Proposed Development
Additions and alterations to existing dwelling and partial demolition

Subject Premises
Lot 299 DP 16719

Council
Northern Beaches

Owner
Daniel DE LOOZE

Date
05/05/2025

1. Introduction

This Statement of Environmental Effects supports a Section 4.55(1) modification request that proposes a performance-based design for a shelter-in-place space within the existing attic level of the dwelling at 17 Narroy Road. The modification challenges the imposition of Council's Request For Further Information, which required a 2.1m ceiling height for the emergency shelter in place, despite the absence of any legislative or performance justification for that height requirement.

The proposed design complies with the Pittwater 21 Development Control Plan (DCP) and the National Construction Code (NCC), and is consistent with the NSW State Environmental Planning Policy (Resilience and Hazards) 2021 and the 2025 Shelter-in-Place Guideline.

2. Flood Risk Assessment and PMF Probability

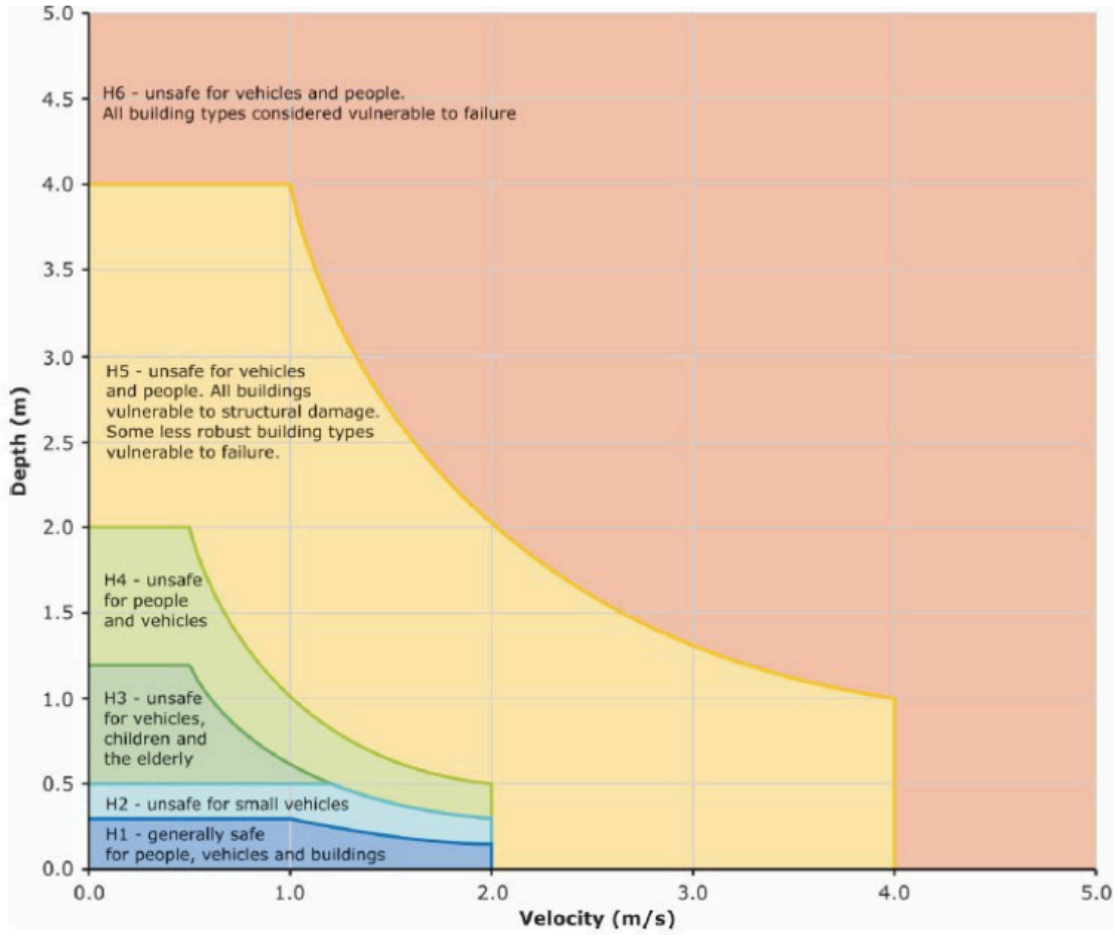

Figure 5.1.1.1 – General flood hazard vulnerability curves

Source: Australian Disaster Resilience Guideline 7-3 Flood Hazard (AIDR 2017)

Figure 5.1.1 – General flood hazard vulnerability curves, from Australian Disaster Resilience Guideline 7-3 Flood Hazard (AIDR 2017)

The subject site sits at 3.16m AHD and is affected by Probable Maximum Flood (PMF) inundation levels of 4.90m AHD. The maximum depth of inundation at the proposed site during a PMF is only 1.24m. Based on AIDR Guideline 7-3, this classifies the existing house space within Hazard Category H3 – safe for adults. Floodwater velocity during a PMF at the site is approximately 0.43m/s but is effectively nil inside the dwelling due to the presence of internal walls and doors.

The likelihood that the shelter would ever be needed is minimal:

- Without evacuation: 0.1% annual / 0.5% lifetime probability
- With 80% evacuation success: 0.02% annual / 0.1% lifetime
- With 90% evacuation success: 0.01% annual / 0.05% lifetime

Evacuation is feasible and safe up to 3.53m AHD (1% AEP + 500mm freeboard), with the nature strip levels along Venetian Road and Rickard Road providing dry, walkable access. Rickard Road provides a clear route to other resources such as shops and evacuation centres.

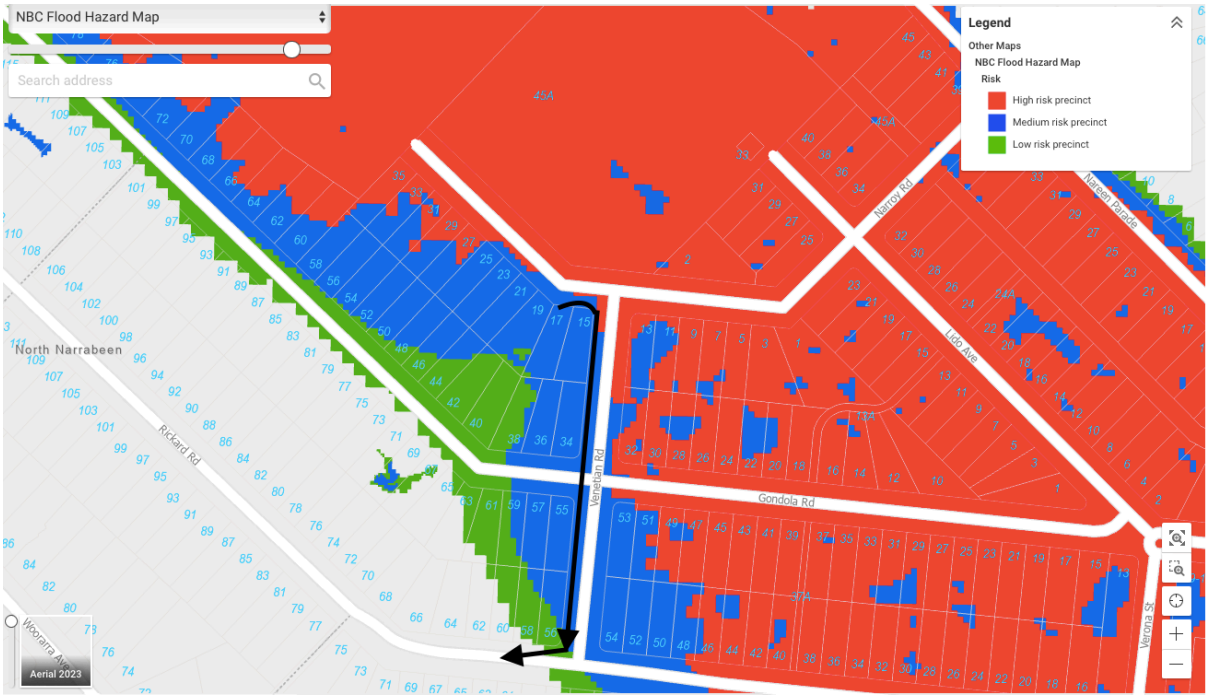

Figure – NBC Flood Hazard Map showing safe pedestrian evacuation route from 17 Narroy Road via Venetian Road to Rickard Road. Lagoon opening protocols at 1.3–1.5m AHD further reduce flood risk.

3. Performance-Based Solution – Shelter-in-Place Design

The proposed attic refuge room, while only 1.6m in ceiling height, directly addresses the number one objective of DCP Control E1 — **the safety of people during a flood emergency**. The performance-based approach ensures that this safety is achieved through practical, site-specific measures.

The additional 500mm ceiling height requested by Council does not change the outcome or improve safety in any measurable way. It has been clearly demonstrated that:

- The shelter would only be used for a very short duration;
- The probability of use is extraordinarily low (0.05% lifetime or less);
- It is virtually impossible not to be aware of an impending 1-in-100 or 1-in-1000 year flood;
- Council's role is to mitigate risk, not to eliminate it entirely;
- There is no additional risk posed by a 1.6m ceiling height compared to a 2.1m height in this context.

Moreover, the room offers more than sufficient usability for temporary occupation:

- Standing room available on the stair landing
- Seated comfort equivalent to long-haul travel
- Space to lie down and sleep if required
- Safe access for adults to other areas of the existing house for retrieval of warm clothes, towels, bedding, or food

Flood depths in the main dwelling during PMF remain below 1.25m and are safe for adult movement. Emergency services could also access the site safely.

The room also incorporates adequate ventilation, which is a key element of a performance-based shelter-in-place design under the NCC. The attic area includes natural passive ventilation via a fixed whirly bird and openable stair case, allowing continuous airflow to maintain breathable air quality and internal temperature stability. This satisfies the intent of the NCC's performance requirements for occupant health and safety in non-habitable rooms used temporarily for shelter.

4. NSW Shelter-in-Place Guideline (2025) – Flash Flood Context

The NSW Shelter-in-Place Guideline (2025) restricts such provisions to flash flood-prone sites with rapid onset, high velocity, and no viable evacuation.

This does not apply to 17 Narroy Road. The site experiences slow, ponded flooding and is not within a mapped hazard or overland flow area. Applying shelter-in-place conditions here contradicts the Guideline, SES protocols, and Council's own flood study data.

5. PMF Flood Duration and Recession Timeline

General PMF Duration and Recession Behavior:

- The PMF event has a critical storm duration of approximately 5 hours, reflecting the rise to peak flood levels.
- Post-peak, floodwaters recede gradually but are accelerated by:
    - Scouring of the lagoon entrance, increasing outflow
    - Storage characteristics of the lagoon acting as a basin
- A **2**–3 hour lag typically exists between peak inflows and peak water levels at the lagoon making it 7 - 8 hours for a PMF to rise and is not subject to flash flooding.

Estimated Recession Timeline from PMF Peak (~4.9m AHD):

- To Flood Planning Level (3.53m AHD): **6–10 hours**
- To 1% AEP Level (3.0m AHD): **8–14 hours**
- To 2.0m AHD: **12–20 hours**
- To tidal equilibrium (0.0m AHD): **24–36 hours**

Summary:

- **You would not be stranded for days.**
- **Access and safety likely restored within 6 –20 hours after PMF peak.**
- **Return to normal tidal levels expected within 1 to 1.5 days.**

Historical flood events (e.g. 2016 and 2022) confirm that lagoon drainage can be efficient, even under lesser storm conditions.

6. Conflict Between DCP E1 and State Policy Framework

The current version of Control B3.11 E1, as applied by Northern Beaches Council, directly conflicts with SEPP (Resilience and Hazards) 2021 and the Shelter-in-Place Guideline (2025):

- **Evacuation is prioritised under SEPP**, yet DCP E1 defaults to mandatory shelter-in-place even where evacuation is clearly feasible.
- **SEPP requires risk-based assessment**, while DCP E1 applies a blanket rule to all H3 or higher sites.
- **SEPP supports performance-based solutions**, but Council has insisted on 2.1m ceiling height, a requirement not present in the current DCP.
- **Shelter-in-place provisions are meant for flash flooding**, but Council applies E1 to lagoon-based, slow-rise flooding sites.
- **Council has not properly localised state guidance**, making DCP E1 more rigid after 2022, not less.

Legal Hierarchy

Under NSW planning law, SEPPs override DCPs. As confirmed in legal commentary:

"Like the LEP, SEPPs override Development Control Plans" – Coutts Legal

"DCPs are not legislative instruments and must not conflict with SEPPs or the EP&A Act" – PDC Law

Council must therefore interpret and apply DCP E1 in alignment with the SEPP, not in contradiction to it.

7. Summary of Performance Justification and Inconsistent Precedents

The shelter-in-place room at 17 Narroy Road functions effectively as a performance-based solution under the NCC and DCP. It prioritises occupant safety — the central aim of Control E1 — and is supported by clear evacuation capacity, functional design, and ventilation.

Importantly, the probability of use is exceptionally low, and the likely duration of use is short — between **6–10 hours**, with the property situated well above the Flood Planning Level (3.53m AHD). To require the room to be enlarged or rebuilt to meet a 2.1m ceiling height imposes an unjustified cost (estimated at $45,000–60,000) with no added life safety benefit.

Furthermore, Council has not applied Condition E1 consistently across similar development sites**.** Examples include:

- **DA2022/0778 – 6 Lido Avenue**: No 2.1m ceiling requirement imposed.
- **DA2020/0678 – 11 Rickard Road**: Approved with a **1.4m ceiling** for a flood refuge, despite being in a high-risk flood zone and at a time when the DCP explicitly required a 2.1m ceiling height for shelter-in-place rooms. This confirms that Council has previously accepted performance-based solutions even when the written controls were more stringent than they are now.
- 11 Rickard Road approval was issued by the same Principal Planner, Tom Burns, who has refused the subject proposal despite it being lower risk and feasibly evacuable.
- The sites at 6 Lido Ave and 11 Rickard Rd feature:
    - Property inundation in a 1% AEP flood
    - No feasible evacuation route
    - Flood Storage designation
    - H5 flood life hazard classification

This creates a clear equity and fairness issue, as 17 Narroy Road is within a medium-risk precinct, has no history of flooding, and presents a demonstrably safer and more compliant flood risk profile**.**

8. Front Building Line Control – Justification for Variation

In addition to the shelter-in-place provisions, this modification also seeks a variation to the front building line control under D11.6 of the Pittwater 21 DCP, which requires a established building line as the setback. The proposed variation allows a structure within closer proximity to the front boundary.

The proposed structure is:

- Open and lightweight in appearance,
- Clearly subservient to the existing dwelling,
- Designed in a way that maintains visual openness of the streetscape,
- Non-intrusive to neighbouring properties' view corridors or privacy,
- Consistent with the scale and pattern of other development in the area.

Importantly, precedents exist in the immediate locality, where similar or greater front setback encroachments have been approved on merit, including:

- DA2022/1937 - 21 Narroy Road (two doors down) - approved with a structure 0.2m from the front boundary (97% variation) under the same control.

Council accepted this substantial variation under the principle of merit assessment, recognising that contextual, functional, and design factors can outweigh strict numeric

compliance. In this case, the subject site presents no adverse visual, amenity, or environmental impacts that would justify strict enforcement of the established building line control.

The proposed variation meets the objectives of D11.6, including:

- Maintaining the predominant street setback,
- Ensuring the structure does not dominate the frontage or streetscape,
- Respecting the character and pattern of development in the area.

On these grounds, the proposed front setback variation should be supported.

The submitted amended plans already conform with the existing building line controls. However, due to extensive delays resulting from prior Council errors and misinterpretation, the applicant respectfully requests that scope and allowance be granted to revert to the original front setback and portico design submitted as part of the initial DA. This will simplify assessment, provide design flexibility, and avoid unnecessary further delays. Given that the original design also responds positively to the streetscape and character objectives of the DCP, and reflects development patterns along this part of Narroy Road, approval of the original setback is both reasonable and consistent with merit-based planning principles.

Further supporting this position is the established character of Narroy Road west of Venetian Road**,** a unique and short section of the street containing only 11 lots all directly opposite a park**.** This portion of the street is closed off and forms a distinct local character area, separate in function and built form from the rest of Narroy Road. The subject site is on an irregular and narrow lot, with a limited street frontage of 10.36m and a building line angled at approximately 103°, making strict application of standard front setback controls unreasonably difficult.

Variations are explicitly contemplated for narrow and irregular shaped blocks**,** and this site clearly qualifies as both. Thirteen (13) nearby homes have approved or existing front setback encroachments — a clear precedent for merit-based assessment in the locality. These include:

- 21, 23, 25, 27 Narroy Road
- 3, 7, 9, 12 Lido Avenue
- 37, 59, 115 Gondola Road
- 19 Nareen Parade
- 11 Rickard Road

The proposed open front gable and widened front portico have been designed to maintain transparency, scale, and visual consistency with the streetscape.

Rather than detracting from the locality, the proposal enhances the attractiveness and rhythm of the streetscape. The proposed design is modest, sympathetic to recent development in the area, and complies with the design objectives of D11.1 and D11.6. On merit, and based on the real-world context of this section of Narroy Road, the variation is both reasonable and justifiable., a unique and short section of the street containing only 11 lots. This part of the street is closed off and forms a distinct streetscape, separate in character and appearance from the eastern portion. Within this unique section, there are three houses in a row with existing

front carports (four once 21 Narroy completes their DA), starting from just two doors down from the subject site. These structures contribute to a consistent visual rhythm along this section of the street.

Rather than detracting from the streetscape, the proposed front portico adds to the continuity and character of this portion of Narroy Road. A merit-based assessment should therefore consider the actual visual context of this defined local character zone, rather than applying a rigid, uniform interpretation of the control across the entire street.

9. Conclusion

The proposed shelter-in-place room is:

- Fully compliant with the DCP and NCC via a performance-based pathway;
- Located on a site with low hazard, slow-rising flood behaviour, and clear evacuation routes;
- Safe for adult use even in the rare PMF scenario;
- Subject to an unjustified and non-mandatory 2.1m ceiling height condition imposed by Council.

Condition E1 should therefore be amended or removed in order to reflect:

- Statutory planning principles,
- State policy intent, and
- The practical, lawful use of performance-based design in low-risk, evacuable flood settings.