

Memo

Development Assessment

To: Northern Beaches Local Planning Panel (NBLPP)

Cc: Adam Richardson
Acting Executive Manager, Development Assessment

From: Anaiis Sarkissian
Planner

Date: 18 August 2026

Subject: Item 4.2 – DA2026/0418 – 580 Barrenjoey Road AVALON
BEACH

Record Number: 2026/475946

The purpose of this memo is to provide advice to the Panel in relation to two submissions received on behalf of the Applicant following the publishing of the business paper.

Four Towns Planning

The submission from Four Towns Planning, which claims that development consent or deferred development consent should (and can) be granted for the development given approval issued by the NBLPP for DA2025/0429 – 3 Lauderdale Avenue, Fairlight on 15 October 2025. The assessment report for DA2025/0429 noted that the subject site did not have the benefit of the easement on the neighbouring land, and that as Council had the benefit of the easement, this easement right could be conferred to the subject site by way of granting of consent to the development application. The report identified that there were several pathways for obtaining consent for the carrying out of the stormwater works, including (but not limited to) obtaining an order under the *Access to Neighbouring Land Act 2000*. That case is distinguishable as Council had an easement over the pipe to which the stormwater connection was proposed.

Foundation Law Group

The second submission is from Foundation Law Group, addressing the owners consent, easement and deferred commencement matters. The advice states that:

“A condition requiring the applicant to secure an easement, or other necessary third-party cooperation, before the consent becomes operative is capable of valid and certain expression. The involvement of third parties does not, of itself, make the condition void for uncertainty...It is not, with respect, for Council to determine as a separate merits criterion the ultimate likelihood of the applicants succeeding in private negotiations or estate-related steps to procure any required easement. That question is not itself a freestanding matter under s 4.15. If the easement is later not obtained, the deferred commencement condition simply prevents the consent from operating until it is.”

Council Response

The example provided by Four Towns Planning at 3 Lauderdale Avenue in Fairlight is not comparable as, in the case of 580 Barrenjoey Road, there is an added element of uncertainty with respect to ownership of neighbouring land. In the case of 3 Lauderdale Avenue, Council's pipe benefited from an easement that allowed for the drainage of public stormwater.

While much of the Foundation Law Group letter presents a fair reflection of the law, the law it addresses does not go to the question about the proper interpretation and application of the essential services clause in the Pittwater LEP. The concern is not about whether additional owner's consent is required for lodgement of the DA, or the power to impose a deferred commencement condition generally.

It is the Council's view that for power to grant development consent to be engaged in this situation, it must first be satisfied that adequate arrangements have been made to make stormwater drainage for the proposed development available when required. On-site management of stormwater of the nature referred to in clause 7.10(d) is not proposed, and no arrangement has been made to connect the stormwater system into the Council pipe (via the adjoining land, the ownership of which is uncertain). Who the arrangement could be made with remains an open question, and would take considerable time (including further investigations by the applicant) to resolve.

Conclusion

The concerns raised within the submissions do not change the opinion of Council and the reasons for refusal outlined within the Assessment Report. No changes are required to the recommendation.

Recommendation

The Panel refuse DA2026/0418, as recommended.