

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA16/1289
Proposed development:	Demolition of Existing Structures & Construction of Six (6) Storey Residential Flat Building containing 23 Apartments & Two (2) Levels of Basement Car Parking
Property address:	31 Santley Crescent, KINGSWOOD NSW 2747
Property description:	Lot 5 DP 215200
Date received:	29 November 2016
Assessing officer	Lauren Van Etten
Zoning:	Zone B4 Mixed Use - LEP 2010
Class of building:	Class 2 , Class 7a
Recommendations:	Refuse

Executive Summary

Council is in receipt of a development application for a residential flat building with 23 units at 31 Santley Crescent KINGSWOOD. The subject site is zoned B4 Mixed Use under the Penrith Local Environmental Plan (LEP) 2010. Residential flat buildings are a permissible land use in the B4 zone with Council consent.

Key issues identified for the proposed development and site include:

- Waste Collection
- Urban Design
- Height
- Water Sensitive Urban Design
- Geotechnical Matters

The application has been notified to adjoining properties, advertised in the local newspaper and placed on public exhibition for a period of 14 days. Two objections were received which are dealt with in the body of this Report.

It is considered that review by the UDRP prior to lodgment would have ensured a more appropriate design. Whilst the UDRP has reviewed the proposal post-lodgment and the applicant has been given ample opportunity to address the concerns, no amended plans have been forthcoming.

An assessment under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is considered to be an overdevelopment and recommended for refusal. The application is to be determined by Council's Senior Officer Review Team due to the recommendation for refusal.

Site & Surrounds

The subject site comprises a single residential lot on the northern side of the street known as No. 31 Santley Crescent and contains a single dwelling house.

The site has a frontage of 20.115m with an overall area of approximately 689m². The lot is orientated in a north south alignment.

The surrounding locality is characterised by older low density housing stock and commercial buildings, ranging from one to three storeys. The character of this area is evolving with the recent changes to the LEP to an increase in higher densities in the area due to its close proximity to Kingswood station and Penrith City Centre and the Penrith Health and Education Precinct (Nepean Hospital).

The site to the east is zoned R4, whilst the subject site and those to the north, south and west are zoned B4.

Proposal

The development involves the demolition of all structures on the site and the erection of a six storey residential flat buildings providing 23 units. The unit mix is as follows:

- 1 x Studio
- 2 x 1 bedroom.
- 17 x 2 bedroom.
- 3 x 3 bedroom.

The proposal provides for 22 on site parking spaces, including 4 disabled spaces and 4 visitor spaces over two levels of basement. Six bicycle spaces are proposed.

The roof level contains communal open space, with associated landscaping, seating, pergola, lift and stair access to all floors and basements.

A 3m front setback from the building to Santley crescent is proposed, which will be utilised as terraces for the ground floor units and the entry to the foyer. A 3m wide landscape strip is proposed at the rear, with a further 3m wide setback to the building containing terraces for the ground floor. A zero setback is proposed for the western boundary.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Penrith Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 4.15 - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979 (as amended) (EP&A Act), and having regard to those matters; the following issues have been identified for further consideration.

Section 4.15(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

As assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The application is accompanied by a list of commitments as to the manner in which the development will be carried out, and the carrying out of residential development pursuant to the recommended development consent or construction certificate will be subject to a condition requiring such commitments to be fulfilled.

State Environmental Planning Policy (Infrastructure) 2007

A noise attenuation report was not provided despite the proximity to the Great Western Highway. In accordance with Clause 102, State Environmental Planning Policy Infrastructure 2007, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the appropriate LAeq levels are not exceeded. The likely acoustic impacts on the occupants of the residential flat building are thus unclear.

State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55) provide aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Under Clause 7 of SEPP 55, it must be considered as to whether the land is contaminated, and if so, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

Council's Environmental Management Officer reviewed the proposal and noted that the site has been used for residential purposes for a large number of years and the nature of the use will continue for residential purposes.

State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

Urban Design Review Panel

The application was not considered by Council's Urban Design Review Panel prior to lodgment, however the application was considered post lodgment on 15 February 2017 and the following comments provided:

External Finishes

Architecturally the design is supported with the exception of the excessive painted render. A greater mix of materials for the external finishes is required. In addition, the bottom floor facing north reads as more of a commercial development, which is not appropriate for residential development.

Scale/Neighbourhood Character

The issues with this application really stem from the fact that it's an overdevelopment of the site which does not provide reasonable amenity to the street or neighbours as detailed below. You are strongly advised to amalgamate with the commercial site to the west, especially as the subject site is the edge of the B4 zone transitioning with the R4 zone to the east.

Setbacks and Separation

The western elevation blank wall is extensive and, coupled with a zero setback, is deemed an unacceptable design outcome. This zero side setback also constrains the development potential of the site to the west, compromising the neighbouring site's amenity, and the ability to achieve reasonable separation should that site redevelop in the future.

The front setback does not provide reasonable amenity for the residential ground floor units. You would need to propose a commercial ground floor in order to consider a narrow setback relative to the western side existing setback or provide residential setbacks.

Regarding the eastern setback, the highlight windows do not provide adequate justification in and of themselves for the 50% non-compliance with the ADG minimum setbacks required. The residential flat building to the east needs to be shown on the architectural plans in order to understand the likely amenity impacts. There may be consideration of some variation to the setback at the front where the ramp is, but a landscaped verge is still required because of the transition of zones (at least 1.5m from the boundary to the ramp). Towards the rear of the site there is no scope for variation to the setback. This may require a loss of

units along the east on each level which is already warranted because of the snorkel bedrooms which is non-compliant with the ADG.

Basement

While the deep soil area may numerically comply with the ADG, it does not allow for planting nor transition as is required.

Existing Tree

Given the subject site is on the edge of the B4 zone, it is welcome to retain the tree for transition. However, given the proposed location of the driveway, an arborist's report is required to ensure the tree can be retained without conflict.

Internal Design and Amenity Impacts

Bedrooms along the ground and first floor facing the east are not provided with satisfactory amenity as they're facing the basement wall and non-trafficable roof.

There are buried kitchens throughout which are unacceptable in accordance with the apartment size and layout controls of the ADG (Units 101, 201 and 301). 3.1m is required floor to floor as per the ceiling height controls of the ADG.

The driveway and pedestrian entry need to be separated for safety. If there is commercial uses on ground floor this will help. If residential is maintained, the access way will need to be moved elsewhere on the site, further west.

Height Variation

Clause 7.11(3) of Penrith LEP 2010 can only be utilised to justify the height contravention if the use of the ground and first floors is for a commercial/medical use, with floor to ceiling heights of at least 3.5 metres.

The applicant has been given opportunity to address the comments but has failed to do so.

SEPP 65

SEPP 65 provides design principles to improve the design quality of residential apartment development and for consistency in planning controls across the state and was amended on 19 June 2015. The amendment replaced the Residential Flat Design Code with the Apartment Design Guide (ADG) which prevails in the event of any inconsistency with a Development Control Plan. SEPP 65 does not contain numerical standards but refers to the ADG. The ADG provides additional detail and guidance for applying the design quality principles outlined in SEPP 65.

An assessment of the proposed building has been undertaken in accordance with the Design Quality Principles of Part 2 of SEPP 65 and is briefly discussed as follows:

Principle	Requirement	Comment
<i>1. Context & Neighbourhood Character</i>	<i>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined.</i>	The building does not respond to the desired future character of the locality or have regard to the adjoining varied zoning or provide a transition. Amalgamation with the adjoining corner B4 zoned site is more appropriate in terms of good planning. The proposal does not demonstrate a suitable response to the site's context in terms of desired future character of the area, including the land to the east.

<p>2. Building Form & Scale</p>	<p><i>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</i></p>	<p>The development does not achieve an appropriate bulk, height and scale relative to the desired future character of the locality. The proposal should consider increased setbacks to provide a transition and appropriate interfaces with the adjoining properties. Development of the subject site and the corner allotment, both being isolated B4 land would provide greater opportunity for an appropriate built form and scale with increased setbacks.</p>
<p>3. Density</p>	<p><i>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</i></p>	<p>High density residential development on the site is desirable given its location near to transport nodes and service facilities. However, the built form is not responsive to the desired and anticipated future character of the locality. Further, the need for a variation to the height control demonstrates that the development contains too much density and is an overdevelopment.</p>
<p>4. Sustainability</p>	<p><i>Good design combines positive environmental, social and economic outcomes.</i></p>	<p>Energy and water reduction measures for the proposed development have been detailed in the submitted BASIX Certificate. The application has not satisfactorily demonstrated that the proposal achieves required WSUD or waste measures.</p>
<p>5. Landscape</p>	<p><i>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.</i></p>	<p>The application has been accompanied by a landscape plan which provides for embellishment of the site by suitable ground covers, shrubs and trees which, at maturity, will complement the height, scale, design and function of the proposed development.</p> <p>However, the 3m wide deep spoil zone at the rear is not appropriate for extensive screen planting and should extend around the building, in particular along the eastern boundary.</p> <p>The proposed development provides green spaces which will allow passive recreation and provide a calming environment for residents.</p>
<p>6. Amenity</p>	<p><i>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.</i></p>	<p>The development does not provides good amenity for residents both in terms of apartment configuration and in terms of facilities for community living in all instances, in particular the ground and first floor. The roof common area provide a variety of positive experience environments for residents. Adequate provision has been made for storage areas, common open space and building servicing areas. The design however lacks consideration for the amenity of adjoining neighbours, in particular to the north and east.</p>

7. Safety	<i>Good design optimises safety and security within the development and the public domain.</i>	The proposed development is considered to be of a safe and satisfactory design which promotes crime prevention in its existing environment. Concern is raised regarding the proximity of the driveway to the pedestrian entry from a safety viewpoint.
8. Housing Diversity & Social Interaction	<i>Good design achieves a mix of apartment sizes, providing housing and facilities to suit the existing and future social mix.</i>	A range of dwellings styles are proposed to accommodate various needs with a diversity in apartment sizes as well as a mix of studio, 1 bedroom, 2 bedroom and 3 bedroom units.
9. Aesthetics	<i>Good design achieves a built form that has suitable proportions and a balanced composition of elements, reflecting the internal layout and structure.</i>	<p>The design of the proposed building could provide an appropriate address to the public domain, however the current design presents as ground floor commercial and the material choices are not fully supported.</p> <p>Architecturally the design is supported with the exception of the excessive painted render. A greater mix of materials for the external finishes is required. In addition, the bottom floor facing north reads as more of a commercial development, which is not appropriate for residential development.</p>

ADG

In consideration of the detailed information above it is considered that the subject proposal can reasonably satisfy the design quality principles of SEPP 65. Below is an assessment against the guidelines contained within the associated Apartment Design Guide (ADG).

Part	Required	Discussion	Complies
3A-1	Each element in the Site Analysis Checklist should be assessed.	A Site Analysis plan was submitted with the application and identifies applicable elements as required within the checklist. A written description of the proposal and subject site are also included in the submitted Statement of Environmental Effects. However, overshadowing of the site by neighbouring structures was not indicated despite the three storey residential flat building adjoining the site to the east.	No
3B-1	Buildings to address street frontages.	Ground floor apartments are provided with individual entryways. The common entry and foyer is of an appropriate design, however concern is raised regarding proximity to the driveway from a safety perspective. Further, the ground floor presents as commercial rather than residential because of the narrow front setback.	No
	Where street frontage is to north or south, overshadowing to be minimised and buildings behind the street frontage to be orientated east and west.	Overshadowing attributed to the development will occur as a result of the overall height, use of zero setbacks and inadequate separation to the east.	No

3B-2	Living areas, Private Open Space (POS) and Communal Open Space (COS) to receive compliant levels of solar access.	Refer to discussion under Parts 3D and 4A.	N/A
	Solar access to living spaces and POS of neighbours to be considered.	Solar access is achieved throughout the site where possible. However, given the narrow nature of the site and adjoining buildings and context in a health precinct, the solar access for the occupants of adjoining property to the east remains unclear as existing and proposed shadows were not indicated on the shadow diagram.	No
	If the proposal will significantly reduce the solar access of neighbours, building separation should be increased.	A more appropriate design would increase solar access for neighbours.	No
3C-1	Courtyard apartments should have direct street access.	N/A	N/A
	Upper level balconies and windows to overlook the street.	All apartments along the street frontage overlook the street.	Yes
	Length of solid walls should be limited along street frontages.	Walls are adequately landscaped and articulated. No large expanses of blank wall are proposed along the street frontage.	Yes
	Opportunity for concealment to be minimised.	Entryways are wide, straight and located to reduce opportunity for crime and concealment.	Yes
3C-2	Ramping for accessibility should be minimised.	Ramping is proposed relative to the street and is via the eastern side of the building.	Yes
3D-1	Communal Open Space (COS) to have minimum area of 25% of site.	25% of COS is proposed within the setback and on the roof.	Yes
	Achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space.	Submitted shadow diagrams indicate the development is compliant in this regard.	Yes
	COS to be consolidated into a well-designed, usable area.	The COS is easily accessible and adequately landscaped.	Yes
	COS to be co-located with deep soil.	Deep soil provided to the COS at rear but not main area on roof.	Yes
3D-2	COS is to be provided with facilities such as barbeque areas and seating.	The COS includes facilities such as seating and barbecue areas on roof.	Yes
	COS is to be well lit and readily visible from habitable rooms.	The rear setback area of COS provided is visible from habitable rooms and will be well lit. The roof will also be lit.	Yes
3D-4	Boundaries should be clearly defined between public open space and private areas.	The private open space areas of the development are clearly defined by the use of landscaping and paving elements.	Yes

3E-1	Deep soil is to be provided at a rate of 7% of site area with a min. dimension of 3m.	The proposal is for 8% deep soil with minimum dimensions exceeding 3m. However, deep soil is also required along the side boundaries for transition screening and there's limited opportunity for quality street landscape planting.	Yes.
3F-1	Minimum required separation distances from the building to side and rear boundaries is to be achieved as follows: 4 storeys – 6m/3m 5-8 storeys – 9m/4.5m	0m side setback to the west and only 3m up to 4 storeys to the east and 4.5m there above to the east. The proposed separation and setbacks to the west compromises the ability to achieve reasonable separation should that site redevelop in the future and it does not provide a transition to the east, which is zoned B4.	No.
3F-2	Balconies and private terraces should be located in front of living rooms to increase internal privacy. Solid or partially solid balustrades to balconies at lower levels	Balconies are provided adjacent living rooms and are considered usable and practical and in this respect are acceptable. Glass balustrades proposed	Yes No
3G-1	Building entries to be clearly identifiable.	The entryway is easily identifiable and will provide access to the mail boxes and is paved to the street front.	Yes
3G-2	Building access ways and lift lobbies to be clearly visible from the public domain and communal spaces.	The main pedestrian entry will be visible from the street and although the lift lobby does not have direct views to the street, it is located centrally near services, the central entry and individual apartment entry doors.	Yes
3H-1	Car park access should be integrated with the building's overall façade.	The car parking is adequately integrated into the facade of the building with the roller door located behind the building line.	Yes
3J-1	The site is located within 800m of a railway station and is required to comply with the car parking rates as stipulated within the Penrith DCP 2014.	>20 units Metropolitan Regional (CBD) Centres: 0.4 spaces per 1 bedroom unit 0.7 spaces per 2 bedroom unit 1.20 spaces per 3 bedroom unit 1 space per 7 units (visitor parking) 16.7 residents and 3.2 visitors generated. Total 22 proposed which is satisfactory.	Yes
3J-2	Secure undercover bicycle parking should be provided for motorbikes and scooters.	Bicycle parking is proposed.	Yes
3J-3	A clearly defined and visible lobby area or waiting area should be provided to lifts and stairs.	Lobby areas are clearly defined and appropriately located.	Yes

4A-1	Living rooms and private open spaces of at least 70% of apartments to receive 2 hours direct sunlight between 9am and 3pm mid-winter. Maximum 15% of apartments to receive no direct sunlight.	The submitted Solar Plan indicates that 73% of apartments will receive compliant levels of solar access. However, 21% is south facing.	No
4A-3	Sun shading devices are to be utilised.	Balconies are proposed to be covered by the levels over, with the balcony above. Submitted elevations include sun shading devices and sliding aluminium louvres.	Yes
4B-3	60% of apartments are to be naturally ventilated and overall depth of cross-through apartments 18m maximum glass-to-glass line.	The submitted Solar and Ventilation Plan indicates that 60.8% of apartments will receive compliant levels of natural ventilation. However, apartment depths are non-complaint with the maximum depth requirement of 18m (23) and all inlets and outlets are not the same size as is required to achieve adequate natural ventilation. Therefore, compliance is questionable.	No.
4C-1	Finished floor to finished ceiling levels are to be 2.7m for habitable rooms, 2.4m for non-habitable rooms.	The proposal is for 2.7m measured from finished floor to finished ceiling level.	Yes
4D-1	Apartments are to have the following min. internal floor areas: 1 bed – 50sqm 2 bed – 70sqm 3 bed – 90sqm Additional bathroom areas increase minimum area by 5sq.m. Every habitable room must have a window in an external wall with a minimum 10% of the floor area of the room.	All proposed apartments comply with the ADG requirements.	Yes
		G01 and G02 have bedrooms without windows	No
4D-2	In open plan layouts the maximum habitable room depth is 8m from a window.	Apartments are generally compliant with this requirement however G03, G02, 103, 203, and 303 exceed the maximum habitable room depth allowed.	No.
4D-3	Master bedrooms to be 10sq.m and other rooms 9sq.m.	All proposed units comply with this requirement.	Yes
	Bedrooms to have a minimum dimension of 3m.	Complies.	Yes
	Living rooms to have minimum width of 3.6m for a 1 bedroom unit and 4m for 2 & 3 bedrooms.	Complies.	Yes

4E-1	All units to have the following primary balcony areas: 1 bed – 8sq.m (2m deep) 2 bed – 10sq.m (2m deep) 3 bed – 12sq.m (2.4m deep) On the ground floor: minimum 15m ² area and 3m width.	The apartments generally comply with the minimum requirements for balcony areas, however Unite 502 only has a 9m ² balcony, G02 only has 11m ² and G01 is only 2.5m wide.	Yes
4E-3	Full height glass balustrades not desirable to ensure balcony design is integrated into the overall design form.	There are full height glass balustrades facing the rear of the site on each level.	No.
4E-4	Changes in ground levels or landscaping are to be minimised.	Landscaped elements are proposed to screen or soften changes in levels across the site including along the rear interface.	Yes
4F-1	Daylight and natural ventilation to be provided to all common circulation spaces.	Natural light is provided to the entry.	Yes.
4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided: 1 bed – 4m ³ 2 bed – 6m ³ 3 bed – 10m ³ With 50% of the above to be provided within the Units.	Submitted plans indicate that storage is available within the basement. Additionally, 12 of the 23 apartments have built-in storage of compliant capacity in addition to that provided within the basement levels with the remaining units capable of providing for additional movable storage (in addition to storage provided within built-in robes, bathroom and kitchen areas).	Yes
4G	Noise transfer should be minimised through siting	Inadequate building separation provided to retain acoustic privacy.	No.
4K-1	Flexible apartment configurations are to be provided to support diverse household types.	The development proposes a range of unit sizes, configurations and number of bedrooms to accommodate change over time and cater for differing households.	Yes
4L-1	Direct street access should be provided to ground floor apartments.	N/A	N/A
4M-1	Building facades to be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The facades are articulated and propose a range of materials and finishes. The UDRP has questioned the commercial feel to the ground floor and the materials.	No
4O-1	Landscape design to be sustainable and enhance environmental performance.	The submitted landscape plan indicates a selection of trees, shrubs and ground covers appropriate for the site.	Yes

4Q-2	Adaptable housing is to be provided in accordance with the relevant Council policy.	Refer to discussion under Penrith DCP 2014.	N/A
4U-1	Adequate natural light is to be provided to habitable rooms.	Most habitable rooms are provided with appropriate levels of natural light with the exception of 2 bedrooms as aforementioned. Apartment depths and open floor plan arrangements allow light into kitchens, dining and living areas.	Yes
4V-2	Water sensitive urban design systems to be designed by suitably qualified professional.	Inadequate WSUD information has been received.	No
4W-1	A Waste Management Plan is to be provided.	Inadequate waste information has been received.	No
	Circulation design is to allow bins to be easily manoeuvred between waste storage and collection points.	Inadequate waste details.	No

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria within Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and the application is unsatisfactory with respect to the likely impact given the insufficient details provided regarding WSUD.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	Complies - See discussion
Clause 4.6 Exceptions to development standards	Does not comply - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.7 Servicing	Complies

Clause 2.3 Permissibility

The proposed residential flat building are permissible uses with consent in the B4 Mixed Use zone.

Clause 4.3 Height of buildings

The proposed development encroaches within the height limit of 18 m for the features located on the roof including the terrace, lift overrun and balustrades. A request to vary the development standard has been provided under Clause 4.6.

Clause 4.4 Floor Space Ratio

The proposed development has a floor space ratio of 2.82:1, which is below the LEP requirement of 3:1.

Clause 4.6 Exceptions to development standards

The applicant submitted a request to vary the development standard under Clause 4.6 with respect to the height limit, providing the following justification for the variation:

- *The proposal includes roof top common open space, providing greater amenity and recreational opportunities for residents. The required lift overrun (top RL 65.50) which is approximately 3.5m - 4m above the standard, while the fire stairs to that communal open space and the proposed pergola over part of it also exceed the maximum building height controls within Penrith Local Environmental Plan (LEP).*
- *It is worth noting that the bulk of the building up to the upper level eave falls within the 18m LEP height limit, so the variation is reflective of only a minor part of the structure, which provides improved amenity for future residents and on that basis a better planning outcome is achieved through its retention and variation to the standard.*
- *In the circumstances of this proposal a better outcome is achieved by varying the relevant height standard through:*
 - *The re invigoration of a low use site with a new vibrant modern building, that although marginally greater in height, respects its surroundings and reduces its impact on nearby residential properties.*
 - *The greatest quantum of the variation arises from the provision of access to the roof top communal open space. These facilities add to the amenity of future residents and provide a better outcome in terms of liveability. The resultant greater height is not readily evident from the public domain, with the central location of the lift and stairs reducing their visibility from the streets around the site.*
 - *The lack of impact in terms of privacy, solar access and amenity from the proposal and its respect of the existing residential properties surrounding the site.*
- *A better planning outcome can also be considered in terms of the potential impact of the proposal from the increased height on the public domain and in an urban design sense. Any assessment of these issues must consider the proposal in terms of the context of the site, its built form, the need for residential development in the locality and the design parameters of SEPP 65 and the relevant OCP. These matters are discussed elsewhere in this report, with the proposal performing well in regard thereto.*
- *It may be suggested in certain submissions that all of the above benefits could be achieved by a smaller compliant development. However, in order for the roof top structures to comply at least one full level would need to be removed, seriously impacting on the viability of the project. The variations do not result in an overall increase in FSR or habitable floor space. The roof top facilities provide enhanced recreational opportunities for residents and improve their future amenity.*
- *In this context the orderly and economic use of the land as promoted by the objects of the EP&A Act, 1979 would be reduced, as would the site's capacity to provide increased residential variety and opportunities within the locality. Accordingly, the application of a flexible approach will provide the desired outcome as expected in the controls, while achieving a modern building outcome and the intent of the relevant zone objectives.*
- *Achieving well designed unit layouts as well as improved future amenity, within the desired future character of an area clearly results in a better planning outcome.*

It has been determined that the request failed to show that there is adequate planning grounds to approve the variation. Recent case law in the Land and Environment Court (*Four5Two v Ashfield Council*) highlights the need for a development that is varying the standard to show that it not only is of no unacceptable impact and compliant with the standards objective but also that there are specific planning grounds that suggest the proposed variation is beneficial outcome. This information is especially pertinent considering that the development requires significant cut into the site and still cannot provide for a compliant height of building.

Having regard to the existing surrounding building sizes, the provision of a much larger building will be a stark contrast and as such should comply fully with the height controls to minimize amenity and visual impacts. Further, the urban design of the building, the interface to adjoining buildings with a zero setback, need for amalgamation, in conjunction with the amenity impacts such as overlooking and overshadowing, do not warrant the variation of the height control in this instance.

Penrith Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
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Section 4.15(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Complies
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Complies
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
D2.1 Single Dwellings	N/A
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	N/A
D2.5 Residential Flat Buildings	Does not comply - see Appendix - Development Control Plan Compliance
D2.6 Non Residential Developments	N/A
E12 Penrith Health and Education Precinct	Does not comply - see Appendix - Development Control Plan Compliance

Section 4.15(1)(a)(iv) The provisions of the regulations

Fire safety

Under Part 9 of the Environmental Planning and Assessment Regulation 2000 owners of buildings must provide the FRNSW Commissioner with a copy of the Fire Safety Certificate for the building (along with the current Fire Safety Schedule). The Fire Safety Certificate is issued when essential fire safety measures have been assessed by a qualified person as being capable of performing to the standard defined by the Schedule. A condition of consent could be imposed to ensure that this occurs on an annual basis.

Prescribed Conditions

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the BCA, could be imposed as conditions of consent where applicable.

Advertising and Notification

Neighbour notification and advertising were carried in accordance with the requirements of the Regulations.

Section 92 - Additional Matters

- Any demolition will be conditioned to be in accordance with the provisions of AS 2601.
- The development is not subject to Government Coastal Policy.
- The development is not situated on land subject to an order made under Schedule 5 of the Act (paper subdivisions).

Section 4.15(1)(b) The likely impacts of the development

Built Form

The proposed non-compliances with the applicable height, front setback, solar access and building separation controls are directly resulting in the inability of the development to achieve an acceptable level of compatibility with local character and existing approved developments in the vicinity.

Amenity

Given the variations sought to the controls of the DCP and the ADG as well as the proximity to adjoining residential allotments, the potential for significant solar, visual and acoustic amenity impacts to arise is anticipated when these adjoining allotments are developed.

WSUD

The stormwater treatment train will include 3*460mm Stormwater 360 Stormfilter PSorb devices and water conservation will be managed through the use of fittings as required by the BASIX certificate. However, no MUSIC modelling, WSUD strategy or draft maintenance manual has been submitted in support of the application.

Geotechnical Issues

This report notes that further investigations are required prior to Construction Certificate to manage excavation stability and the conflict of the water table. The report notes that water is expected between 2-3m below NGL. It is unclear what water management strategy will be proposed, it may require tanking or pumping. In addition, it is unclear whether the proposed development is considered to be an Aquifer Interference Activity under Section 91(3) of the Water Management Act 2000.

Acoustic Impacts

A noise attenuation report was not provided despite the proximity to the Great Western Highway. In accordance with State Environmental Planning Policy Infrastructure 2007 the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the appropriate LAeq levels are not exceeded. The likely acoustic impacts on the occupants of the residential flat building are thus unclear.

Access and circulation

Vehicular access is via Santley Crescent to 2 levels of basement car parking.

Apartment buildings with more than 20 units and more than 3 storeys require on-site truck access for garbage removal which has not been provided. However, Council's Traffic Engineer noted that as this site is approx. 20m width, it is unlikely that an on-street indented bay could be provided without affecting adjoining properties.

Section 4.15(1)(c) The suitability of the site for the development

The subject site is not deemed suitable for the development for the following reasons:

- The design of the development is not consistent with the existing or desired future character of the area and does not transition to the adjoining residential land or minimize amenity impacts.
- The building footprint and built form does not achieve orderly development outcomes with respect to the site area and resulting development scale.
- The development has not demonstrated a positive environmental outcome in terms of waste and water management.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with the Act and Regulations, consideration has been given to any necessary referrals and any submissions made.

Community consultation

In accordance with Chapter 2.7 of the Penrith Development Control Plan the application was notified for 14 days from 16/12/2016 to 31/01/2017. Two submissions were received. The following issues were raised in the submissions received and have formed part of the assessment.

Issue Raised	Comment
The height of the building is not congruent with the immediate vicinity, none of which are six storeys. The building will dwarf the existing nearby buildings.	The height exceeds the LEP height limit and is not warranted in this instance. The application is recommended for refusal.
Balconies on the northern side and the rooftop terrace will reduce privacy to No. 2a Bringelly Rd with direct view into the backyard.	A loss of privacy is expected from the proposal in its current form. The application is recommended for refusal.
Proposed planting will not provide screening.	Should the application be deemed suitable, there would be opportunity for the landscaping along the rear seep soil zone to be enhanced.
Proposal reduced amenity of the site and surrounds, rather than enhancing as stated in the application.	The proposal in its current form is expected to have amenity impacts. The application is recommended for refusal.
Overshadowing of adjoining residential flat building to the east	Inadequate detail was provided to assess the likely overshadowing. The application is recommended for refusal.
Construction Disruption: noise and dust	Standard conditions of consent would address these matters in any future application.

A response was also received from the NSW Police who made recommendations to be incorporated into the development is approved.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Landscape Architect	No objections
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	Not supported
Waste Services	Not supported
Traffic Engineer	Not supported
Community Safety Officer	No objections

Traffic Engineer

Council's Traffic Engineer reviewed the proposal and raised objection as on-site truck access for garbage removal has not been provided as required with apartment buildings with more than 20 units and more than 3 storeys. However, as this site is approximately 20m in width, it is unlikely that an on-street indented bay could be provided without affecting adjoining properties.

Waste Services

Waste

The current proposal will consist of 23 dwellings and basement parking. The waste collection infrastructure and collection proposal is not supported or approved in its current state in the following regard:

- All residential flat buildings will need to accommodate on-site waste collection for Council's 10.5 heavy rigid waste collection vehicle. The submitted plans do not provide an onsite loading bay.
- There must be sufficient manoeuvring area on-site to allow collection vehicles to enter and leave the site in a forward direction and service the development efficiently with little or no need to reverse.
- RFB developments (typically over 3 storeys) are required to install a **dual chute system** for residual and recyclable waste streams. The current plans only provide a single chute system which is not supported by Council.
- Specifications of the portable bin lift will need to be submitted to Council for review.
- A waste collection room will need to be located adjacent to the on-site loading bay. The current configuration is not supported.
- Each RFB will be required to provide a bulky waste storage room on ground floor or adjacent to the proposed loading bay. The current plans do not include a bulky household goods room.
- For the internal movement of 1,100L bins a Tug Device is required to assist the caretaker and council's collection staff to manoeuvre the bins throughout the development. Each site is required to provide a mechanical tug or suitable towing device to assist in the movement of bins.

Section 4.15(1)(e) The public interest

The proposed development is not in the public interest as it has the potential to set an undesirable precedent for development in the locality and has the potential to negatively impact both the neighbourhood character of the area as well as impact upon the residential amenity.

Conclusion

In assessing this application against the relevant environmental planning instruments, the proposal does not satisfy the aims, objectives and provisions of these policies.

In its current form, the proposal will have a negative impact on the surrounding character of the area and support for this application would set an undesirable precedent. The proposed design does not comply with key development standards. The site is unsuitable for the proposed development, the proposal is not in the public interest, and there is likely to be negative impacts arising from the proposed development.

Therefore, the application is not worthy of support for the attached reasons.

Recommendation

1. That DA16/1289 for a residential flat building at 31 Santley Crescent KINGSWOOD be refused for the following reasons;

Refusal

1 X Special (BLANK)

The application is not satisfactory for the purpose of Section 91 of the Environmental Planning and Assessment Act as it is not clear whether the proposed development is considered to be an Aquifer Interference Activity under Section 91(3) of the Water Management Act 2000 given the basement excavation work proposed and possible interference with the water table.

2 X Special 2 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act as the proposal is inconsistent with Clause 28(2)(c) of the State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development which requires that the consent authority take into account the provisions of the Apartment Design Guidelines.

The proposal does not comply with the following Principles of SEPP 65:

- 1. Context & Neighbourhood Character
- 2. Building Form & Scale
- 3. Density
- 4. Sustainability
- 5. Landscape
- 6. Amenity
- 7. Safety
- 9. Aesthetics

The proposal does not comply with the following provisions of the Apartment Design Guidelines:

- 3B - Orientation.
- 3F - Visual Privacy.
- 4A - Solar and Daylight Access.
- 4B - Natural Ventilation
- 4D - Apartment Size and Layout.
- 4F - Common Circulation and Spaces.
- 4M - Facades
- 4V - Water Management and Conservation
- 4W - Waste Management

3 X Special 3 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following provisions of the Penrith Local Environmental Plan 2010:

- 4.3 - Height of Buildings.
- 4.6 - Exceptions to Development Standards.

Specifically it is not considered that the submitted written request with regard to Clause 4.6 of the LEP has justified that there are sufficient environmental planning grounds to justify contravening the development standard, particularly in relation to the likely amenity, built form and character impacts on adjoining allotments.

4 X Special 4 (Refusal under Section 79C(1)(a)(iii) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:

- Part C5 - Waste Management.
- Part D2.5 - Residential Flat Buildings.

5 X Special 7 (Refusal under Section 79C(1)(b) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(b) of the Environmental Planning and Assessment Act in terms of the following likely impacts of that development:

- Built form, materials, aesthetic and neighbourhood character
- Transition to adjoining properties;
- Geotechnical Impacts;
- Acoustic Impacts;
- Access and Circulation; and
- Amenity.

6 X Special 8 (Refusal under Section 79C(1)(c) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(c) of the Environmental Planning and Assessment Act as the site is not suitable for the proposed development for the following reasons:

- The design of the development is not consistent with the existing or desired future character of the area;
- The building footprint and built form does not achieve orderly development outcomes with respect to the site area and resulting development scale; and
- The development has not demonstrated a positive environmental outcome in terms of waste and water management.

7 X Special 9 (Refusal under Section 79C(1)(d) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(d) of the Environmental Planning and Assessment Act due to matters raised in submissions.

8 X Special 9 (Refusal under Section 79C(1)(e) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(e) of the Environmental Planning and Assessment Act as the proposal is not in the public interest.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C1 Site Planning & Design Principles

The proposed development fails to have adequate regard to the site context and surrounding development. Regard has been given to the future character to an extent however a more appropriate outcome would be to see amalgamation with the adjoining corner allotment.

C3 Water Management

The applicant did not provide complete details of the proposed water sensitive urban design. Council cannot be certain that the proposal will prevent damage to the built and natural environment.

C5 Waste Management

The proposed development provides a n on-street indented waste collection bay and basement garbage room with a single chute above serving all levels of the development.

The proposed waste collection fails to comply with Council's requirements that on-site collection be provided, as well as the lack of a second chute for recycling materials. Finally no bulky waste storage is provided for in proximity to the collection point.

D2 Residential Development

The proposal has been assessed against the applicable provisions of Section D2.5 Residential Flat Buildings. The proposal is not wholly in accordance with the DCP, however, in this instance for a residential flat building, SEPP 65 and the Apartment Design Guide are given greater weight and address the same controls.

E12 Penrith Health and Education Precinct

The following controls have been considered, however it is to be noted that the DCP is a guide only and the ADG overrides.

Control	Complies / Comment
75% of frontage to be commercial	No commercial proposed
Minimum 24m site width	No - 20.115m
Residential entries clearly marked and separate to commercial	No commercial proposed
Avoid blank walls at ground level	Yes
4m front setback	No - 3m front setback
0m side and rear setback for non-residential	Yes - 0m to sides to commercial only
Separation between buildings	Only one building on the site
25% open space	Yes - 25%
Maximum 75% site coverage	Yes
Minimum 10% deep soil	No - 8%

Section 12.2.1 Mixed Use Development Controls

The DCP calls for commercial development on the ground and first floors in large swathes of the Hospital Precinct. The proposed development does not include commercial tenancies at the first floor.

Entry to the residential lobby will be clearly marked, providing direct access to the street. Vehicular access is to be located via the street.

Section 12.3.3 Boundary Setbacks and Building Separation

SEPP 65 and the Apartment Design Guide override the DCP in relation to side boundary setbacks and building separation.