



Application Pursuant to Division 8.2 of
The Environmental Planning and Assessment Act 1979

Amended Statement of Environmental Effects
in support of the review of Determination of No. DA – 1568/2023

155 – 157 Bexley Road, Earlwood NSW 2206

Client:	Mark Diab
Project No:	155 – 157 Bexley Road, Earlwood
Date:	July 2024
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1 EXECUTIVE SUMMARY

1.2 SITE ATTRIBUTES

Address of Site:	155-157 Bexley Road Earlwood.
Local Government:	Canterbury Bankstown City Council.
Local Environmental Plan:	Canterbury Bankstown L.E.P. 2023.
Development Control Plan:	Canterbury Bankstown D.C.P. 2023.
Zone:	R3 Medium Density Residential Zone.
Brief Description / Purpose of Proposal:	Continuation of Existing Use Rights.

The development application number DA-1568/2023 for the change of use from existing electrical automotive repair workshop to office premises (Lot A, DP 337714 and Lot B, DP337714) was refused by delegated authority on 4th of June 2024.

2 HEADS OF CONSIDERATION AND EVALUATION

2.1 DIVISION 8.2 REVIEWS

Determinations and decisions subject to review

The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division:

(a) The determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),

The determination has been made by the consent authority; thus the application and subsequent review are caught by this Division.

2.2 REVIEW DETAILS

The applicant seeks a review of the determination to refuse the proposal pursuant to Section 8.3(1) of "The Act". The reasons for refusal are as follows:

- 1. The proposed use is prohibited under the R3 Zone as specified in the land use table of the Canterbury Bankstown Environmental Control Plan 2023. [Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979].*

Response:

The proposal does not alter the land use as approved pursuant to Ordinance 70. The land use is prohibited within the R3 Medium Density zone and relies on the provisions of Division 4.11 Existing Uses of the Environmental Planning and Assessment Act, together with Part 7 of the

Environmental Planning and Assessment Regulation 2021 for continued permissibility from a commercial use to another commercial use.

The primary approved use is “*Automotive Electrical Repair Services*”, permissible with consent pursuant to the Canterbury Planning Scheme Ordinance 70 of The Local Government Act approved as part of application 75/4176, Dated 8 December 1975.

Subsequently the Canterbury Local Environmental Plan No 138 altered the definition to a “*Trade Service*” and was identified as prohibited within the zone.

The current instrument identifies the parent definition land use as “*Commercial Premises*” as follows:

Commercial Premises means any of the following:

- (a) business premises,
- (b) office premises,
- (c) retail premises.

For the child definition this we turn to “*Office Premises*” identified as:

Office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

Further confirmation is provided by the EPI below:

Note: *Office premises are a type of commercial premises—see the definition of that term in this Dictionary.*

Ergo, the land use has been identified clearly and distinctly as a commercial premises and remains prohibited within the zone under the current instrument thus enjoys the benefits of Existing non-Conforming Use rights pursuant to Division 4.11.

Finally: Section 163 Certain Development Allowed identified within the Environmental Planning and Assessment Regulation allows for, pursuant to sub section (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”

Thus, the proposed use is, being a commercial use, permissible pursuant to the relevant EPI and may continue.

2. *Insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development. [Pursuant to the provisions of Section 4.15(1)(b)(c) of the Environmental Planning and Assessment Act 1979].*
3. *The site is not considered suitable for the proposed development. [Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979].*

Response

Below is a consideration of the environmental, social and economic impacts to the locality and site suitability under Section 4.15 (1) (b) (c) to address points 3&4 raised in the Notice of Determination.

Environmental

The assessment of the proposal has shown that any environmental impacts resulting from the works will be negligible. The existing built form is to remain and operate as an office premise which is a non-hazardous use and will not result in any adverse environmental impacts.

Social

The proposal maintains the economic diversity, allowing for a more diverse commercial typology. This allows a more diverse population cross section to work within the Canterbury Bankstown LGA. The increased choice of employment in this area provided by the proposal increases the longevity of the site.

The commercial outlet will continue to provide for local services available to the residents of the locale. The proposal maintains the available employment opportunity within the area and provides opportunities for more varied employment choice. The proposal is consistent with the social requirements in these regards.

Economic

Maintaining the commercial operation will add to the economic stability of the area by allowing for residents to live in a locality that is economically vibrant. The site is in close proximity to local services and within reasonable distance to other local business and upgraded infrastructure. All of these entities will benefit from the employment and economic input provided by the future residents of the LGA.

4. *Having regard to the previous reasons noted above, approval of the development application is not in the public interest. [Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979].*

Response

The immediate locality is serviced by a variety of commercial premises across from the subject site along William Street and the proposed change of use will add to mix use character and the site longevity. The proposal is clearly within the public interest.

3 CONCLUSIONS AND RECOMMENDATIONS

The proposal has demonstrated consistency with the underlying objectives of the controls contained within both State and Local policies and plans. The proposal shows regard for Section 4.15 of the Act, shows regard for all heads of consideration including site suitability, economic, social and environmental impacts and the public interest.