

Statement of Environmental Effects

A Development Application for demolition of the residential component of the existing building and part demolition of the existing retail premises, construction of a new residential dwelling, swimming pool and secondary dwelling along with retail premises



**UNDER THE *ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979*
(AS AMENDED) AND *REGULATIONS 2000***

**Property: 38 Bangaroo Street, Balgowlah
Lot 21 DP395978**

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1. Introduction

This Statement of Environmental Effects has been prepared by Tomasy Pty Ltd on behalf of the owners of the subject site, being 28 Bangaroo Street, Balgowlah (**the site**). The Statement supports a Development Application for demolition of the existing retail premises, construction of a new residential dwelling, swimming pool and secondary dwelling along with retail premises. The statement also comprises a legal opinion relating to the existing use rights for the retail development which was approved by Council in 1954. The development has been the subject of two pre-DA meetings. The last meeting was held on 14 April 2022 and in preparing this Statement due consideration has been given to Council's comments both at the meeting and their pre-lodgement meeting notes.

In preparing this document, consideration has been given to the following:

- *Environmental Planning and Assessment Act 1979 (as amended);*
- *Environmental Planning and Assessment Regulation 2000;*
- *Warringah Local Environmental Plan 2011 ('WLEP2011');*
- *Warringah Development Control Plan 2011 ('WDCP11');*
- *Pre-DA meeting 16 December 2021;*
- *Second Pre-DA meeting notes 14 April 2022;*
- *Survey Plan prepared Usher and Company dated 29 September 2021;*
- *Legal advice pertaining to existing use rights prepared by Piper Alderman dated August 2022;*
- Documentation received by way of a GIPA application to council relating to previous development and/or building approvals for the premises that have been in existence since mid-1955.
- Stormwater Management plan and OSD design by In-Line Consulting dated August 2022;
- Bitzios Traffic and Parking Consultants report dated August 2022;
- BCA and Accessibility report prepared by BCA Logic dated August 2022;
- BASIX prepared by Aspire dated August 2022;
- Geotechnical Report prepared by White Geotechnical Group dated July 2022;
- Landscape drawings prepared Concept Design Landscape Architects dated August 2022;
- Architectural Drawings prepared by Breakspear Architects Pty Ltd:
 - Drawing DA 000, Issue G – Cover Sheet
 - Drawing DA 001, Issue B – BASIX
 - Drawing DA 100, Issue B – Site Analysis Plan
 - Drawing DA 200, Issue B – Existing Ground Floor
 - Drawing DA 201, Issue B – Existing Roof
 - Drawing DA 202, Issue B – Existing Long & Cross Sections
 - Drawing DA 210, Issue B – Demolition Ground Floor
 - Drawing DA 211, Issue B – Demolition Roof
 - Drawing DA 220, Issue H – Proposed Ground Floor

- Drawing DA 221, Rev H – Proposed First Floor
- Drawing DA 222, Rev D – Proposed Roof
- Drawing DA 300, Rev H – Proposed North & South Elevations
- Drawing DA 301, Rev G – Proposed East & West Elevations
- Drawing DA 400, Rev F – Proposed Long & Cross Sections
- Drawing DA 500, Rev C – Material Palette
- Drawing DA 600, Rev B – Shadow Diagrams - Plan
- Drawing DA 700, Rev F – Area Schedule

This Statement of Environmental Effects describes the works associated with the development application for demolition of the existing retail premises, construction of a new residential dwelling, swimming pool and secondary dwelling along with retail premises.

The Statement has due regard to the Provisions of Section 4.15 of the *Environmental Planning & Assessment Act 1979* and examines any potential environmental impacts with regard to the relevant sections of the Act, policies and relevant requirements of Council's DCP.

2. Background

The subject property is legally known as Lot 21, DP395978. Erected on the property are shops, together with an attached residence. A search of Council's records by way of a GIPA application revealed Council, on 31 May 1954, approved an application for a proposed shop on the subject land. Council's records indicate that the shop was in existence in 1962 as per a record from the Department of the Valuer-General. Council's building records also verify that works associated with the shop were carried out in 1955.

Our clients intend to retain the existing shop and carry out alterations and additions to that component of the land that is occupied by the shop and adjoining residence. Based upon evidence provided by Council, the property does have existing use rights for a shop as the premises have continued to be used for retail purposes up until current times. The client has engaged the services of Paul Vergotis, Lawyer (Piper Alderman) experienced in planning and environmental law, to review all relevant documentation relating to existing use rights pertaining to the site and provide a report on this matter. The advice confirms that the site has existing use rights for a retail shop. A copy of the legal advice forms part of the supporting DA documentation.

Two pre-DA meetings have been held, one of 15 December 2021 and the second on 14 April 2022. The purpose of the second pre-DA meeting was to address a number of concerns raised by Council in the first pre-DA meeting. Amended plans were prepared and submitted to Council's pre-DA team for review and comment. Council's pre-DA notes are quite comprehensive and raised a number of matters that would require further investigation prior to the submission of a formal DA. All matters raised by Council have been comprehensively reviewed and addressed. It was noted that Council, in its formal meeting notes, did not support the proposal in its current form but may be supported subject to design amendments outlined within Council's notes. Council also highlighted the need for a legal opinion demonstrating that the subject site benefits from existing use rights for the purpose of a retail premises.

It is our submission that all relevant matters have been addressed by the design team which includes specialist consultants from various disciplines such as traffic, legal, stormwater, architectural, landscaping and planning.

3. Site Profile

The site is located on the northern corner of Bangaroo Street and St Pauls Road. The property has an area of 632sqm with a frontage of 52m to St Pauls Street and 12.19m to Bangaroo Street. Erected on the property is a single-storey residence with an attached brick shop. The shop component of the development shares a common boundary with No 30 Bangaroo Street, which comprises a corner store and a single-storey residence at the rear of the site. This locality comprises a mixture of single detached residential dwellings, residential flat buildings and dual occupancy developments.

This immediate precinct is dominated by the presence of the retail premises located on Nos 28 and 30 Bangaroo Street. Photos of development in this immediate locality are shown on the following page.



Subject Site: St Paul's Road Frontage (Source: Tomasy Planning)



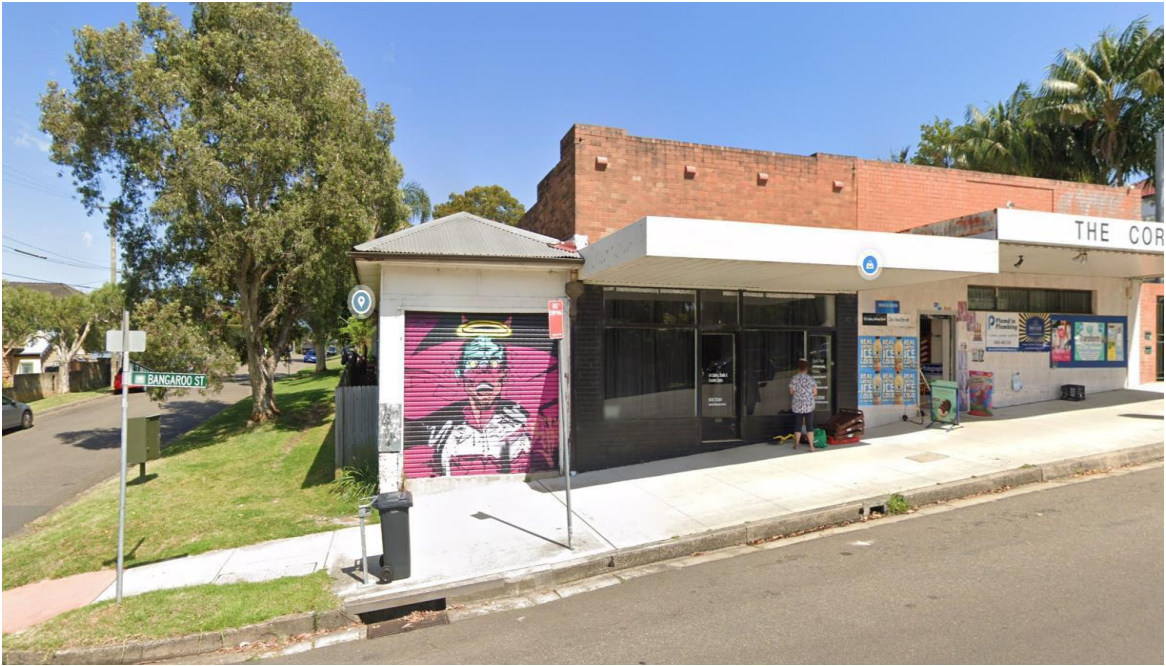
Subject Site: Bangaroo Street Frontage (Source: Tomasy Planning)



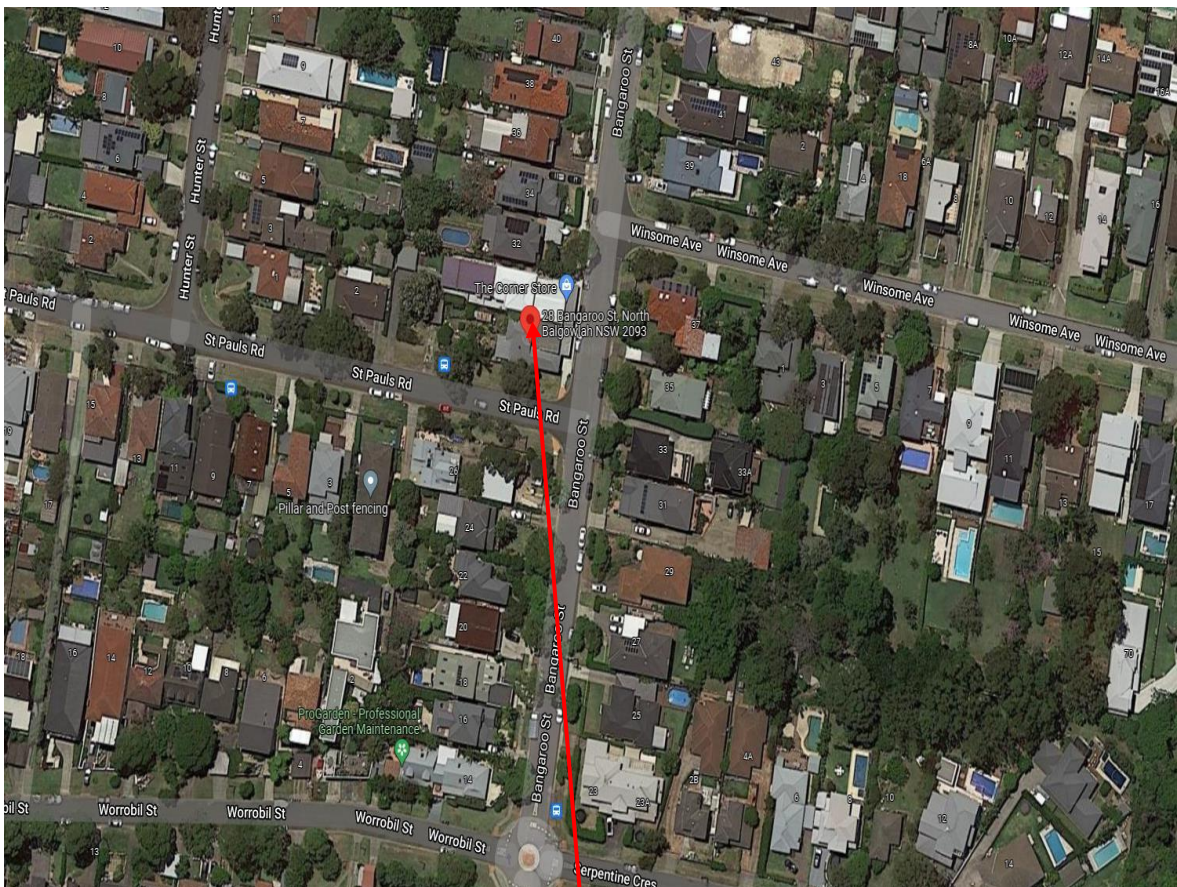
Subject Premises: Bangaroo Street Frontage (source: Tomasy Planning)



Residential Flat Building directly opposite site in St Paul's Street

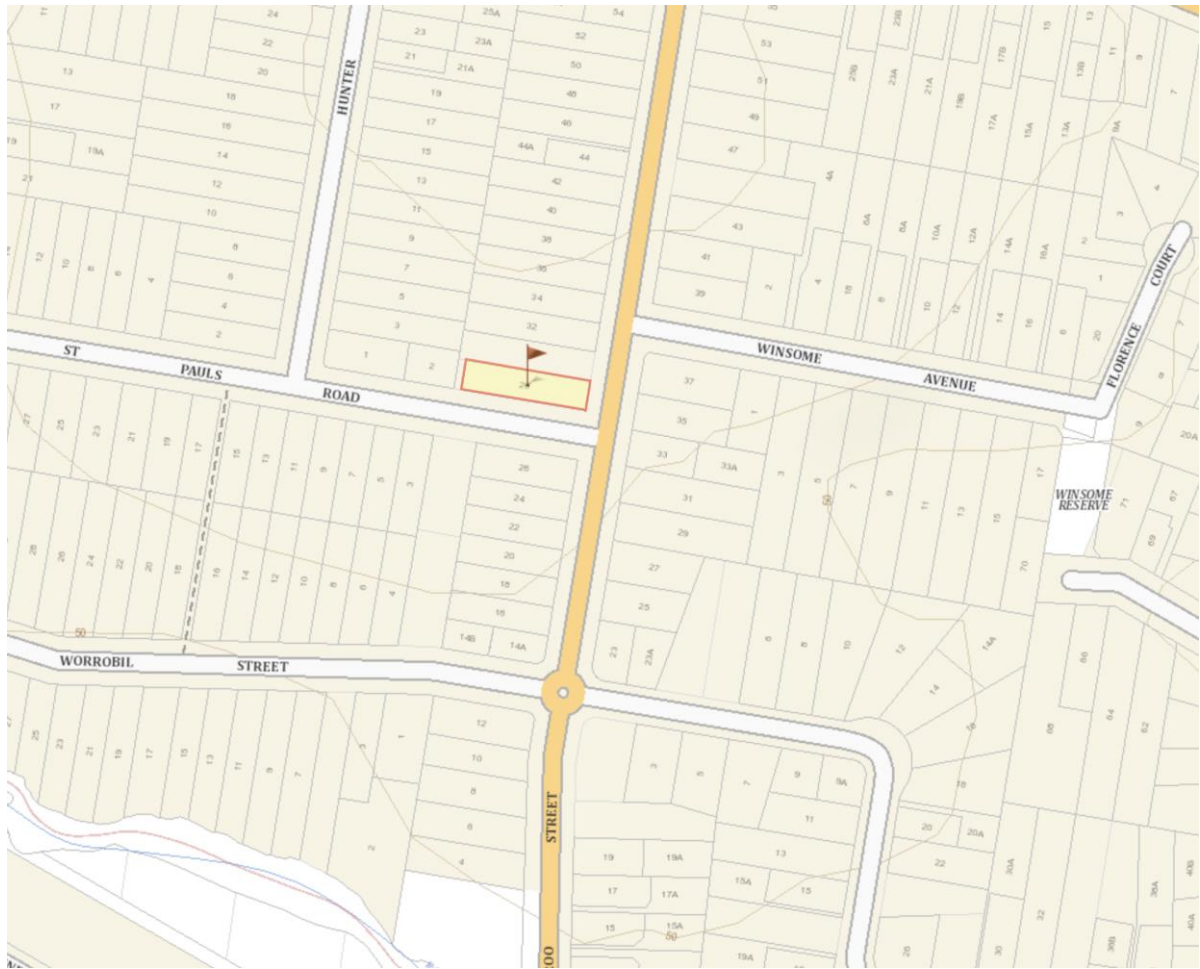


Source: Google Maps



Source: Google Maps

Subject Site

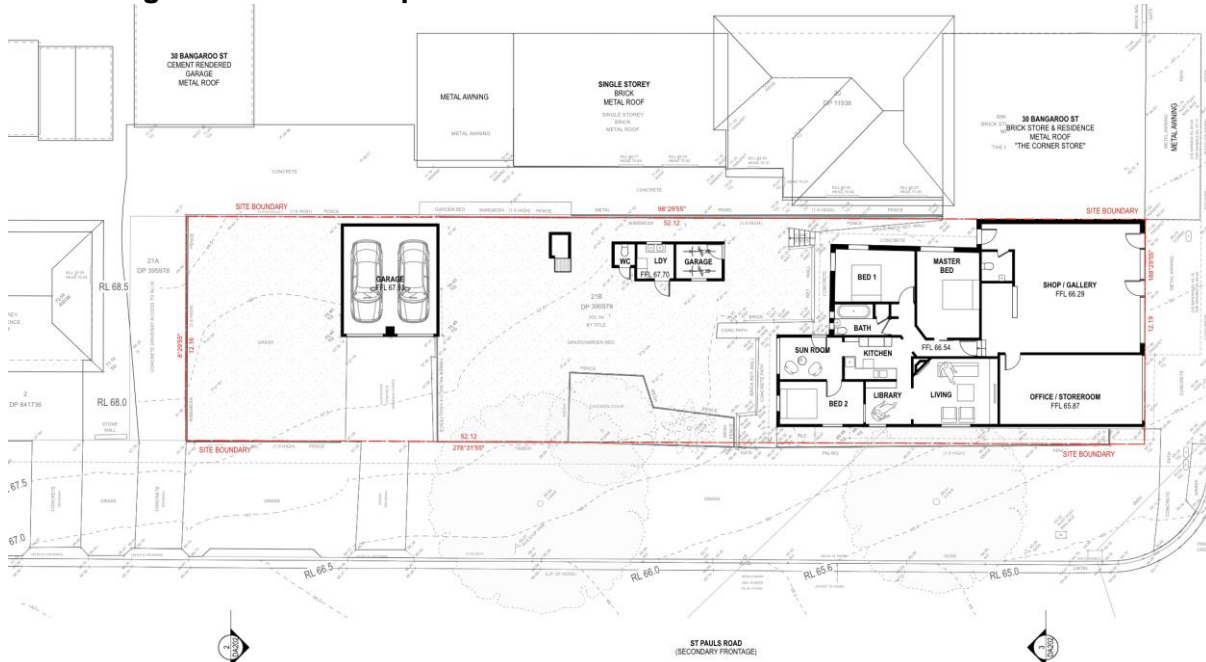


Source: <https://maps.six.nsw.gov.au/>

4 The Proposal

The proposed works associated with the Development Application are for the demolition of the existing retail premises, construction of a new residential dwelling, swimming pool and secondary dwelling along with retail premises.

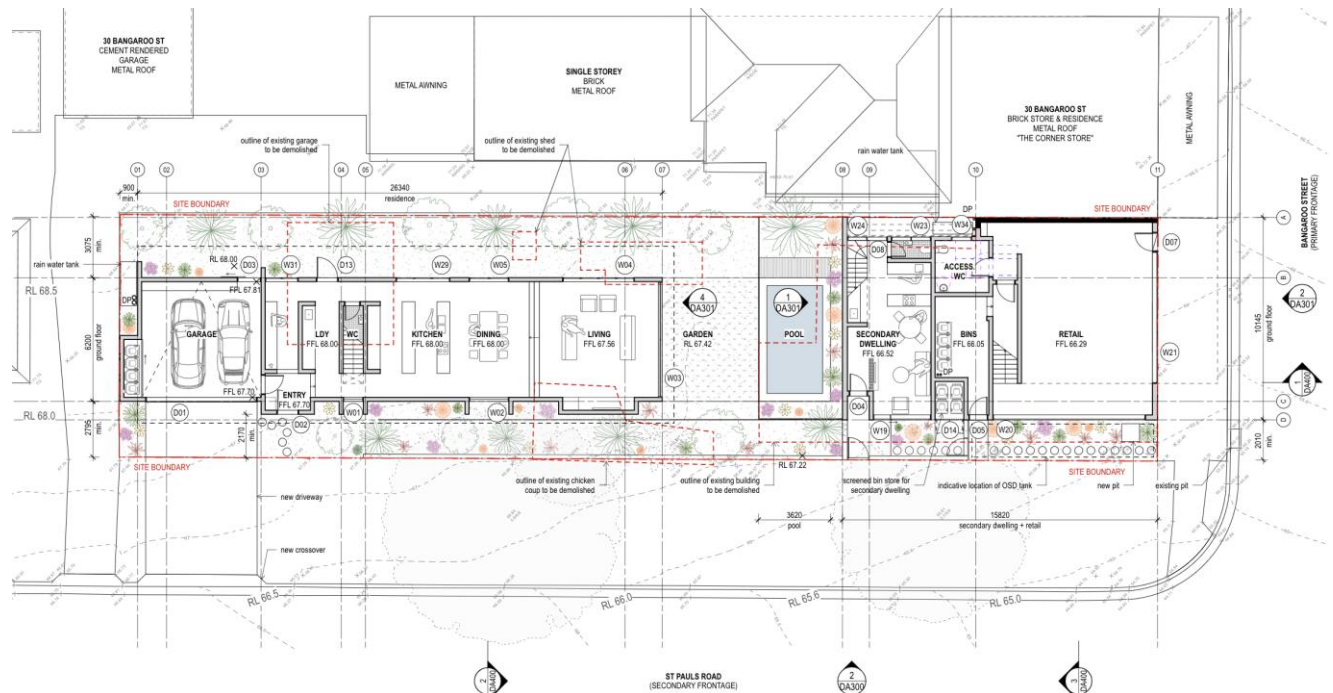
Existing Site Plan with improvements



Source: Breakspear Architects – Existing Ground Floor DA200

Comment: The existing improvement on the subject land includes a retail premise since 1955. The current use of the premises is a shop/gallery with an associated office/storeroom. There is also a single storey residence in poor condition that abuts the retail premises. There is an existing outbuilding comprising storage and laundry and a double garage with driveway access off St Pauls Road.

The proposed ground floor comprises the following:



Source: Break Spear Architectural – Drawing DA220 - proposed ground floor

Ground Floor – Retail Premises

- Retail premises with direct pedestrian access from Bangaroo street.
- Back of house facilities that are an integral component of the retail premises.

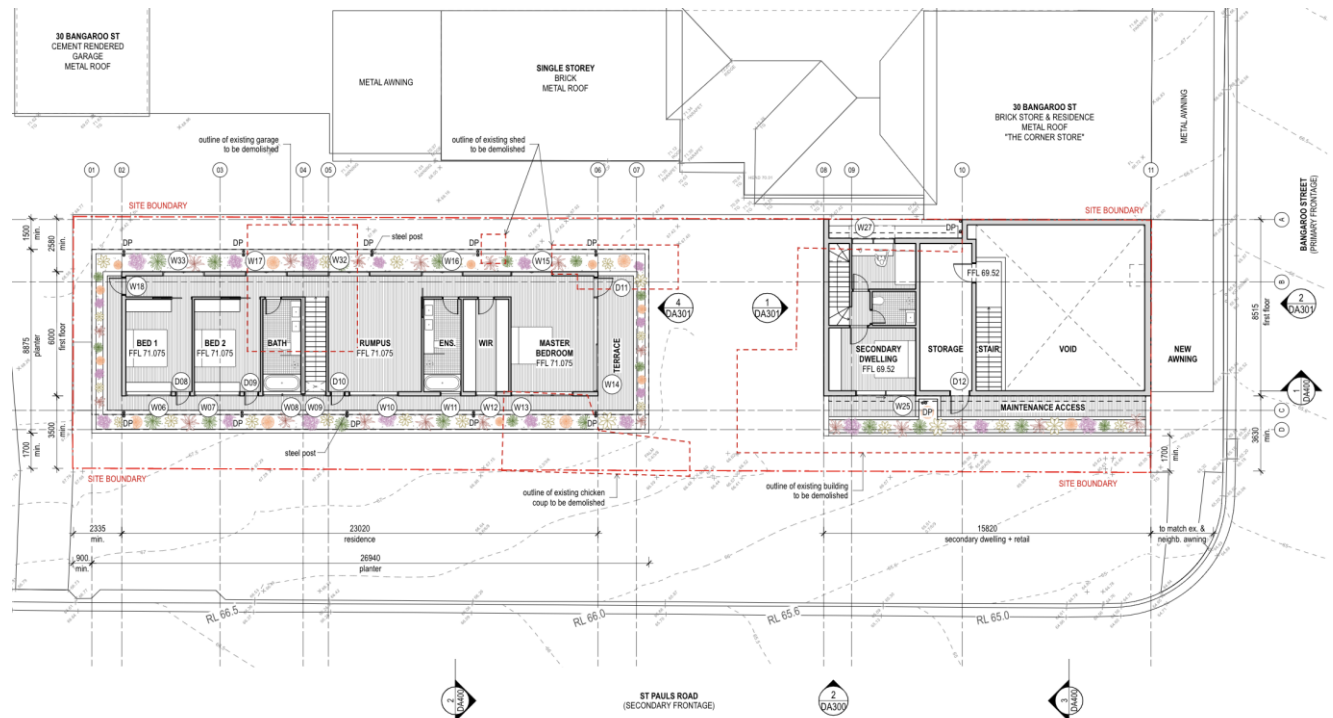
Ground Floor component – Secondary Dwelling (two storey building)

- Comprising living area, dining, kitchen, bathroom and laundry facilities with access from St Pauls Road

Ground floor – two storey residence

- Comprising living area, dining, kitchen laundry, study/office area, entry facilities to ground floor residence and access to a double garage
- Swimming pool located at ground level positioned between the proposed secondary dwelling and principal residence.

First Floor Plan



Source: Break Spear Architectural – Drawing DA221 - Proposed first floor

First Floor works :

- Void over the retail space

First floor works – secondary dwelling

- Master bedroom, bathroom and small bedroom

First Floor Works – principal dwelling

- Master bedroom with walk-in robe and ensuite
- Rumpus room
- Bathroom
- Two bedrooms



38 BANGOROD ST
BRICK STORE & RESIDENCE
METAL ROOF
"THE CORNER STORE"

RIDGE 75.95

RIDGE 72.20

GUTTER 71.35

GUTTER 73.35

2m LOW ROOF HEIGHT LIMIT

2m HIGH WALL HEIGHT LIMIT

2m HIGH ROOF HEIGHT LIMIT

outline of existing street to be demolished

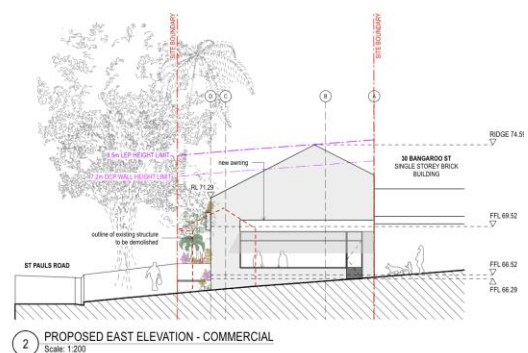
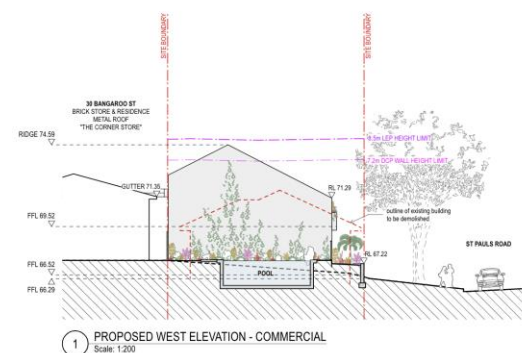
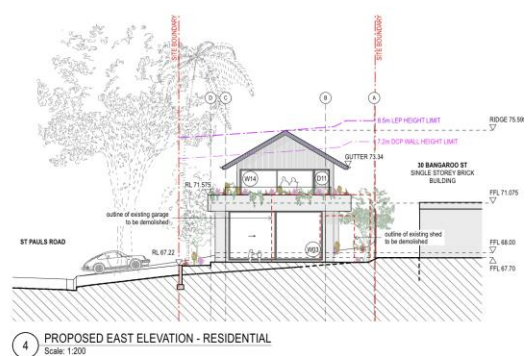
outline of existing street to be demolished

rain water pipe

ST PAULS ROAD

PROPOSED WEST ELEVATION - RESIDENTIAL

Scale: 1:200



Source: Break Spear Architectural – Drawing DA301 - Proposed East and West Elevations

Development Data:

SITE AREA: 632.3m²
EXISTING LANDSCAPE 44%
 278m²

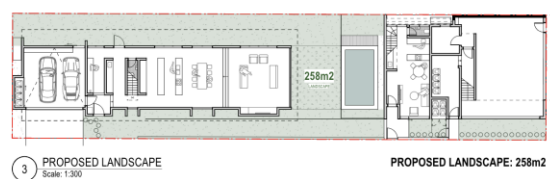
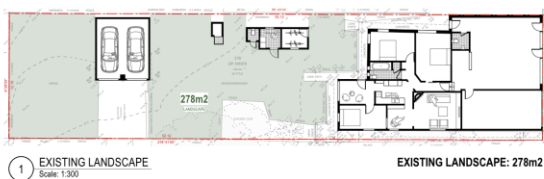
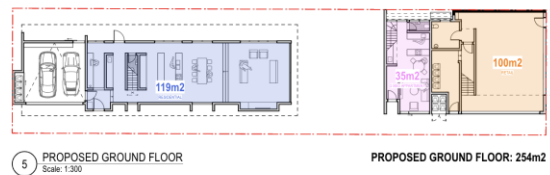
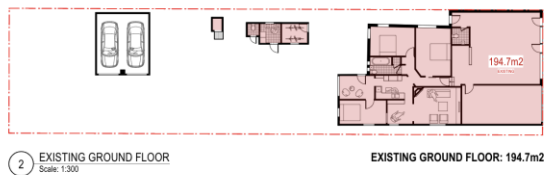
EXISTING GFA
EXISTING GROUND FLOOR: 194.7m²
EXISTING FSR: 0.3:1
TOTAL EXISTING GFA: 194.7m²

DCP CONTROLS
DCP MIN LANDSCAPE AREA: 40%
PROPOSED LANDSCAPE AREA 258m²
 41%

PROPOSED RESIDENTIAL GFA: 240m²
PROPOSED RETAIL GFA: 121m²
PROPOSED SECONDARY DWELLING GFA: 60m²

PROPOSED TOTAL GFA: 425m²

PROPOSED FSR: 0.67:1



Source: Break Spear Architectural – Drawing DA700 – Area Schedule

Hours of Operation – Retail Premises:

- Monday – Friday: 7:00 am – 6:00 pm.
- Saturday and Sunday: 7:00 am – 3:00 pm.

5. Statutory Planning Controls

The relevant statutory planning controls applicable to the proposed development are as follows:

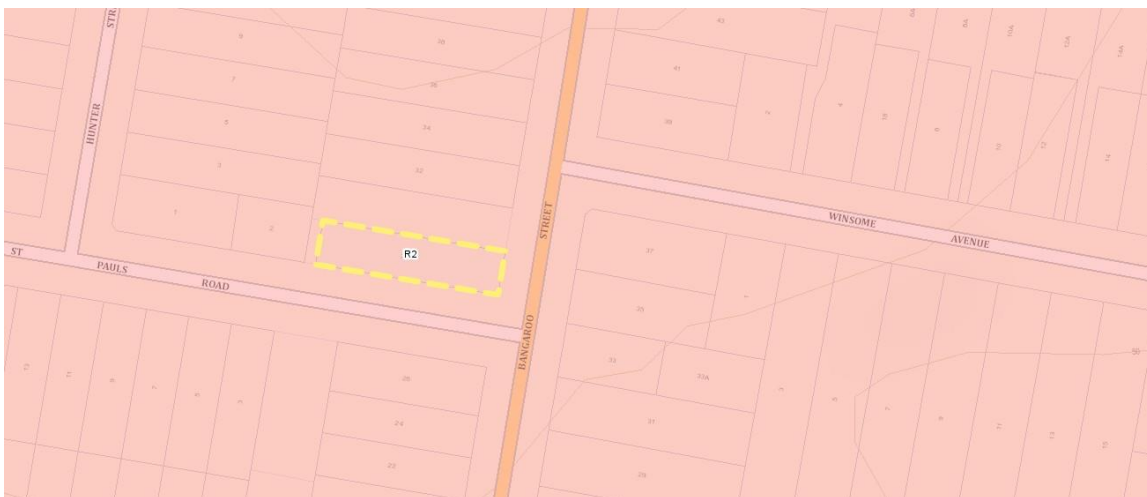
- *Warringah Local Environmental Plan 2011 (WLEP2011);*
- *Warringah Development Control Plan 2011 (WDCP2011);*
- *Environmental Planning and Assessment Act 1979 (as amended);*
- *Environmental Planning and Assessment Regulations 2000.*

5.1 Warringah Local Environmental Plan 2011

The following are the applicable clauses of Warringah Local Environmental Plan 2011 relevant to the proposed development:

5.1.1 Zoning Provisions

The site is zoned R2 Low Density Residential as shown on the above zoning map of Warringah LEP2011 and is described below.



Zone R2 Low Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

2 Permitted without consent

Home-based childcare; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home businesses; Hospitals; Oyster aquaculture; Places of

public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Tank-based aquaculture; Veterinary hospitals

4 Prohibited

Any development not specified in item 2 or 3

COMMENT: Dwelling houses and secondary dwellings are a permissible land use within the R2 Low Density Residential Zone under Warringah LEP 2011. Swimming pools and associated infrastructure would be deemed to be ancillary development to the principal land use, being a dwelling house. The existing shop has existing use rights under the Provisions of the EP&A Act and associated Regulations, being a lawful land use approved by Warringah Council on 31 May 1954.

A secondary dwelling is a permissible land use on the R2 Low Density Residential Zone, in accordance with the following definitions from the WLEP 2011 Dictionary of Terms:

secondary dwelling means a self-contained dwelling that—

- (a) is established in conjunction with another dwelling (the *principal dwelling*), and
- (b) is on the same lot of land as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling.

Note—

See clause 5.4 for controls relating to the total floor area of secondary dwellings.

Secondary dwellings are a type of *residential accommodation*—see the definition of that term in this Dictionary.

- “(9) **Secondary dwellings on land other than land in a rural zone** *If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—*
- (a) 60 square metres,
 - (b) 11% of the total floor area of the principal dwelling.”

Comment: The proposal is a permissible development, being located separate to the principal dwelling and restricted to a floor area of 60sqm.

It is submitted that retail premises are a prohibited development under the provisions of WLEP2011, however it is acknowledged that the subject land enjoys the benefits of existing use rights under Part 4, Division 4.11 of the EP&A Act 1979. The existing use rights relate back to a Council decision in 1954 whereby Council resolved that an application be approved for the purpose of a shop at 28 Bangaroo Street, Balgowlah at its meeting held on 31 May 1954. It is further acknowledged that on a valuation assessment by the Valuer-General's department that 1965 showed that the existing improvements on the property included a shop. It is also important for council to acknowledge that for many decades Council has issued rate and charges notices on the subject property under the premise of ordinary business rate. If Council disputes the existing use rights what legal right have to have charged the owners of subject land over many years a business rate. In accordance with Council's comments made at the pre-DA meeting a legal opinion has also been obtained from an accredited lawyer specialising in planning and environmental law which supports the proposition that this site does have existing use rights for retail premises. The following sets out existing use rights as defined under Part 4, Division 4.11 of the EP&A Act 1979.

Please see document provided by Northern Beaches Council's Records Section:

WARRINGAH SHIRE

County of Cumberland Planning Scheme Ordinance

Lot. 28 Sec. 1 D.P. 11936

CLAUSE 56 REGISTER

Bangaroo Street
Street

Balgowlah
District

(50) Proposed Shop, Balgowlah - Letter from L.T. & E.M. Stevenson requesting permission for a further shop at 28 Bangaroo St., Balgowlah. *TPDC 17.5.54*

Resolved to recommend - That this application be refused as it is not in Council's proposed shopping area.

Item No. 50 - Proposal by L.T. & E.M. Stevenson for shop at 28 Bangaroo Street, Balgowlah: *TPDC 24.5.54*

Resolved, - That this matter be referred back to the Town Planning Committee for further consideration. (Crs.)

(31) Proposed Shop, Balgowlah - Letter from L.T. & E.M. Stevenson, requesting permission to erect a further shop at 28 Bangaroo Street:

Resolved to recommend - That the application be approved, subject to the submission of satisfactory building plans. *TPDC 31.5.54*



Existing use rights is defined under **Part 4, Division 4.11 of the EP&A Act 1979** as follows:

Definition of "existing use"

4.65 Definition of "existing use" (cf previous s 106)

In this Division, "**existing use**" means--

- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and
- (b) the use of a building, work or land--
 - (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
 - (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

Part 5 – Existing Uses of the EP&A Regulation's 2000

Clause 41 "Certain Development Allowed" of the Regulations states

- (1) An existing use may, subject to this Division:
 - (a) be enlarged, expanded or intensified, or
 - (b) **be altered or extended**, or
 - (c) be rebuilt or
 - (d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent, or
 - (e) if it is a commercial use – be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or
 - (f) if it is a light industrial use – be changed to another light industrial use or a commercial use (including a light industrial or commercial use that would otherwise be prohibited under the Act),
- (2) However, an existing use must not be changed under subclause (1) (e) or (f) unless that change of use:
 - (a) involves only alterations or additions that are minor in nature, and
 - (b) does not involve an increase of more than 10% in the floor space of the premises associated with the existing use, and
 - (c) does not involve the rebuilding of the premises associated with the existing use, and
 - (d) does not involve a significant intensification of that existing use, and relates to premises that have a floor space of less than 1000m²

Refer to the legal opinion prepared by Paul Vergotis, Lawyer at Piper Alderman, that states the following:

- It is clear that Council's records confirm that a shop use at the site was approved on or around 31 May 1954. We are instructed that the site is currently being used as an art gallery and art supplies shop.

- Further more, there is no evidence that a shop use at the site has been abandoned for a continuous period of 12 months or more since WLEP2011 commenced in December 2011.
- In light of the above, it is likely that the site enjoys existing use rights because approval was granted for the use of a shop prior to the commencement of WLEP2011 and that shop use has not been abandoned since the retail use was prohibited by the commencement of the WLEP.

A copy of the full advice will be submitted as supporting documentation to the DA.

5.1.2 Height of Building

Under WLEP2011, Clause 4.3 Height of Building is set out below:

4.3 Height of buildings

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
 - (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
 - (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
 - (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*
- (2A) *If the [Height of Buildings Map](#) specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.*

Height of Buildings Map



The works associated with this Development Application are within the maximum height of 8.5m above the natural ground level (as shown on architectural drawing prepared by Break Spear Architects); therefore, the works are under the maximum height of 8.5m that applies to the subject land.

5.1.3 Principal Development Standards - WLEP 2011

Part 4: Principal Development Standards			
Standard	Permitted	Proposed	Comment
4.1 Minimum subdivision lot size	N/A	N/A	N/A
4.2 Rural subdivision	N/A	N/A	N/A
4.2A Strata - Community Title Subdivision	N/A	N/A	N/A
4.3 Height of Buildings	8.5m	NA	No breach to the maximum building height in respect to the subject works.

Part 5: Miscellaneous Provisions	
Provision	Comment
5.1 Relevant acquisition authority	Not applicable
5.2 Classification and reclassification of public land	Not applicable
5.3 Development near zone boundaries	Not applicable
5.4 Controls relating to miscellaneous permissible uses	Not applicable
5.5 Development within the coastal zone	Not applicable
5.7 Development below mean high water mark	Not applicable
5.8 Conversion of fire alarms	Not applicable
5.9 Preservation of trees or vegetation	Not applicable
5.9AA Trees of vegetation not prescribed by a development control plan	Not applicable
5.10 Heritage conservation	Not applicable
5.11 Bush fire hazard reduction	Not applicable
5.12 Infrastructure development and use of existing buildings of the Crown	Not applicable
5.13 Eco-tourist facilities	Not applicable

Part 6: Relevant Additional Local Provisions	
Provision	Comment
6.1 Acid Sulfate Soils	Not applicable
6.2 Earthworks	Not applicable
6.3 Flood planning	Not applicable
6.4 Development on sloping land	Refer to the geotech report prepared by White Geotechnical Group dated July 2022
6.5 Coastal hazards	Not applicable
6.6 Erection of dwelling houses in zone E3	Not applicable
6.7 Residential Flat Buildings in Zone B4 Mixed Use	Not applicable
6.8 Subdivision of Certain Land	Not applicable
6.9 Location of Sex Service Premises	Not applicable

Relevant Schedules	
Schedule	Comment
Schedule 1 Additional Permitted Uses	Not applicable

Schedule 2 Exempt Development	Not applicable
Schedule 3 Complying Development	Not applicable
Schedule 4 Classification and reclassification of public land	Not applicable
Schedule 5 Environmental Heritage	Not applicable
Other Relevant WLEP 2011 Clauses	
N/A	

5.2 Warringah Development Control Plan 2011

In preparing this application, consideration has been given to Warringah Development Control Plan 2011 (WDCP2011). Accordingly, an assessment against the relevant controls has been undertaken below.

Part B - Built Form Controls

An assessment against the relevant built form controls identified in Part B of WDCP2011 (Built Form Controls) has been undertaken as follows:

Control	Required	Complies
B1 Wall Height	Maximum 7.2m	Yes – refer to the cross section drawings prepared by Breakspears Architects
B2 Number of Storeys	Not applicable	N/A
B3 Side Boundary Envelope	5m	Complies
B4 Site Coverage	Not applicable	Not applicable
B5 Side Boundary Setbacks	Minimum 0.9m	Compliant
B7 Front Boundary Setbacks	6.5m	Frontage to Bangaroo Street, no change to the retail building. Secondary frontage to St Pauls Road requires 3.5m under the DCP. The principal residence is 2.95m – therefore a minor encroachment however due to the size and shape of the parcel of land, and the articulated street frontage of the proposed residence, the 2.9m setback is justified. In respect to the secondary dwelling, the setback is 2.065 which is greater than the current setback of the existing residence and retail premises.
B9 Rear Boundary Setbacks	Minimum 6m	The proposed setback is 3.073 as it is impossible to achieve a 6m setback due to the size and shape of the parcel of land and to accommodate a residential dwelling. Both the secondary road setback to the dwelling and rear setback has both

		allowed for extensive landscaping to take place as per the landscape plan. It is important for Council to acknowledge the landscaped area is 40%, consistent with the DCP control.
B11 Foreshore Building Setback	Not applicable	Not applicable
B12 National Parks Setback	Not applicable	Not applicable
Control	Required	Complies
B13 Costal Cliffs Setback	Not applicable	Not applicable
B14 Main Roads Setback	Not applicable	Not applicable

Part C – Siting Factors

C1 Subdivision

Not applicable

C2 and C3 – Parking Facilities and Traffic Access and Safety

Refer to the Traffic and Parking report prepared by Bitzios Consulting.

C4 Stormwater

Refer to the stormwater management plan and OSD plan designed by In-Line Consulting dated August 2022.

C5 Erosion and Sedimentation

Not applicable

C6 Building over or adjacent to Constructed Council Drainage Easements

There are no changes to the existing drainage infrastructure.

C7 Excavation and Landfill

The excavation to accommodate the proposed swimming pool has been addressed in the White Geotechnical Group investigation report.

C8 Demolition and Construction

This will be subject to a demolition and construction plan at CC Stage.

C9 Waste Management

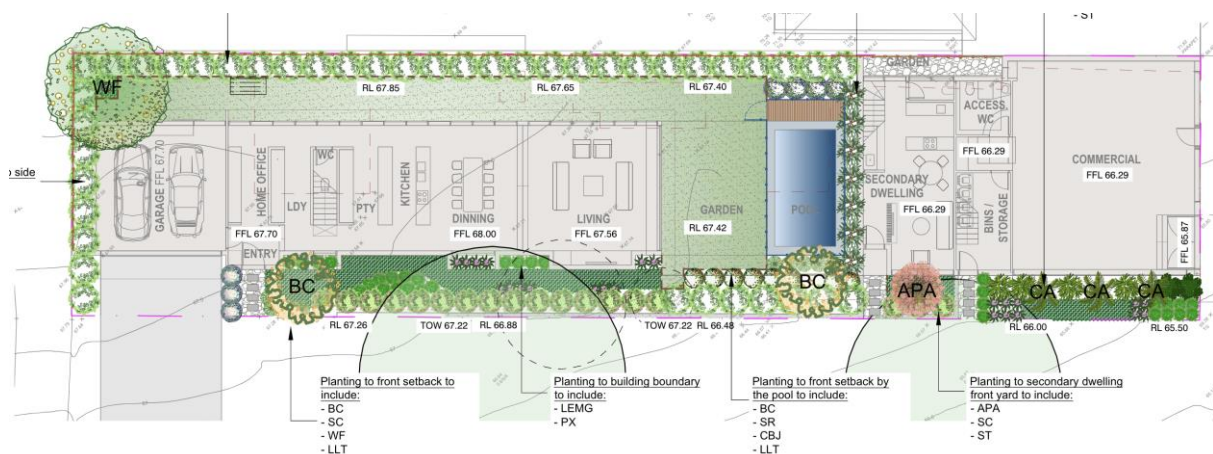
Refer to the waste management plan that has been prepared in accordance with Council's standard template.

Part D - Design

D1 LANDSCAPED OPEN SPACE AND BUSHLAND SETTING

Objectives:

- To enable planting to maintain and enhance the streetscape.
- To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.
- To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low-lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.
- To enhance privacy between buildings.
- To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.
- To provide space for service functions, including clothes drying.
- To facilitate water management, including on-site detention and infiltration of stormwater.



Source: Concept Landscape Architects – Drawing LPDA23-034

Comment: The landscaped open space calculations demonstrate that the works are compliant with the DCP standard being a minimum landscaped area of 40% (refer to drawing DA700). It is noted that the proposed landscape area is 258m² and based on a site area of 632.3sqm provides for a 41% landscaped area.

Objective: To enable planting to maintain and enhance the streetscape.

Comment: Refer to the landscape plan prepared by Concept Design which demonstrates that the proposed planting along St Pauls Road will substantially enhance the existing streetscape and create a very attractive and aesthetically pleasing landscaped area along this frontage of the development.

Objective: To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.

Comment: The amount of open space provided for on site will permit substantial planting however there is no indigenous vegetation, topographical features or habit for wildlife that exists on the current property. This site has been used for residential purposes and a retail shop for many decades.

Objective: To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low-lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.

Comment: There is ample area in the rear yard and in the area between the retail premises and the dwelling that will permit the establishment of low-lying shrubs and medium height shrubs.

Objective: To enhance privacy between buildings.

Comment: The proposal will not result in any unreasonable privacy impacts on adjoining residential development noting that part of the building to the north comprises a general store with a residence at the rear.

Objective: To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.

Comment: Within the rear yard setback and around the proposed in-ground swimming pool is adequate area to permit outdoor recreational opportunities to meet the needs of the occupants of the principal dwelling.

Objective: To provide space for service functions, including clothes drying.

Comment: The rear yard area is more than adequate to accommodate service facilities including an outdoor drying area.

D2 Private Open Space

Objectives:

- *To ensure that all residential development is provided with functional, well located areas of private open space.*
- *To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.*
- *To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.*
- *To ensure that private open space receives sufficient solar access and privacy.*

Comment: Complies with the above objectives.D3

Noise

Objectives:

- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment: The works will comply with noise emissions and adhere to the requirements of WDCP011, the NCC/BCA and relevant Australian Standards.

D4 Electromagnetic Radiation

Not applicable – no phone towers, transmitters or antennas proposed.

D5 Orientation and Energy Efficiency

Not applicable.

D6 Access to Sunlight

Objectives:

- *To ensure that reasonable access to sunlight is maintained.*
- *To encourage innovative design solutions to improve the urban environment and public open space.*

- *To promote passive solar design and the use of solar energy.*

Comment: The works, the subject of this Development Application, do not result in any adverse impacts on the existing built form or private recreation areas of adjoining residents. Adequate solar access is available to the occupants in both the rear yard as the front of the building to the north comprises a general store (retail premises). Refer to shadow diagrams on drawings DA600, DA601 and DA602.

D7 Views

Objectives:

- *To allow for the reasonable sharing of views.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure existing canopy trees have priority over views.*

Comment: There is no sharing of views associated with the development of this site for the purposes of a dwelling house, secondary dwelling and retail premises. There are no views towards the coastal area or any buildings that would be deemed to be of iconic value. Therefore, there is no requirement to undertake a view analysis in accordance with the NSW Land and Environment Court Principles.

D8 Privacy

Objectives:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic*
- *privacy for occupants and neighbours.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To provide personal and property security for occupants and visitors.*

Comment: The works the subject of this Development Application do not result in any adverse impacts by way of privacy on adjacent neighbouring properties.

D9 Building Bulk

Objectives:

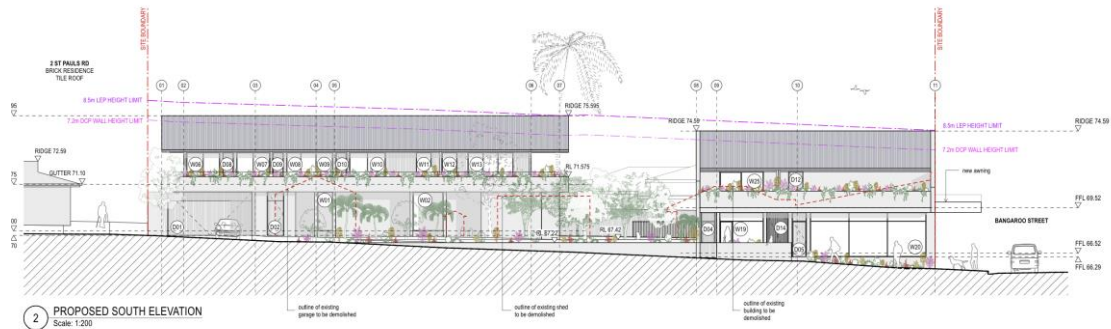
- *To encourage good design and innovative architecture to improve the urban environment.*
- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment: The works the subject of this Development Application have been designed in such a manner that they represent innovative architecture to improve the urban environment and due regard to building height, scale and size to ensure they are compatible with the existing surrounding development and locality. The architect has been mindful of comments made by Council's staff at the pre-DA meetings and has designed the development so that there is a significant space and area between the principal dwelling and the secondary dwelling and retail premises. The southern elevation clearly demonstrates this component of the development which minimizes bulk and scale and introduces an area of landscape, swimming pool and associated private recreational space between buildings.

The visual impact of the development when viewed from adjoining properties and public streets is minimal as a result of the sensitive design of the development.

It is also important for Council to acknowledge that there is a mixture of housing types

in this immediate locality, including dual occupancies, residential flat building immediately opposite the subject site and many examples of two storey private residences of significant bulk, scale and built form. These forms of residential accommodation are a strong influencing factor in determining the existing built form and streetscape that prevails predominantly in this immediate precinct. The immediate development to the north comprises a general store and residence at the rear that has been there for many decades and the residence has undergone major alterations and additions.



Source: Drawing DA300 – proposed north and south elevations



Residential Flat Building directly opposite site in St Paul's Street



Subject Site: Bangaroo Street Frontage (Source: Tomasy Planning)

D10 Building Colours and Materials

Objectives:

- *To ensure the colours and materials of new or altered buildings and structures are sympathetic to the surrounding natural and built environment.*

Comment: The building materials have been selected to be sympathetic to the surrounding natural and built environments and compatible with other buildings in this immediate precinct. Refer to architectural drawings DA500 and DA501.

D11 Roofs

Objectives:

- *To encourage innovative design solutions to improve the urban environment.*
- *Roofs are to be designed to complement the local skyline.*
- *Roofs are to be designed to conceal plant and equipment.*

Comment: The building materials for the roof will complement the existing built form environment in this immediate locality, particularly where residential dwelling houses prevail as the dominant land use. There is no plant or equipment designed to be accommodated on the roof area.

D12 Glare and Reflection

Objectives:

- *To ensure that development will not result in overspill or glare from artificial illumination or sun reflection.*
- *To maintain and improve the amenity of public and private land.*
- *To encourage innovative design solutions to improve the urban environment.*

Comment: Complies.

D16 Swimming Pools

Objectives:

- *To ensure swimming pools and spas are located to preserve the natural environment, streetscape and residential amenity.*
- *To encourage innovative design solutions to improve the urban environment.*

Comment: The proposed swimming pool, which is located between the secondary dwelling and the principal residence meets the relevant objectives of this clause in that it is located in an area suitable for private recreation and residential amenity. Plant and equipment can be adequately accommodated so there is no acoustic impacts on adjoining development or the residents to the north. The pool and associated garden area will be adequately landscaped along the St Pauls road frontage and is considered to be an ideal location for a swimming pool having regard to the narrow elongated configuration of the parcel of land.

D14 Site Facilities

Objectives:

- *To provide for the logical placement of facilities on site that will result in minimal impacts for all users, particularly residents, and surrounding neighbours.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To make servicing the site as efficient and easy as possible.*
- *To allow for discreet and easily serviceable placement of site facilities in new development.*

Comment: Not applicable

D20 Safety and Security

Objectives:

- *To ensure that development maintains and enhances the security and safety of the community.*

Comment: The subject works have no detrimental environmental effect on the safety and security of the community. The activation of the street frontage on the corner of St Pauls Road and Bangaroo Street will have significant community benefits and will enhance the built form that currently exists on this corner by way of dilapidated retail premises and residential residence.

D21 Provision and Location of Utility Services

Objectives:

- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure that adequate utility services are provided to land being developed.*

Comment: All relevant services are available to the site such as waste, sewer, electricity and communications.

D22 Conservation of Energy and Water

Comment – refer to the BASIX report.

Part E – The Natural Environment

E1 Private Property Tree Management

Not applicable.

E2 Prescribed Vegetation

Not applicable.

E3 Threatened Species, Populations, Ecological Communities Listed Under State or Commonwealth Legislation, or High Conservation Habitat

Not applicable.

E4 Wildlife Corridors

Not applicable.

E5 Native Vegetation

Not applicable.

E6 Retention of Unique Environmental Features:

Not applicable.

E7 Development on Land Adjoining Public Open Space

Not applicable.

E8 Waterways and Riparian Lands

Not applicable.

E9 Coastline Hazard

Not applicable.

E10 Landslip Risk

Refer to the geotechnical report carried out by White Geotechnical Group dated July 2022;

E11 Flood Prone Land

Not applicable.

Part F – Zones and Sensitive Areas

Not applicable.

Part G – Special Area Controls

Not applicable.

6. Section 4.15 Considerations of the *Environmental Planning and Assessment Act, 1979*

In considering the Development Application, Council must consider the relevant planning criteria in Section 4.15 of the *Environmental Planning and Assessment Act, 1979*. Section 4.15 is addressed as follows:

6.1 Statutory Policy and Compliance – S.4.15(1)(a)

The relevant statutory planning policies have been assessed with respect to all relevant SEPPs, LEPs and DCPs above in the Statement of Environmental Effects.

The planning provisions relevant to the proposed development include the following:

- *Environmental Planning and Assessment Act 1979 (as amended)*;
- Environmental Planning and Assessment Regulation 2000;
- Warringah Local Environmental Plan 2011;
- Warringah Development Control Plan 2011.

Refer to Section 5 for a full assessment against each respective planning instrument and planning policy.

6.2 Likely Impacts of the Development – S.4.15(1)(b)

An assessment of the likely impacts of the development, including environmental impacts on both the natural and built environments and social economic impacts in the locality, has been undertaken.

It is deemed the proposal is unlikely to have any environmental impacts on the natural and built environments. The proposal would also have no adverse social impacts on this locality. The proposal is consistent with statutory planning controls as they currently exist and, taken individually, will have a negligible economic impact on other similar developments in this locality.

The project architect has skilfully designed the development comprising a residential dwelling, secondary dwelling and an existing retail premises. The design complements the character of the area which has undergone change in recent times with some homes demolished and new dwellings erected and others the subject of major alterations and additions to an existing dwelling. The architect has been mindful that the retail component of the development abuts a building at No. 30 Bangaroo Street which comprises a brick general store and residence at the rear. The retail premises are known as 'corner store' which is in need of a major upgrade having regard to the existing streetscape that prevails on the corner No. 28 Bangaroo and No. 30 Bangaroo street.

6.3 Suitability of the Site for Development – S.4.15(1)(c)

The proposed development application is considered suitable to the subject site, having regard to its frontage, depth and area. The development is aesthetically pleasing and designed to be compatible with other developments, both adjoining and in the immediate locality. The characteristics of the site are such that the development has been designed to take into consideration the size and shape of the parcel land and the owner's requirement of ensuring that the retail premises component of the development is maintained and designed to complement the architectural character of the proposed new residence and secondary dwelling.

The development is compliant in respect of WLEP 2011 Height of Building Requirements and is generally compliant with the relevant DCP Controls, having regard to the fact that the proposal relates to an existing, lawful retail premises and attached residence.

The proposal would have no adverse impacts upon the prevailing streetscape and in fact represents a potential to substantially enhance the streetscape when viewed from both St Pauls Road and Bangaroo Street.

6.4 Submissions (Section 4.15(1)(d))

No submissions are available at this time.

6.5 The Public Interest – S.4.15(1)(e)

The proposal does have significant community benefits as it would result in an enhancement to both the existing streetscapes and built form that prevails on this corner site. The community will have the opportunity of using the retail component of the premises for a wide range of opportunities and will benefit from the street activation which will improve safety and surveillance from a public perspective. The revamping of the existing retail shop will further reinforce the value of having a community facility in close proximity to the residential development and patrons who use the corner store and children attending the nearby public school.

The public perception of the finished product will be a dwelling house with swimming pool, landscaping, a secondary dwelling and retail premises – all of which could be deemed to be 'the right fit' for this locality.

Approval is within the public interest.

7. Conclusions

- The merits of the proposal have been assessed in accordance with the provisions of the relevant clauses of WLEP2011 and the Provisions of Part 4, Section 4.15 of the *Environmental Planning and Assessment Act, 1979 (as amended)*.
- The built form outcome in terms of overall bulk, scale, height and appearance of the development is consistent with the relevant Provisions of WLEP2011 and WDCP2011 noting that the site does possess existing use rights for the purpose of a retail premises and attached residence lawfully approved in accordance with Warringah Shire Council decision dated 31 May 1954.
- The merits of the application have been assessed in accordance with the relevant requirements of WLEP2011 and the provisions of Section 4.15 of the EP&A Act 1979. There is no evidence that the impact of the development would warrant amendment to the subject proposal or justify refusal.
- The proposal has also given due consideration to the relevant State Environmental Planning Policies including:
 - SEPP No 55 – Remediation of land
 - SEPP (Building Sustainability Index BASIX) 2004

An assessment of the relevant provisions of the above SEPPs has revealed the development satisfies the requirements of each of the statutory documents.

- It is submitted that retail premises are a prohibited development under the provisions of WLEP2011 however it is acknowledged that the subject land enjoys the benefits of existing use rights under Part 4, Division 4.11 of the EP&A Act 1979. The existing use rights relate to Warringah Shire Council's approval on 31 May 1954 for the purpose of a new shop. The existing use rights have also been verified by way of legal advice obtained from an accredited lawyer specialising in planning and environmental matters.
- This development application therefore is deemed to be permissible, having regard to the fact that the subject land enjoys the benefits of existing use rights under Part 4, Division 4.11 of the EP&A Act 1979 and associated Regulations.
- The merits of the proposal include the following:
 - A development that is consistent with the context and neighbourhood character;
 - A built form and scale which are consistent with the prevailing built form in this immediate locality and in particular, along Bangaroo Street and St Pauls Road.
 - The proposal provides adequate landscaped area and private open space for the occupants of the principal dwelling;
 - The development maintains a building height limit below the prescribed Height of Building Requirement under WLEP 2011;
 - Adequate off-street car parking with a double garage with direct access from St Pauls Road. In respect to the retail premises, which have existing use rights, reference is made to the traffic and parking consultant's report that supports the subject proposal without the need for additional car parking for the secondary dwelling;

- Adequate solar access and ventilation to the principal dwelling and secondary dwelling;
- The scale and bulk of the built form are designed to effectively moderate the scale and length of the building along St Pauls Road and in this regard, the architect has designed the building with adequate articulation and modulation and this is reinforced by the landscaped area that separates the principal residence and the secondary dwelling.
- The development is a significant improvement to the existing building and other structures erected on the land. The development will display a high-quality finish and the overall proposal will have a positive impact on the streetscape, neighbouring properties and the surrounding locality and community.
- Accordingly, the proposed development comprising a principal residence, swimming pool, secondary dwelling and retail premises at 28 Bangaroo Street, North Balgowlah, is deemed acceptable from environment, social and planning perspective and approval should therefore be granted by Northern Beaches Council.