

Daniel De Looze
17 Narroy Road
North Narrabeen NSW 2101

Date: 5 May 2025

Northern Beaches Council
Planning Assessment Unit
725 Pittwater Road
Dee Why NSW 2099

RE: Request for Modification under Section 4.55(1) – DA2024/1580

17 Narroy Road, North Narrabeen

Dear Sir/Madam,

I write to request a modification under Section 4.55(1) of the *Environmental Planning and Assessment Act 1979* in relation to Development Consent DA2024/1580, issued for alterations and additions to the existing dwelling at 17 Narroy Road, North Narrabeen.

This modification seeks to:

1. Rectify planning and administrative errors originating from Council's Request for Further Information (RFI) dated 24 December 2024;
2. Clarify and vary elements of the approved plans, particularly the front setback;
3. Correct or remove several conditions of consent that are unreasonable, incorrect, or disproportionate to the scale and context of the works.

1. Dispute of RFI Advice – Shelter-in-Place Ceiling Height

In the Request for Further Information dated 24 December 2024, Council's Principal Planner stated:

"The shelter in place must have sufficient standing height of 2.1m..."

This direction was incorrectly presented as a mandatory planning requirement, when in fact it reflects a deemed-to-satisfy provision of the National Construction Code (NCC) — a matter outside Council's authority to enforce during development assessment. Acting in reliance on this statement, the applicant amended the attic design at significant cost.

It has since been confirmed, including via written email correspondence from Tom Burns dated 24 December 2024, that Council was relying on the NCC as the source of the 2.1m

height requirement. That email will be submitted as an attachment to this modification request.

1.1 NCC Requirements vs Planning Controls

While the NCC Volume 2 (Clause 3.8.2.2) sets a 2.1m ceiling height for certain non-habitable rooms (e.g. laundries, garages, storerooms), this refers to spaces intended for regular or routine use. A shelter-in-place area, by contrast:

- Is intended solely for rare, emergency-only use in a PMF scenario (1-in-1000 year flood);
 - Is not a utility space and does not require full standing height for seated or reclining temporary occupancy;
 - Performs its emergency function equally well at 1.6m ceiling height, and this is supported by a certified Performance Solution under NCC P2.4.2.
-

1.2 Certifier's Statutory Role – Not Council's

Compliance with the NCC is governed by the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*. Specifically:

Section 19(1):

“A certifier must not issue a construction certificate for building work unless the building will comply with the relevant requirements of the Building Code of Australia as in force on the relevant date.”

(AustLII – s19)

This means the certifying authority, not Council, is responsible for assessing NCC compliance at the Construction Certificate stage.

It is a well-established legal principle in NSW planning law that consent authorities must not impose NCC requirements as conditions of development consent unless those requirements are expressly adopted in an applicable planning instrument.

1.3 No Empowering Provision in LEP or DCP

In this case, there is no provision in:

- Clause 5.21 of the *Pittwater LEP 2014*;
- Section B3.11 of the *Pittwater 21 DCP*; or
- Any relevant SEPP,

that prescribes a ceiling height requirement for shelter-in-place areas, or empowers Council to apply specific NCC provisions to such design elements during the DA stage.

Shelter Design Summary

The proposed shelter-in-place area:

- Is located safely above the PMF (at ~5.0 m AHD);
- Is accessible via retractable stairs;
- Provides 8m² of safe, enclosed space;
- Is supported by a Performance Solution included in the revised Statement of Environmental Effects, to be formally certified under NCC P2.4.2.

There is no planning, policy or legal basis for Council to impose a 2.1m ceiling height standard in this context.

Requested Outcome

That Council:

- Acknowledge the 2.1m height requirement in the RFI as an administrative error, and
 - Approve reinstatement of the original 1.6m ceiling height for the shelter-in-place, subject to certification of a compliant Performance Solution at Construction Certificate stage.
-

2. Dispute and Clarification – Front Setback and Portico Scope

Council staff raised concern about the verandah and portico exceeding the front building line. The approved plans have since been modified to sit within the existing front building and portico lines, in response to that concern.

However, this modification request seeks to retain the ability to revert to the originally proposed larger footprint, should the merit of the front setback variation be acknowledged.

Planning Justification:

- The lot is narrow (10.36m) and irregular, with an angled (103.18°) front boundary;
- Control D11.6 provides scope for merit-based variation on constrained sites;
- The original proposal was sympathetic, lightweight in form, and improved the streetscape;
- There are multiple precedents in Narroy Road and surrounding streets, including:

- 21 Narroy Road – DA-approved carport with 200mm encroachment, 5.5m wide;
- 23, 25, 27 Narroy Road – existing carports forward of the building line;
- 3–12 Lido Ave, 37–115 Gondola Rd – similar front encroachments;
- No objections were received during the DA notification period.

Requested Outcome: That Council support the front setback variation on merit and allow the option to revert to the original larger verandah/portico footprint.

3. Correction or Removal of Conditions in the Notice of Determination

Condition 6 – Road Protection Bond (\$2,000)

This condition is excessive and disproportionate. Narroy Road:

- Lacks kerb, gutter, or formal footpath;
- Is already in poor condition (see photographic evidence – Flood Management Report, pp. 17–18);
- Will not be materially impacted by the minor renovations.

Legal grounds for removal include the principles established in:

- *Newbury DC v Secretary of State for the Environment* [1981];
- *North Sydney Council v Ligon 302 Pty Ltd* [1996];
- *Fodor Investments v Hornsby SC* [2005].

Requested Outcome: Waiver or significant reduction of the bond.

Condition 10 – Garage Floor Level

This condition incorrectly sets the 1% AEP flood level at **3.53m AHD**. However:

- Council's own Flood Map B confirms the applicable 1% AEP level is **3.03m AHD**;
- The condition imposes unnecessary design burden and construction complexity.

Requested Outcome: Amend Condition 10 to reflect the correct 1% AEP level of 3.03m AHD.

Condition 14 – Stormwater Certification

The requirement for stormwater plans by a registered hydraulic/civil engineer is excessive given:

- The applicant has submitted compliant designs based on manufacturer-engineered specs (AS/NZS 3500.3);
- The system is largely existing infrastructure;
- Many NSW councils accept such submissions for minor residential developments;
- Internal Council engineers can assess the plans;
- It creates unnecessary cost.

Supported by *North Sydney Council v Rocca* [2017] NSWLEC 99, which upholds flexibility and performance-based design.

Requested Outcome: Remove or revise Condition 14 to allow internal assessment of the submitted stormwater design.

Condition 15 – Driveway Access

This condition implies construction of a new driveway. However:

- The site is already serviced by an existing functional gravel driveway;
- The development is a renovation, not a new dwelling;
- Only minor adjustments to the gravel surface are proposed.

Requested Outcome: Delete Condition 15 in its entirety.

4. Supporting Documentation

The following updated materials accompany this modification request:

- Revised Statement of Environmental Effects, incorporating all justification;
- Updated plans, showing the approved and original footprint for the front portico;
- Email from Tom Burns (24 Dec 2024) confirming reliance on NCC for the 2.1m height.

Request for Reimbursement and Fee Waiver

As a direct consequence of Council's erroneous instruction in the Request for Further Information dated 24 December 2024, I incurred a \$370 re-notification fee for lodging updated plans that altered the development footprint solely to comply with advice that has now been demonstrated to be incorrect. These changes would not have been necessary had accurate and lawful advice been provided at the time.

In lodging this current Section 4.55(1) modification request to rectify the same issue, I am advised that a further \$513.50 modification fee and an additional \$370 notification fee may be payable. However, the plans being submitted do not propose any increase to the

development footprint beyond what has already been notified and approved. As such, **no** additional notification should be required, and any such fee would be unreasonable and duplicative.

Accordingly, I respectfully request:

- Reimbursement of the initial \$370 re-notification fee, and
- Waiver of the second \$370 notification fee and the \$513.50 modification fee, on the basis that both arise solely from a procedural error by Council and that no new environmental impact or footprint change is being proposed.

Supporting documentation and receipts can be provided upon request.

Conclusion

This modification:

- Corrects errors made during the DA assessment process;
- Responds reasonably to site-specific constraints;
- Maintains or improves compliance with environmental planning controls;
- Involves no new environmental impact;
- Reflects the principles of merit-based assessment, fairness, and proportionality under NSW planning law.

I respectfully request that Council approve this modification under Section 4.55(1) of the EP&A Act.

Please don't hesitate to contact me should you require additional information.

Yours sincerely,
Daniel De Looze