

8 September 2021

NSW Department of Planning, Industry & Environment

Attention: Aditi Coomar, Team Leader
aditi.coomar@planning.nsw.gov.au

RE: Weigall Sports Complex, Sydney Grammar School (SSD-10421) - Request for information (impact on views/outlook)

Dear Ms Coomar

A. Preliminaries

We refer to the Department of Planning, Industry and Environment's (DPIE) email dated 6 September 2021 which set out the following request for information (RFI):

- *A comprehensive summary of the reasons for which the Applicant considers the proposal to be reasonable despite any view loss that may be incurred to the apartments at 8 Vialoux Avenue.*

By way of background, the VIA and the addendum to the VIA do not clearly iterate the reasonableness of the proposal per Step 4 of the Tenacity. It would be appreciated if this can now be provided.

- *The reasons for which (including any supporting information), any further reduction in height and/or bulk and scale of Building 1 would not significantly improve the views of the neighbouring properties, especially 8 Vialoux Avenue.*

Our response to this RFI follows.

- ***A comprehensive summary of the reasons for which the Applicant considers the proposal to be reasonable despite any view loss that may be incurred to the apartments at 8 Vialoux Avenue.***

The DPIE RFI is based on the fourth step of the Tenacity view sharing planning principle which states:

- *The **fourth step** is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable*

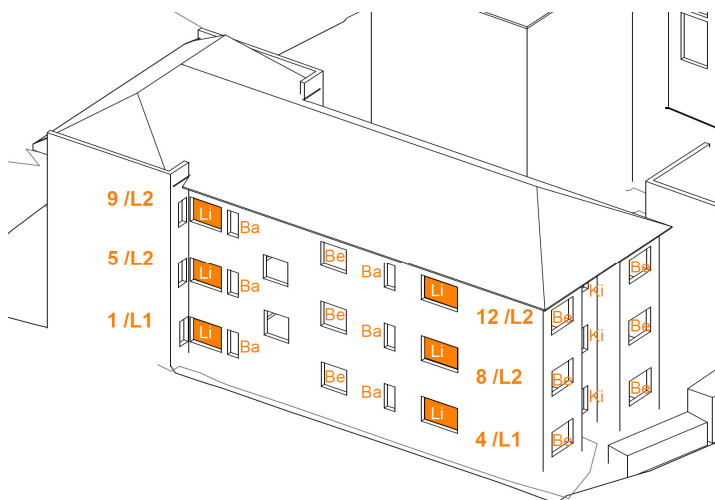
Before addressing the fourth step in the Tenacity planning principle, it is important to briefly consider the view impact of the proposal on units at 8 Vialoux Avenue using the first, second and third steps set out in Tenacity:

- 1) **First step:** The northerly view over the SSDA site from units at 8 Vialoux Avenue provides a “pleasant outlook” but is not an “iconic, scenic or highly valued” view in Tenacity terms¹.

¹ *Visual Impact Analysis*, by Urbis (October 2020), p. 24.

- 2) **Second step:** The outlook from units at 8 Vialoux Avenue is obtained over a side boundary looking towards land in Zone R3 – Medium Density Residential. According to the Tenacity planning principle, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries and the expectation to retain side views is often unrealistic.
- 3) **Third step:** As shown on **Figure 1**, the outlook over the SSDA site is available from the following six units at 8 Vialoux Avenue:
 - Ground Floor: Units 1 (east) and 4 (west)
 - Level 1: Units 5 (east) and 8 (west)
 - Level 2: Units 9 (east) and 12 (west).

Six living room windows would be affected, with other north facing windows servicing bedrooms and bathrooms. As noted in the third step of Tenacity *“the impact on views from living areas is more significant than from bedrooms or service areas”*.



LEGEND

- Living room
- Ba Bathroom
- Be Bedroom
- Ki Kitchen
- Li Living room
- v/GF Unit no./Building level

Figure 1: North elevation of 8 Vialoux Avenue showing use of rooms facing north (Source: AJ+C)

Following on from the above summary; the following Tenacity fourth step analysis considers the reasonableness of the proposal that is causing the view/outlook impact:

- (a) **Application of development standards:** The proposal is a State significant development. Pursuant to clause 42 of the Education and Child Care SEPP, consent may be granted to development for the purpose of a school that is State significant development even though the development would contravene a development standard. Given this, limited weight must be given to the height and FSR standards in Woollahra LEP 2014 that apply to the portion of the site in Zone R3 - Medium Density Residential. Additionally, there are no height or FSR standards for the portion of the site in Zone RE2 – Private Recreation. With this in mind, the proposal can be categorised as a development that complies with all planning controls and in Tenacity terms the proposal should be considered as reasonable.

- (b) **Impact of a development permitted in Zone R3 with a height of 10.5m:** Woollahra LEP 2014 would permit a residential flat building with a height of 10.5m on the land adjoining 8 Vialoux Avenue. This equates to a three storey building (3.1m x 3 = 9.3m) plus a roof feature. Measured above the *ground level (existing)* of the tennis courts on the site (RL 6.72), a compliant residential flat building would reach RL 17.22 which is some 6.5m higher than RL 10.75 which is referenced in draft Condition B1(b).
- A Woollahra LEP 2014 compliant building at RL 17.22 would obstruct all views/outlooks from north facing units at 8 Vialoux Avenue noting that the affected windows are well below this height (see **Figures 2 and 3** below). As a fully compliant residential flat building would have a severe/devastating impact on the view/outlook from north facing units at 8 Vialoux Avenue, the proposal and its view/outlook impact is considered to be predictable and reasonable. The survey information used to prepare **Figure 2** is attached.

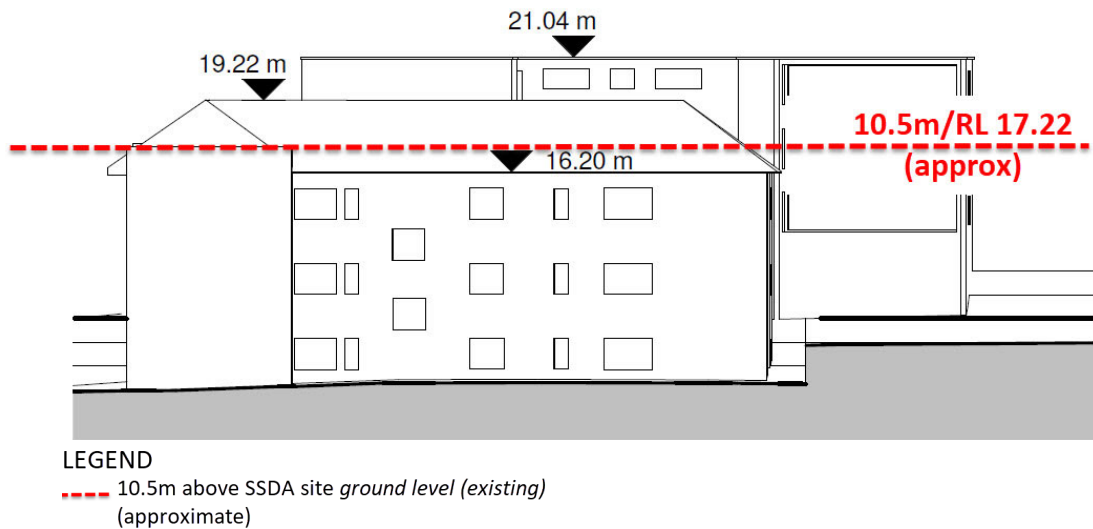


Figure 2: North elevation of 8 Vialoux Avenue showing the height of a compliant building (10.5m/RL17.22) on the SSDA site (Source: Project Surveyors Elevation 7)

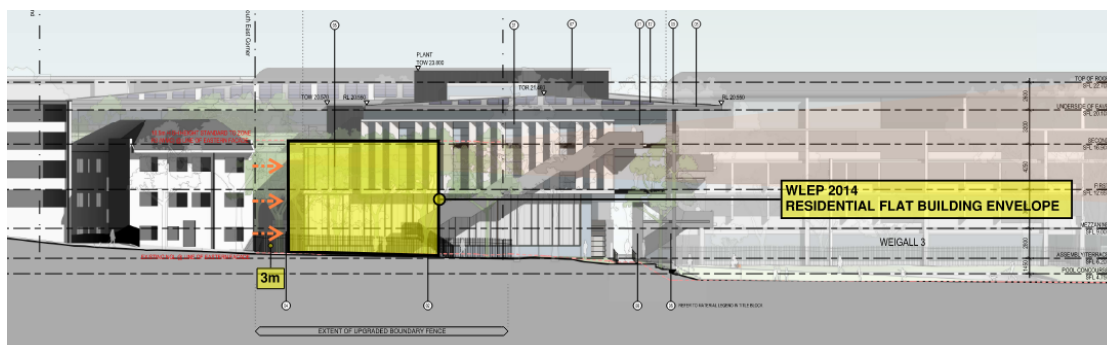


Figure 3: East elevation of proposed Building 1 showing the envelope of a compliant residential flat building (Source: AJ+C)

- (c) **Impact of a development permitted in Zone R3 with a setback/building separation complying with the Apartment Design Guide (ADG) building separation design criteria:** As well as height, the setbacks/building separation provided by the proposal will have a significant impact on the view/outlook available for units at 8 Vialoux Avenue as noted below:

- i. The ADG Objective 3F-1 states that “*Adequate building separation distances are shared equitably between neighbouring sites...*”. In this instance, almost all of the building separation is to be provided on the SSDA site as the existing building at 8 Vialoux Avenue is setback nil to 1.5m from the common side boundary.
 - ii. Adjoining 8 Vialoux Avenue, the ADG building separation design criteria would require a side boundary setback of 3m for non-habitable windows and 6m for habitable windows/balconies. Given the northern aspect of the SSDA site, a skilfully designed residential flat building is likely to comprise living rooms, bedrooms and balconies orientated to the north; with non-habitable rooms facing the southern boundary adjoining 8 Vialoux Avenue. Given this, a side setback of 3m to the boundary with 8 Vialoux Avenue is considered to be reasonable and predictable. With a side setback of 3m, the view/outlook to the north would be obstructed and there would be no sightlines to the north-east (see **Figure 3**). Some landscaping opportunities would be available, but the capacity to plant canopy trees would be very limited (impacted in part by the narrow setback at 8 Vialoux Avenue).
 - iii. In comparison, AJ+C looked for opportunities within the massing and form of the proposal to minimise the impact on views/outlooks across the SSDA site, whilst maintaining the capacity to reasonably develop the land to meet the needs of Sydney Grammar School. To achieve this, proposed Building 1 provides the following generous side and front boundary setbacks:
 - Ground Floor side setback to 8 Vialoux Avenue: **6.5m - 13.7m**
 - Second Floor side setback to 8 Vialoux Avenue: **13.4m - 18.9m**
 - Vialoux Avenue front setback: **8.6m to 14.2m**
 - iv. These generous side and front boundary setbacks open up a wide north-eastern view cone for Units 1, 4, 5, 8, 9 and 12 at 8 Vialoux Avenue (see **Figure 4**). The proposal would also provide a spacious and attractive green outlook for these units noting that the proposed landscape plan includes low/high level planting and draft condition B14 requires 42 new trees with 200 litre pot sizes and no less than 31.7% of the site area to be tree canopy. It is considered that this design and siting constitutes a skilful design. When compared with the sightlines afforded by a compliant residential flat building (see **Figures 3 and 5**), the proposal is considered to be eminently reasonable.
- (d) **Reasonable expectation to develop the land:** Occupied by tennis courts, the portion of the SSDA site that adjoins 8 Vialoux Avenue is effectively vacant land. Retaining a northern view/outlook from units in 8 Vialoux Avenue would completely frustrate the capacity to reasonably develop this part of the SSDA site. Furthermore the design amendments required by draft Conditions B1(a) and (b) would severely diminish the function and amenity of the proposed Weigall Sports Complex. It is considered that any new building on this part of the SSDA site would affect the view/outlook from 8 Vialoux Avenue noting that:
- i. A single storey building on the SSDA site would have a severe/devastating impact on the view/outlook of Units 1 and 4 on the Ground Floor of 8 Vialoux Avenue
 - ii. A two storey building would also have a severe/devastating impact on the view/outlook of Units 5 and 8 on Level 1 of 8 Vialoux Avenue
 - iii. A three storey building would also have a severe/devastating impact on the view/outlook of Units 9 and 12 on Level 2 of 8 Vialoux Avenue.
- Noting that each of these scenarios could be a compliant development consistent with the provisions of Woollahra LEP 2014 and the ADG, the protection of views/outlook from 8 Vialoux Avenue is an unrealistic and improbable expectation.

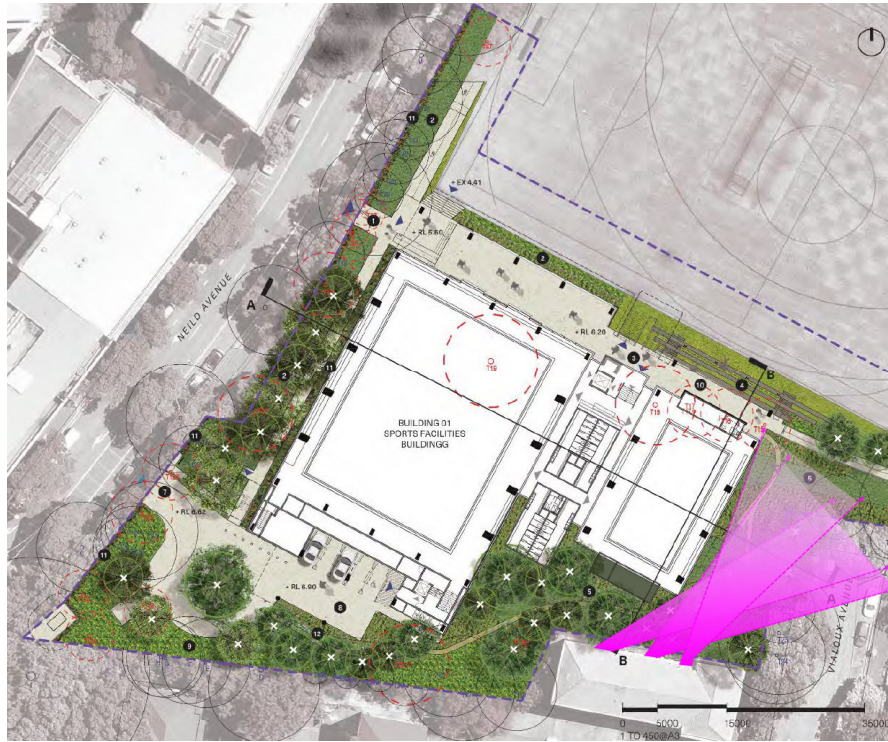


Figure 4: North-easterly view provided by the proposal for units at 8 Vialoux Avenue (Source: AJ+C)

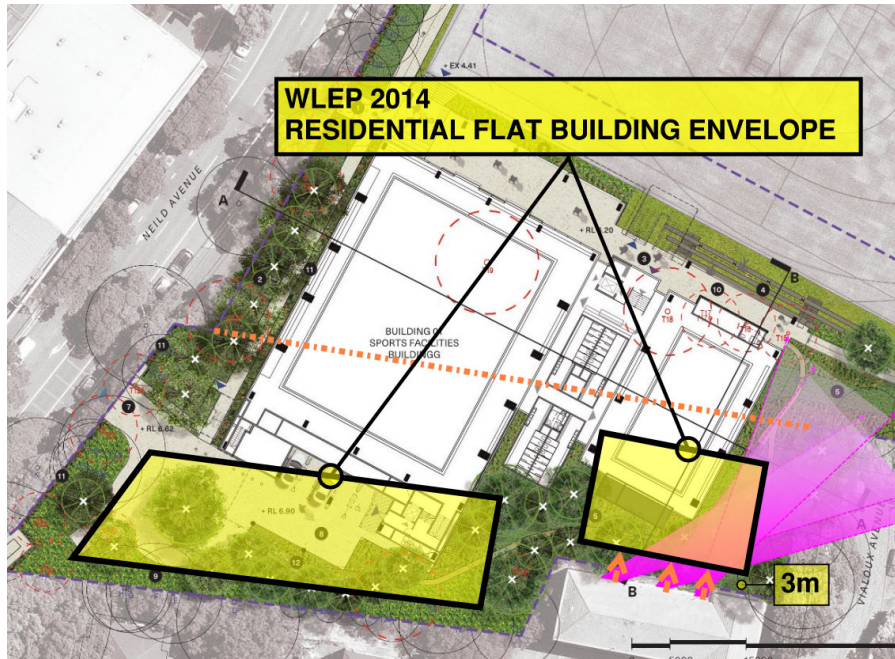


Figure 5: North-easterly view provided by a compliance residential flat building for units at 8 Vialoux Avenue (Source: AJ+C)

(e) Skilful design and reasonableness of the proposal:

As noted in the following points, the proposal constitutes a skilful design as described in the fourth step of the Tenacity planning principle:

- i. In *Arnott v City of Sydney Council [2015] NSWLEC 1052*, Commission O’Neill noted that it is very difficult to apply the Tenacity skilful design test to view impacts from individual units within a residential flat building as there are generally more limited opportunities to rearrange massing to preserve what is often a singular orientation to a view.
- ii. Notwithstanding this, proposed Building 1 has been skilfully designed and sited to provide a north-eastern view cone for Units 1, 4, 5, 8, 9 and 12 at 8 Vialoux Avenue. This provides an attractive green outlook for units at 8 Vialoux Avenue noting that the proposed landscape plan includes low/high level planting and draft Condition B14 requires 42 new trees with 200 litre pot sizes and no less than 31.7% of the site area to be tree canopy.
- iii. Relevantly, earlier designs for Building 1 which were presented to the community in early 2020 included a much narrower side setback to 8 Vialoux Avenue, a smaller front setback to Vialoux Avenue and a consistent wall height along the side boundary to 8 Vialoux Avenue. To improve the view/outlook (and solar access) for units at 8 Vialoux Avenue, the final massing and form of proposed Building 1 was refined to reduce the height and increase the side and front boundary setbacks, as illustrated by **Figure 6**.
- iv. The development of a three storey building on the portion of the SSDA site in Zone R3 is predictable and reasonable. The view/outlook impact of a compliant residential flat building on the site would be comparable to the impact of the Weigall Sports Complex, but the setbacks and landscaping achieved would be substantially reduced and there is no certainly that an attractive outlook would be provided for north facing units at 8 Vialoux Avenue.



Figure 6: Refinement of the massing and form of proposed Building 1 to minimise view/outlook impacts and provide for the needs of Sydney Grammar School (Source: AJ+C)

- *The reasons for which (including any supporting information), any further reduction in height and/or bulk and scale of Building 1 would not significantly improve the views of the neighbouring properties, especially 8 Vialoux Avenue.*

Given that it is effectively vacant land, any new building on the SSDA site will affect the view/outlook from neighbouring properties particularly some or all of the north facing units at 8 Vialoux Avenue. As

demonstrated above, proposed Building 1 has been skilfully designed, sited and massed to minimise the impact on views/outlooks from north facing units at 8 Vialoux Avenue.

It is considered that any reasonable design amendments to reduce the height and/or bulk and scale of Building 1 would not significantly improve the affected views/outlook. Relevantly, the design amendment required by draft Condition B1(b) (which requires deletion of Multipurpose Halls 1 and 2) would have a very negligible benefit for 8 Vialoux Avenue as Aquatic Hall 2 and the roof above would obstruct the northern view/outlook from all north facing units (see **Figure 7**).

It is therefore considered that design amendments prescribed by draft Condition B1 do not constitute a skilful design as described in the Tenacity planning principle as the reasonable expectations of Sydney Grammar School to develop urban land would be decimated to provide an imperceptible improvement in view/outlook over a side boundary.

Most relevantly, and contrary to the fourth step in the Tenacity planning principle, an amended design complying with draft Condition B1 could not *“provide the applicant with the same development potential and amenity”*.

Given the reasonableness of the proposal using fourth step in the Tenacity planning principle, there would be no basis to impose such an onerous condition which would unfairly diminish the development potential of the SSDA site.

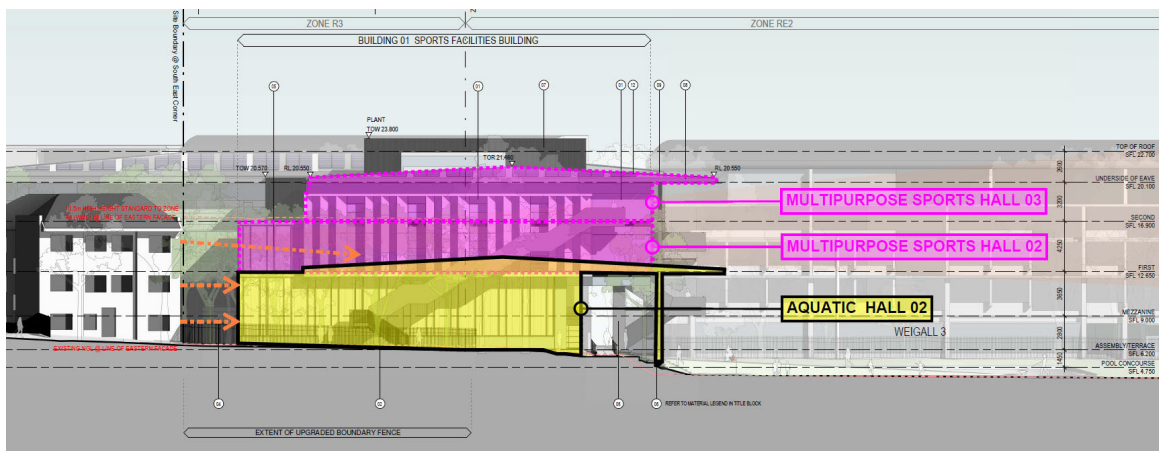


Figure 7: Design amendment required by draft condition B1(b) showing the view/outlook for units at 8 Vialoux Avenue (Source: AJ+C)

For the reasons set out in this letter, it is considered that the proposal is reasonable and has been skilfully designed to balance the requirements of Sydney Grammar School with the protection of views/outlook for neighbouring properties including units at 8 Vialoux Avenue. Using the Tenacity planning principle, the proposal is therefore considered to be reasonable and the view sharing acceptable.

Please do not hesitate to call or email the undersigned if you have any queries or comments.

Yours sincerely

Sandra Robinson BTP (Hons) MPIA
Director