Project is to increase the resident density of the site. Any number of texts explain that there is a threshold beyond which increasing resident density in social housing becomes problematic, with adverse outcomes. The partial 4th-storey additions are unsightly (at all distances, and increasingly so up close), out of place, do not integrate into the design, look like the after-thought add-ons that they are, and detract from any clean-cut architectural appearance that the three-storey buildings might possess. In addition, the building costs for the non-compliant 4th-storey units will be significantly higher than other units on the site. The tax-payer should not be funding expensive units which can be provided cheaper elsewhere. No cost-benefit analysis (capital and ongoing) for the non-compliant works appears to have been undertaken.</p>

EIS Assertions (Appendix B, Sect 5.2)	My Responses
<p>It (<i>height non-compliances</i>) does maximise the delivery of affordable housing which will have a positive social benefit.</p> <p>The part 4th storey will promote the orderly and economic use of the land by maximising a unique opportunity to deliver 100% social and affordable housing on an ageing and significantly underdeveloped social housing site.</p>	<p>Incorrect. Non-compliant architecture increases the costs of delivering affordable housing when that housing can be provided on other sites with compliant architecture. In Australia, there is no positive social benefit in the adoption of non-compliant architecture. In the NHA era, whether delivery at a particular site is 100%, or 2.8% less than this, makes little difference to social benefit. This is because benefit is determined by the total delivery over all sites, not just one site. Maximising land use on one site and referring to this as a unique opportunity is misleading because the site owner, the NSW Government, owns thousands of sites and it is the performance overall, not on any one, that is relevant. Potential residents have a range of sites to choose from.</p>
<p>Reducing the proposed heights so they are compliant would result in the direct loss of a number of affordable housing units and the Project would fail to capitalise on the Site's potential for renewal.</p>	<p>As above, this is incorrect. There would be no direct loss of a number of affordable housing units because they would simply be built more economically elsewhere. There are, of course, downsides to having the largest possible number of residents occupy a site (see my earlier comments) – such considerations have not been addressed in the available documents. The Project should not be focused on capitalising on the site's potential for renewal, but instead should be focused on avoiding the potential for over-exploitation.</p>

EIS Assertions (Appendix B, Sect 5.2)	My Responses
<p>Due to existing mature figs and banksia trees located within the 15-20m verge, there are only ever glimpses of the Fitzgerald Avenue facade visible from the street. The full scale of the development is not evident and therefore the impact on Fitzgerald Avenue streetscape is minimal.</p>	<p>So non-compliant architecture is fine if it is hidden?</p> <p>It is disappointing that the EIS uses so many specious arguments to justify the <i>necessity</i> for non-compliant architecture. Typical arguments are:</p> <ul style="list-style-type: none"> ~ if you view a non-compliance from afar, it can't be seen so must have minimal impact; ~ if you view a non-compliance obscured by a tree or foliage, it is not apparent so its consequences must be insignificant. <p>Like fashion photography, non-compliance is never depicted from an unflattering angle or shown up close. A person staring close up at a 13-metre high masonry wall may find the spectacle unnerving. This perspective is never shown when spruiking the benefits of a 3-storey building and arguing that there is no problem with mass and bulk. Similarly, pedestrian views looking up are avoided unless some obstructing foliage can be included. Artificial photomontages and artist impressions reported in the EIS are suspect. For example:</p> <ul style="list-style-type: none"> ~ EIS Figure 2 is a photomontage of the Project but it is at the wrong address (it starts at 42 Yorktown Parade instead of 40). ~ EIS Figure 8, the Appendix F materials presented at various consultations, and page 105 of Appendix AL all show a site map with incorrect development boundaries. ~ Page 100 of Appendix AL shows a project overview picture which bears no relationship to the street locality, its houses, or the development plans.

Project Impacts on 38 Yorktown Parade

9. The Project will have severe impacts on its immediately adjacent property, 38 Yorktown Parade. This property is a single-storey brick home built in the 1950s, typical of the Coral Sea Park Estate and the original fabric of Yorktown Parade. Next door, at 40 Yorktown Parade, stands a matching single-storey brick house built at the same time. This is the house you see looking out the kitchen window of No. 38, together with a 70-year-old frangipanni tree basking in the sunlight. In the name of progress, it is proposed to demolish this neighbouring house, destroy the frangipanni, and replace them with a massive wall (the western side of Building 2A) nearly 14m high (including floor raising) and 28m long, close to the dividing fence (corrected setback minimum 2.7m, refer paragraphs 11 and 12 below). The view from the kitchen window will be masked by the huge wall, so close that not even a vestige of sky will be visible above it.
10. Being particularly interested in the distance between the massive wall (Building 2A) and the dividing fence (side setback) I enquired of Naoise at the Community Drop-In Session on 29 August what this would be. After diligently consulting with technical staff he advised the minimum side setback was 5m with the average 9m. After a follow-up email to Homes NSW, I was advised: *"I am sorry to hear about your concerns with the size and scale of the development. Ensuring appropriate boundary setbacks, minimising of overshadowing/overlooking and acoustic separation is woven through our conceptual design."* (Allison Maher, Senior Community Engagement Officer, Housing Portfolio, Homes NSW).
11. In November, when the EIS and associated documents were put on public exhibition, I was distressed to find that the minimum side setback (Building 2A) was not 5m but instead given as 2.88m. Perhaps there was a mistake? However, on investigation, the situation got even worse. Close inspection of the actual plans (EIS Appendix G) revealed that the architect does not calculate setbacks correctly according to the Standard: *"Setbacks are the horizontal distance between the relevant boundary and the building line. They are measured at 90 degrees from the boundary."* (NSW Department of Planning and Environment, *"Guide to Complying Development"*, August 2023). On the other hand, the architect calculates the setbacks at 90 degrees from the building line. This inflates the setback by a factor dependent upon the angle of the building line with respect to the boundary. The inflation could be large or it could be small. The serious consequence of my finding is that no setback measurements given in the EIS and associated documents can be assumed to be accurate – all must be validated by recalculating according to the Standard.

12. As noted, the EIS gives the minimum side setback of Building 2A as 2.88m, but after calculation according to the Standard, the true value is found to be 2.7m. At half the value I was quoted at the Community Drop-In Session, this was not the news I wanted to hear. According to the Randwick 2013 DCP, the minimum side setback control is 4m. It is therefore hard to reconcile the email advice I received from Homes NSW that “*ensuring appropriate boundary setbacks ... is woven through our conceptual design*”.
13. “*Negative impact on property prices: There is no evidence to indicate that this development would negatively affect property values in the region*” (Appendix F, Engagement Report, P26). The obvious impact of replacing the single-storey house at 40 Yorktown Parade with the extreme mass and bulk of the Project, namely, the 14m x 28m west wall of Building 2A, placed with a non-compliant minimum side setback of 2.7m at the property boundary, will substantially negatively affect the property value of 38 Yorktown Parade. Evidence of this statement is easy to provide.
14. “*Planning Priority 3. Encourage development that responds to the local character and desired future character of our neighbourhoods. The Project responds to the local character of the area as detailed in Section 7.2 and Appendix H and I.*” (EIS P27). The Project fails to respond sympathetically to the adjoining property at 38 Yorktown Parade. In fact, the adjoining property is completely overwhelmed by the mass and bulk of the Project, together with its non-compliant architecture and setbacks as detailed elsewhere in this submission. The Project fails to respond to the local character and desired future character of the neighbourhood also due to its extreme mass and bulk. There is no other possibility because the Project, due to its special status, has utilised an additional 30% height and 0.5:1 floor space ratio. In addition, the size of the site is huge. These factors can never be matched in the neighbourhood because they are inaccessible to private developers. The Project will always overwhelm even the largest private properties in Yorktown Parade and this will remain, adversely affecting the future character of the neighbourhood.

15. The following tables give my responses to certain assertions made in the EIS with respect to Building 2A and its interface with 38 Yorktown Parade.

EIS Assertions (Sect 7.2.3, Table 19)	My Responses
The Project meets the intent of these requirements (<i>design criteria for visual privacy</i>) as demonstrated in the Architectural drawings at Appendix G, with the exception of a minor encroachment between the balconies of Building 2A and the dwelling at 38 Yorktown Parade which is considered acceptable as detailed at Table 20.	The Project fails to meet the design criteria for visual privacy as demonstrated in the Architectural drawings at Appendix G, with extensive encroachment between the balconies of Building 2A and the dwelling at 38 Yorktown Parade which is unacceptable as detailed below. There is also additional encroachment not noted in the EIS as discussed below.
Separation of adjoining properties: ~ Proposed living spaces are oriented to the north or south rather than to side boundaries and high level windows and privacy screens are used to avoid privacy issues within this zone.	Separation of adjoining properties: ~ The main balcony area is oriented to the west, not the north or south. This positioning exacerbates privacy issues to the side boundary. The privacy screens only avoid privacy issues towards the north of 38 Yorktown Parade. Privacy issues toward the south remain.
~ Where windows and balconies are screened or high level windows are used, it is considered appropriate to treat as nonhabitable.	~ Where windows and balconies are screened they must be treated as habitable because substantial privacy issues remain unaffected.
~ 6m (non-habitable to non-habitable) and 9m (habitable to non-habitable) overall separation achieved with minimum 3m and 4.5m setbacks proposed on the Project's side of the side boundaries respectively.	~ 9m (habitable to non-habitable) overall separation is not achieved with minimum 4.5m setbacks proposed on the Project's side of the side boundaries as shown on the architectural plan.

EIS Assertions (Section 7.2.3, Table 20)	My Responses
<p>The balcony of the proposed units at the south west of Building 2A are opposite a window at 38 Yorktown Parade that is presumed to be habitable space. The separation distance between the balconies and the window ranges is a minimum of 7.3m. This is within the 12m building separation required but is considered equitable as justified below.</p>	<p>The minimum separation distance of 7.3m between the Building 2A balconies and the 38 Yorktown Parade window is substantially less than the 12m building separation required. This is inequitable because the EIS does not provide any cogent or valid justification for this non-compliance, as set out below. The minimum separation distance involving screened windows is also non-compliant, as discussed above.</p>
<p>Setbacks to the boundary are approximately 3.39m. While this is short of distance of 4.5m either side of boundary its considered appropriate and equitable as follows:</p>	<p>The 3.39m setback is for upper floors only. According to the ground floor plan, the setback is 2.88m. The actual corrected setback is 2.7m (as discussed in paragraphs 11 and 12). This is considerably short of the distance 4.5m and is neither appropriate nor equitable, as follows:</p>
<p>~ The proposed interface is for a small portion of the overall elevation.</p>	<p>~ The proposed interface is for a substantial portion, namely 8.2m, of the overall elevation.</p>
<p>~ The proposed setback provides adequate area for a landscape buffer and does not result in any visual and acoustic privacy issues or adverse overshadowing or outlook.</p>	<p>~ The 2.7m proposed setback provides insufficient area for a landscape buffer and this results in visual privacy issues and adverse overlooking. Even if a narrow buffer were possible, its effect on visual privacy issues and adverse overlooking would be negligible. Note that a landscape buffer can never provide any acoustic privacy (it does not possess the necessary requirements of mass and continuity).</p>
<p>~ Potential impacts on privacy and amenity from balcony from overlooking and noise are avoided through the use of solid balustrading 760mm in height, buffer landscaping within the setbacks.</p>	<p>~ The use of solid balcony balustrading 760mm in height has no potential impact on privacy and amenity from overlooking and noise unless a person crouches or lies down close in, obscured behind the balustrade – a most unlikely scenario. As noted above, a landscape buffer can never provide any acoustic privacy.</p>
<p>~ Shared separation distances along this elevation are otherwise achieved as detailed above.</p>	<p>~ The proposed interface is for a substantial portion, namely 8.2m, of the overall elevation.</p>

EIS Assertions (Section 7.2.3, Table 20)	My Responses
Accordingly, the variation to the separation distances is considered to meet the intent of the ADG objectives and design criteria (Table 19) as reasonable levels of external and internal visual privacy to 38 Yorktown Parade will be achieved.	Accordingly, it is demonstrated that the variation to the separation distances fails to meet the intent of the ADG objectives and design criteria (Table 19) as there is no reasonable level of external or internal visual and acoustic privacy to 38 Yorktown Parade.

EIS Assertion (Sect 7.2.3, Side Setbacks)	My Response
The Project generally exceeds with RDCP 2013's minimum 4m side setback control with the exception of the south west corner of Building 2A and south east corner of Building 2D. These encroachments are for a very minor portion of the boundary and do not create issues in terms of privacy and overlooking. Sufficient setback remains for landscaping to soften the built form at these corners.	The Project fails to exceed the RDCP 2013 minimum 4m side setback control for a distance of 7.4m from the south west corner of Building 2A. This substantial encroachment creates issues in terms of privacy and overlooking. The 2.7m proposed setback provides insufficient area for a landscape buffer and this results in visual privacy issues and adverse overlooking. Even if a narrow buffer were possible, its effect on visual privacy issues and adverse overlooking would be negligible. Note that a landscape buffer can never provide any acoustic privacy (it does not possess the necessary requirements of mass and continuity).

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9 December 2024