

JRPP No.	2010NTH029
DA No.	DA 10.2010.328.1
Proposed Development	Alterations/ Additions to existing Post Office, Lot 1 DP 717762, 89-91 Dalley Street, Mullumbimby
Applicant:	Australia Post
Report By:	PANEL SECRETARIAT

Assessment Report and Recommendation

Referred to the Joint Regional Planning Panel pursuant to section 89(2)(b) of the Environmental Planning and Assessment Act 1979.

22 October 2010

1. EXECUTIVE SUMMARY

The Panel Secretariat has reviewed this application for the Regional Panel's consideration, including a consideration of the views of Council and the applicant. Council's refusal of the development application is not supported because the proposal will not result in an increase in sewage load and is in the public interest. Therefore it is recommended the DA be approved, subject to conditions.

2. SITE DESCRIPTION

The subject site is located at 89-91 Dalley Street, Mullumbimby, on the south western corner of Dalley Street and Burringbar Street, and extends through to River Terrace at the rear. The building to the south is a Telstra facility. The site is located on the western end of the Mullumbimby commercial district.

The site is currently occupied by a post office building fronting Dalley Street, which includes an AustPost shop, an office area and postal sorting area. The existing post office building is a single storey building constructed in federation bungalow style. The rear of the site facing River Terrace is paved and used as an informal parking space but is otherwise unoccupied.

The site is rectangular in shape with a site area of 1054 m².

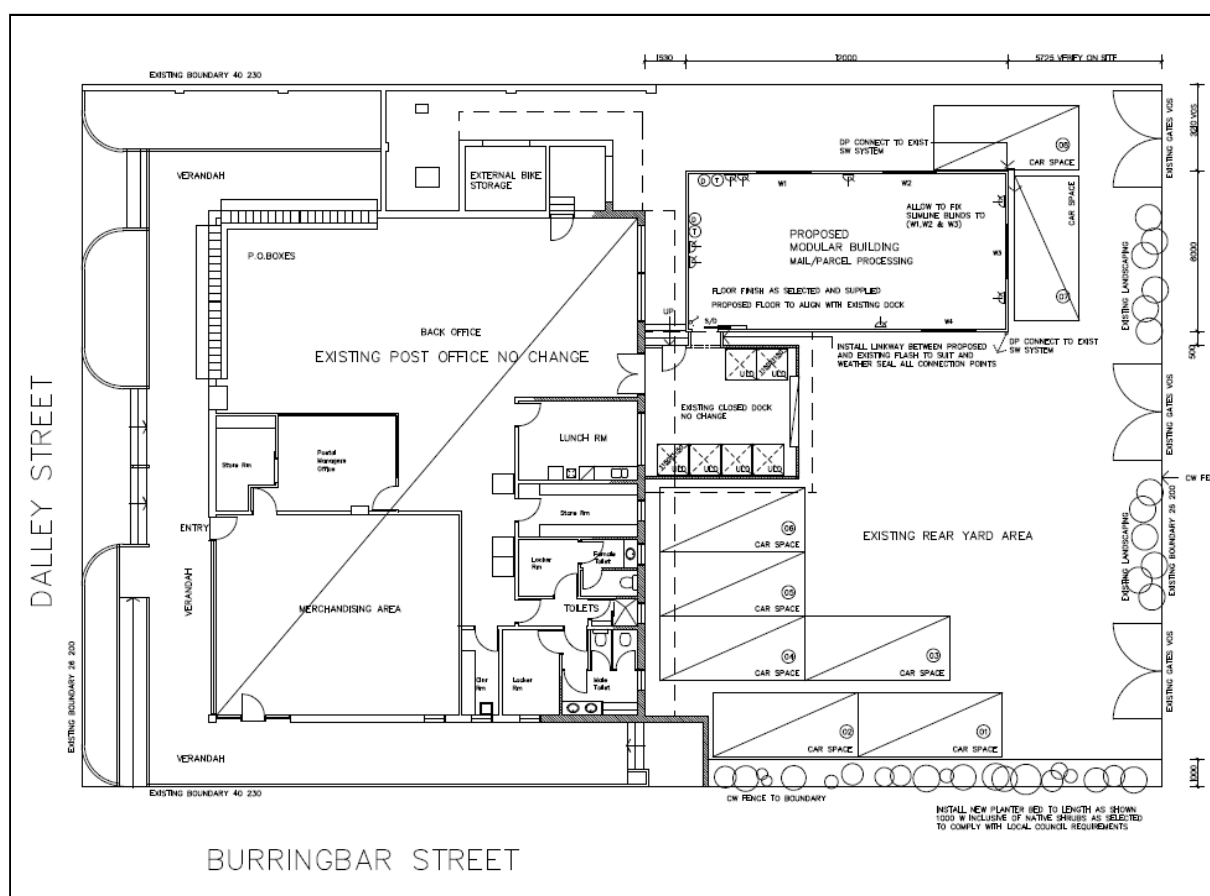
3. PROPOSAL

The application seeks consent to install a permanent modular building for mail and parcel sorting to be attached to the existing loading dock at the rear of the post office. The addition measures 12 metres long x 6 metres wide and has a maximum height to the ridge of the roof of 3.67 metres. The building is constructed of metal clad walls and a metal roof in colours to match the existing loading dock.

The proposed addition will not result in additional employees and there is no increase in retail or commercial space.

The proposal includes a 1 metre wide landscaped strip along the Burringbar Street frontage of the site for 16.5 metres. It is also proposed to formalise car parking on the site by line marking eight (8) spaces.

Figure 1 Site Plan



Source: Drawing DACC1004101 - 30/06/2010, Perera Design

4. BACKGROUND SUMMARY

- The development application was lodged with Council on the 5 July 2010;
- The proposal was notified from 15 July 2010 to 28 July 2010 and no submissions were received;
- A letter requesting additional information was sent to the applicant and a response to Council's letter was received on the 3 August 2010;
- Council prepared an assessment of DA 10.2010.328.1 recommending refusal on the 7 September 2010;
- Council referred DA 10.2010.328.1 to the Joint Regional Planning Panel on the 29 September 2010;
- The applicant provided comments on the draft conditions of consent on the 22 October 2010;
- The DA has been referred to the JRPP as under Section 89(1)(a) of the EP & A Act. Council must not refuse its consent to a Crown development application.

5. ENVIRONMENTAL PLANNING INSTRUMENTS

The site is zoned 3(a) – Business Zone under the Byron Local Environmental Plan 1988 and the proposed development is permissible with consent.

The site is located in Development Control Plan 2002: Part D – Commercial Development and Development Control Plan No. 11 - Mullumbimby and the proposal complies with the objectives of these plans.

The proposed development is generally consistent with:

- State Environmental Planning Policy Infrastructure 2007
- North Coast Regional Environmental Plan (Deemed SEPP)
- Remediation of the site is not required under State Environmental Planning Policy No 55 – Remediation of Land.

6. CONSULTATION AND PUBLIC EXHIBITION

The development application was notified for fourteen (14) days in accordance with Development Control Plan No. 17 – Public Notification and Exhibition of Development Applications. No submissions were received during the exhibition period.

7. JRPP's STATUTORY ROLE

Section 89(1)(a) of the Environmental Planning and Assessment Act 1979 (EP & A Act) states that a consent authority must not refuse its consent to a Crown development application, except with the approval of the Minister.

Section 89(2)(b) of the Act provides that if a consent authority fails to determine a Crown DA within the prescribed time limit it may be referred by either the applicant or the consent authority to a JRPP.

In this case, referencing Section 89(1)(a) of the EP & A Act, Council has resolved to refer the application to the JRPP with a recommendation for refusal.

8 CONSIDERATION OF SECTION 79C(1) OF THE EP & A ACT

Council's officer has undertaken an assessment of the application with regard to the provisions of the EP & A Act and all matters specified under section 79C(1). Council's officer has recommended that the DA be referred to the Joint Regional Planning Panel with a recommendation to refuse the application. The Panel Secretariat's review alters these findings and recommends conditional approval.

9. POSITION OF EACH PARTY

DA 10.2010.328.1 has been referred to the JRPP as Byron Shire Council has recommended refusal of the proposal.

The views of Council and the applicant are summarised as follows:

Byron Shire Council

Assessment staff

- Clause 45 of Byron LEP 1988 states that Council cannot consent to the carrying out of development on any land unless it is satisfied that prior arrangements have been made for the provision of sewerage, drainage and water services to the land.
- The proposal is recommended for refusal as the additional floor area creates a demand on the sewer services. There is no capacity in the current sewer system due to a moratorium on new development that will result in an additional sewage load.
- Council has therefore recommended that the proposal be referred to the JRPP with a recommendation to refuse the application for the following reason:

‘There is not an adequate arrangement for the provision of sewer services to the land to cater for the increase in demand generated by the development. This arrangement is required by Clause 45 of the Byron Local Environmental Plan 1988’.

Applicant - Australia Post

- The proposal is to address a serious shortage of storage space for mail sorting and the existing Australia Post building does not provide sufficient room for the movement of mail sorting loading devices.
- This is having a negative effect on the efficient delivery of mail and parcels, which is an essential public service.
- The applicant requests a variation to the moratorium policy as the proposal does not increase the load on the sewerage system as there will be no increase in employees and the building is not suitable for other uses.

10. DISCUSSION OF PLANNING MERIT

Sewer Services

Byron Shire Council has implemented a moratorium on new development that will result in additional sewage load on the existing Mullumbimby Sewage Treatment Plant. The determination of whether a development proposal will result in an additional sewage load is based upon the gross floor area of a building. Council has determined that the sewage entitlement for the site is 1 ET. As the existing development and the proposed extension together will generate a sewerage load of 1.2 ET (see Attachment iii for calculations), this is greater than the 1 ET entitlement and Council is unable to provide additional sewerage services to the site during the sewerage moratorium.

The applicant states that during discussions with Council's engineer on 16 June 2010 it was indicated that consideration would be given to a variation to this policy if there was sufficient justification provided.

The applicant has justified their requested for a variation to this policy as:

- Firstly, although there is an increase in gross floor area of the building there will be no increase in the sewage load. This is because the Australia Post facility is a specialised facility and no additional employees will be involved in the use of the site.
- Secondly, the additional floor space is required for mail and parcel storage and sorting which utilises a Unitary Loading Device (ULD). The ULD takes up a considerable amount

of room and the existing building does not provide sufficient room for the movement of the ULDs. Two existing staff members will have their main area of work moved to the proposed modular building.

- Thirdly, Australia Post provides an essential public service. The applicant states that it is in the public interest to permit the proposed modular building to be installed as it will improve the postal service which is of benefit to everyone in the community.

The Panel Secretariat considers that the justification provided by the applicant for the variation to the sewage moratorium is just and sound.

Car Parking

Council's assessment report also raises the car parking provided with the proposal.

Byron Council's DCP 2002 requires 1 car parking space per 20m² of GFA. The existing building on the site requires 13.77 car spaces however none are provided, except for the paved area at the rear of the building that is informally used for car parking. No car parking spaces were previously provided as the existing building was constructed in 1985 and was exempt from State Laws as Australia Post was a federal agency.

Under Byron Council's DCP 2002 the proposed extension requires 3.6 car spaces. The applicant proposes to formalise the existing onsite parking arrangement by providing 8 marked parking spaces, of which 4 are tandem spaces. The car parking spaces will be used by employees only and the provision of tandem car parking is considered reasonable in this situation. As there will be no increase in employee numbers there will be no increased demand for car parking.

The Panel Secretariat considers that the car parking spaces proposed are satisfactory.

The Panel Secretariat has reviewed the development application and its associated documents, the Council Officer's assessment report and the views of the applicant and concludes that the proposal will not result in an increase in sewage load or generate additional parking demand. The Panel Secretariat recommends the proposal be approved, with conditions for the reasons outlined above.

11. WITHOUT PREJUDICE CONDITIONS OF APPROVAL

Although the Council's assessment report recommended refusal, the Panel Secretariat requested Council to provide a set of without prejudice conditions of approval in the event the Panel resolved to approve the application. The draft conditions were received on 21 October 2010 (see Attachment ii).

The draft conditions were referred to the applicant for comment and the applicant has advised they do not agree with Condition 7, which seeks the payment of Section 94 contributions and water/ sewer servicing charges (see attachment iv).

Circular D6 – Crown DAs and Conditions of Consent, allows for development by the Crown to be exempted from section 94 contributions when the Crown activities provide “a public service or facility that lead to significant benefits for the public in terms of essential community services and employment opportunities”. As the proposed development is to improve the efficiency of the Australia Post service, does not increase the demand for such services and there is no intensification of the use of the land, section 94 contribution should not be imposed.

The Panel Secretariat considers this condition not applicable in the circumstances and recommends it be removed.

Australia Post is satisfied with draft conditions 14 and 17, although they note that there will be no increase in employees, customers or demand for off street car parking.

12. RECOMMENDATION

It is recommended that the JRPP:

- (A) **consider** all relevant matters prescribed under the *Environmental Planning and Assessment Act 1979*, as contained in the DA and its associated documents, Byron Council's assessment report and the findings and recommendations of this report; and
- (B) **approve** the application, subject to conditions set out in Schedule 1, pursuant to section 80(1)(a) and section 89 of the *Environmental Planning and Assessment Act 1979*, having considered all relevant matters in accordance with (A) above.

Prepared by:

Emily Dickson
Panel Secretariat

Endorsed by:

Paula Poon
Panel Secretariat

12. ATTACHMENTS

- i) Assessment Officers Development Evaluation Report, dated 7 September 2010
- ii) Without prejudice draft conditions of consent prepared by Byron Council,
- iii) Sewerage Entitlement Assessment, dated 22 July 2010
- iv) Applicants comments on draft conditions of consent

SCHEDULE 1
CONDITIONS OF APPROVAL

Parameters of this Consent

1) Development is to be in accordance with approved plans

The development is to be in accordance with plans listed below:

Plan No.	Description	Prepared by	Dated:
DACC 1004101	Site Plan, floor plan & elevations	Perera	30/06/10

2) Compliance with Building Code of Australia

- (1) For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:
- (a) that the work must be carried out in accordance with the requirements of the Building Code of Australia ,
- (2) This clause does not apply:
- (a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4), or
- (b) to the erection of a temporary building.
- (3) In this clause, a reference to the Building Code of Australia is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

3) Erection of signs

- (1) *For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.*
- (2) *A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:*
- (a) *showing the name, address and telephone number of the principal certifying authority for the work, and*
- (b) *showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and*
- (c) *stating that unauthorised entry to the work site is prohibited.*
- (3) *Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.*
- (4) *This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.*

- (5) *This clause does not apply in relation to Crown building work that is certified, in accordance with 09R of the Act, to comply with the technical provisions of the State's building laws.*
- (6) *This clause applies to a development consent granted before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.*

Note: Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

The following conditions are to be complied with prior to issue of a Construction Certificate

4) Certificate of Compliance – Water Management Act 2000

A Certificate of Compliance under Section 307 of the Water Management Act 2000 is to be obtained from Byron Shire Council prior to the issue of a Construction Certificate for payment of developer charges for water supply and sewerage.

Application forms are available from Council's administration building or online at http://www.byron.nsw.gov.au/files/Forms/Section_305_Certificate.pdf to be submitted for a Certificate of Compliance.

5) Stormwater drainage –Section 68 approval required

An approval under Section 68 of the Local Government Act 1993 to carry out stormwater drainage works must be obtained.

6) Flood Planning Level for new buildings

The flood planning level for this development is **R.L. 5.61m A.H.D.**

The plans and specifications to accompany the construction certificate application are to indicate a minimum floor level that is above the flood planning level.

The plans and specifications to accompany the construction certificate application are also to indicate the use of flood compatible materials, fixtures and power outlets where used in the building below the flood planning level. The flood compatible materials, fixtures and power outlets are recommended to be those components listed as "suitable" in *Table 10 - Flood Proofing Code* of Part K – Flood Liable Lands of Development Control Plan 2002.

7) Bond required to guarantee against damage to public land

A bond of **\$500** is to be paid to Council as guarantee against damage to surrounding public land and infrastructure during construction of the proposed development.

Evidence is to be provided to Council indicating the pre development condition of the surrounding public land and infrastructure. Such evidence must include photographs.

The proponent will be held responsible for the repair of any damage to roads, kerb and gutters, footpaths, driveway crossovers or other assets.

Such bond will be held until Council is satisfied that the infrastructure is maintained/repared to pre development conditions and that no further work is to be carried out that may result in damage to Council's roads, footpaths etc.

The following conditions are to be complied with prior to commencement of building works

8) Construction times

Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible from adjoining residential premises, can only occur:

- a) Monday to Friday, from 7 am to 6 pm.
- b) Saturday, from 8 am to 1 pm.

No construction work to take place on Saturdays and Sundays adjacent to Public Holidays and Public Holidays and the Construction Industry Awarded Rostered Days Off (RDO) adjacent to Public Holidays.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

The following conditions are to be complied with during construction

9) Wiring in flood prone buildings

All wiring, power outlets, switches, etc., must to the maximum extent possible, be located above the flood planning level. All electrical wiring installed below the flood planning level must be suitable for continuous submergence in water and must contain no fibrous components. Only submersible-type splices are to be used below flood planning level. All conduits located below flood planning level are to be so installed that they will be self-draining if subjected to flooding.

10) Construction Noise

Construction noise is to be limited as follows:

- a) For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
- b) For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A)

Note: Council may impose on-the-spot fines for non-compliance with this condition.

11) Builders rubbish to be contained on site

All builders rubbish is to be contained on the site in a 'Builders Skips' or an enclosure. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

The following conditions are to be complied with prior to occupation of the building

12) Works to be completed prior to issue of a Final Occupation Certificate

All of the works indicated on the plans and approved by this consent, including any other consents that are necessary for the completion of this development, is to be completed and approved by the relevant consent authority/s prior to the issue of a Final Occupation Certificate.

Any Security bond paid for this application will be held until Council is satisfied that no further works are to be carried out that may result in damage to Councils road/footpath reserve.

13) Car parking areas to be completed and signs to be provided.

The car parking areas are to be delineated in accordance with the approved plans. Signs are to be erected clearly indicating the availability of off-street parking and the location of entry/exit points, visible from both the street and the subject site.

14) Stormwater disposal

Stormwater must be collected and disposed of in a controlled manner such that stormwater flows are:

- a) Clear of buildings and infrastructure,
- b) Not onto adjoining land.

15) Floor Levels

Prior to the issue of an occupation certificate the owner/builder of a development is to confirm in writing to Council the as-built levels are as per the approved designs (ie. the heights are confirmed by a registered surveyor). The heights which should be provided would be the floor levels.

The following conditions are to be complied with at all times

16) Car Parking spaces are to be available for the approved use

A minimum of eight (8) car parking spaces are to be provided and maintained, together with all necessary access driveways and turning areas, to the satisfaction of Council.

Tenants and customers of the development must have unrestricted access to the car parking spaces on a daily basis during business hours of the development.

17) Loading and unloading not to occur on the street

The loading and unloading area must be available at all times for the loading and unloading of goods for the development. All loading and unloading is to take place within the curtilage of the premises.

NOTES:**Occupation Certificate required:**

The building must not be occupied until the Principal Certifying Authority has issued an Occupation Certificate.

Principal Certifying Authority:

Work must not commence until the applicant has:-

appointed a Principal Certifying Authority (if the Council is not the PCA); and given the Council at least two days notice of the their intention to commence the erection of the building. Notice must be given by using the prescribed 'Form 7'. notified the Principal Certifying Authority of the Compliance with Part 6 of the Home Building Act 1989.

Certificate of Compliance – Water Management Act 2000

A Certificate of Compliance will be issued on completion of construction of water management works to serve the development and/or on payment of developer charges for water and sewer as calculated in accordance with Byron Shire Council and Rous Water Development Servicing Plans.

Note: Copies of the application forms for Certificates of Compliance are available on Council's website www.byron.nsw.gov.au or from Council's Administration Office. Copies of Byron Shire Council's Development Servicing Plans are available at Council's Administration Office.

The following charges are indicative only. Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment. A check must be made with Council to ascertain the current rates.

INDICATIVE CHARGES PURSUANT TO THE WATER MANAGEMENT ACT, 2000

(Office Use Only)						
Water	(S64W Mull)	0.20	ET @	\$8,035.78	=	\$1,607
Bulk Water					=	
Sewer	(S64S Other)	0.20	ET @	\$9,507.75	=	\$1,902
				Total	=	\$3,509

END

DEVELOPMENT APPLICATION EVALUATION REPORT

Doc No. #984874

DA No.	10.2010.328.1
Proposal:	Alteration/Additions to existing post office
Property description:	LOT: 1 DP: 717762 Dalley Street MULLUMBIMBY
Parcel No/s:	18160
Applicant:	Perera Design Pty Ltd
Owner:	Australia Post
Zoning:	Zone No. 3(a) - Business Zone
Date received:	5 July 2010
Integrated Development	No
Public notification or exhibition:	Level 2 advertising under DCP 17 – Public Notification and Exhibition of Development Applications Exhibition period: 15/7/10 TO 28/7/10 Submissions: For 0 Against 0
Other approvals (S68/138):	Not applicable
Planning Review Committee:	N/A
Delegation to determination:	Council
Issues:	<ul style="list-style-type: none"> • Sewer capacity; • Car Parking
Summary:	<p>Compliance with Clause 45 of the LEP is the critical issue associated with this development.</p> <p>The addition floor area creates a demand on the sewer services. There is no capacity in the current system. Accordingly the application should be refused.</p>
Recommendation:	<p>It is recommended that:</p> <p>1. Pursuant to Section 89 (2A) that development application No. 10.2010.328.1, for Alteration/Additions to existing post office , be referred to the Regional Planning Panel with a recommendation to refuse the application for the following reason:</p> <p>(1) There is not an adequate arrangement for the provision of sewer services to the land to cater for the increase in demand generated by the development. This arrangement is required by Clause 45 of the Byron Local Environmental Plan 1988.</p>

1. INTRODUCTION

1.1 History/Background

The post office was constructed in 1985. No DA or BA was required for this development as Australia Post was a federal government agency and at that time NSW planning laws did not apply.

1.2 Description of the site

An existing commercial building (post office) is located on the site. The commercial building is a single story building constructed in federation bungalow style to appear as a converted dwelling. Service yards and a loading dock occupy the rear of the site. There is no formalised / marked parking on the site.

1.3 Description of the proposed development

The proposal is to erect a modular building at the rear of the existing post office. This area will be utilised for mail and parcel processing.

2. SUMMARY OF GOVERNMENT/EXTERNAL REFERRALS

	Summary of Issues
Development Engineer	
Environmental Health Officer	
Water & Waste Services	Recommend refusal. Sewer moratorium.
Building Surveyor	
Fire Control Officer	
Ecologist	
Tree Preservation Officer	
Government Authorities	(list)

3. SECTION 79C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard for the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the issues.

3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

Requirement	Requirement	Proposed	Complies
State Environmental Planning Policies	Infrastructure SEPP 2007 SEPP 55	This is not exempt development. The land is not identified as being contaminated.	Yes
North Coast Regional Environmental Plan	No clauses applicable to this development.		Yes
NSW Coastal Policy 1997	No clauses applicable to this development.		Yes
Building Code of Australia	Set backs and construction standards.	Modular building to comply with the BCA	Yes
Demolition		No demolition is proposed	

* Non-complying issues discussed below

State/Regional Planning Policies and instruments - Issues

There are no significant issues raised by any SEPP.

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 1988

Zone: Zone No. 3(a) - Business Zone

Definition: Additions to a public building

Public building means a building used as offices or for administrative or other like purposes by the Crown, a statutory body, a council or an organisation established for public purposes.

LEP Requirement	Summary of Requirement	Proposed	Complies
Meets zone objectives	(b) to facilitate the establishment of retail, commercial, tourist and professional services to meet the needs of the community and which are compatible within the surrounding urban environment,	Additions to a commercial premises	Yes
Permissible use	Commercial premises	Additions to a commercial premises	Yes
Meets relevant Clauses (list clauses)	Clause 40 Top floor 7.5	0.62m	Yes
	Clause 40 Top of building 11.5m	3.6m	Yes
	45 Provision of services (1) The Council shall not consent to the carrying out of development on any land to which this plan applies unless it is satisfied that prior adequate arrangements have been made for the provision of sewerage, drainage and water services to the land.	The applicant proposes that despite the increase in floor area that the staff numbers will be kept the same.	NO

* Non-complying issues discussed below

Byron Local Environmental Plan 1988- Issues

The proposal does not comply with clause 45 of the LEP. Adequate provisions of services have not been made. Additional information was requested of the applicant. The information provided by the applicant did not address the issues raised in the request for further information. The increase in floor area generates an additional demand for services.

The Court has considered the issue of compliance with Clause 45 on a number of occasions. In *Codlea Pty Ltd v Byron Shire Council* (1999) 105 LGERA 370, the Court of Appeal considered the operation of cl 45. In that case the Court of Appeal held that there are two elements to cl 45. One is the making of the “prior adequate arrangements” by the council and the second is the “satisfaction” with them prior to granting consent. The former is exclusively the province of the council and the Court does not acquire that function on an appeal. It is not for the Court to make the arrangements on behalf of the council. The Court on appeal does, however, acquire the function of the council as to

“satisfaction” with such “prior adequate arrangements” required to be made under the clause. The Court can substitute its satisfaction under cl 45 for that of the council.

In *Ian McKay Pty Ltd v Byron Shire Council* [2000] NSWLEC 29, Pearlman J also considered the operation of cl 45. Her Honour held that the clause required the commissioner to decide on the facts whether prior arrangements in the sense of the willingness of any relevant authority to co-operate in a consensual way had been made; and whether the Court was satisfied that such arrangements on the facts were adequate. This required the commissioner on appeal to pose the question of fact for himself as to whether it had been shown to the Court that there existed a willingness to co-operate in a consensual way between the council and the developer. The commissioner then had to pose the further question of fact for himself as to whether, if “prior arrangements” had been made, they were “adequate”. In the latter respect, evidence about the capacity of the sewerage treatment plant would be relevant.

On this basis it is worth noting that there no prior adequate arrangements have been made.

Council’s Water and Sewer Engineer make the following comments:

The sewerage entitlement for the above property is:

The sewerage, water and bulk water entitlement for a developed lot is 1 ET.

The existing sewerage, water and bulk water entitlement for the existing post office is 1 ET

Development	Area	ET Rate	ET
Existing Post Office	310 m ²	0.003 ET / m ²	0.93
Existing Enclosed Dock	29 m ²	0.003 ET / m ²	0.09
Total			1.02 = 1.0 ET

The water, sewerage and bulk water load from the proposed development is 1.2 ET (taken from plan DACC1004101 – 30/06/10)

Development	Area	ET Rate	ET
Existing Post Office	310 m ²	0.003 ET / m ²	0.93
Existing Enclosed Dock	29 m ²	0.003 ET / m ²	0.09
Proposed New Building	72 m ²	0.003 ET / m ²	0.22
Total			1.24 = 1.2 ET

The proposed development generates a sewerage load of 1.2 ET, this is greater than the 1 ET entitlement. Council is therefore unable to provide sewerage services to the proposed development during the sewerage moratorium.

The sewerage load of any development on this property during the moratorium must be limited to 1 ET.

Further it is worth noting that as there is no capacity within the system it is not possible to make a prior adequate arrangement. The wording of clause 45 is explicit that Council “shall not consent” to the carrying out of development unless the prior adequate arrangement is in place. On this basis the DA must be refused.

Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority - Issues

There are no draft EPIs that impact upon this proposal.

3.3 DEVELOPMENT CONTROL PLANS

Development Control Plan 2002

Car Parking 1 space per 20m² GFA.

Existing building = 275m² GFA requires 13.77 car spaces. Nil were provided.

Extension = 72m² GFA requires 3.6 car spaces.

The applicant proposes to provide 8 spaces. 4 of which are stacked. This does not comply with the provisions of the DCP.

Other Development Control Plan/s

DCP	Requirement	Proposed	Complies
11 Mullumbimby	Scale of buildings	Single story	Yes

Other Development Control Plan/s - Issues

There are no significant issues raised by DCP 11.

3.4 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The development will have an adverse impact on the built environment due to there being inadequate provision of sewer services to cater for the development.

3.5 The suitability of the site for the development

There is inadequate provision of services to the site. Accordingly the application should be refused.

3.6 Submissions made in accordance with this Act or the regulations

There were **Nil** submissions made on the development application.

3.7 Public interest

Approval of a development where there is no adequate sewer service is not considered to be in the public interest.

4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

As the DA is being refused there is no reason to impose water and sewer levies.

4.2 Section 94 Contributions

As the DA is being refused there is no reason to impose section 94 levies.

5. CONCLUSION

As there are no prior arrangements for the provision of sewer services to the proposed development the application should be refused.

As the developer is the Crown for the purposes of the Act Council must not refuse the application without the consent of the Minister.

6. RECOMMENDATION

It is recommended that:

1. It is recommended that:

- 1. Pursuant to Section 89 (2A) that development application No. 10.2010.328.1, for Alteration/Additions to existing post office , be referred to the Regional Planning Panel with a recommendation to refuse the application for the following reason:**

There is not an adequate arrangement for the provision of sewer services to the land to cater for the increase in demand generated by the development. This arrangement is required by Clause 45 of the Byron Local Environmental Plan 1988.

7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

8. ENDORSEMENT

Assessment Officer (s): Name: Christopher Soulsby

Signature:

Date: 7 September 2010

9. INSTRUMENT OF EXERCISE OF DELEGATED AUTHORITY

The application is determined in accordance with the above recommendation (amendments have been made where necessary) under delegated authority.

Name:

Position:

Signature:.....

Date:

CONDITIONS OF CONSENT:

Parameters of this Consent

1) Development is to be in accordance with approved plans

The development is to be in accordance with plans listed below:

Plan No.	Description	Prepared by	Dated:
DACC 1004101	Site Plan, floor plan & elevations	Perera	30/06/10

The development is also to be in accordance with any changes shown in red ink on the approved plans or conditions of consent.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

2) Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

- (1) For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:
 - (a) that the work must be carried out in accordance with the requirements of the Building Code of Australia ,
 - (b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- (2) This clause does not apply:
 - (a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4), or
 - (b) to the erection of a temporary building.
- (3) In this clause, a reference to the Building Code of Australia is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

3) Erection of signs

- (1) For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- (2) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the work site is prohibited.
- (3) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (4) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.
- (6) This clause applies to a development consent granted before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

Note: Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

The following conditions are to be complied with prior to issue of a Construction Certificate

4) Certificate of Compliance – Water Management Act 2000

A Certificate of Compliance under Section 307 of the Water Management Act 2000 is to be obtained from Byron Shire Council prior to the issue of a Construction Certificate for payment of developer charges for water supply and sewerage.

Application forms are available from Council's administration building or online at http://www.byron.nsw.gov.au/files/Forms/Section_305_Certificate.pdf to be submitted for a Certificate of Compliance.

5) Stormwater drainage –Section 68 approval required

An approval under Section 68 of the Local Government Act 1993 to carry out stormwater drainage works must be obtained.

6) Flood Planning Level for new buildings

The flood planning level for this development is **R.L. 5.61m A.H.D.**

The plans and specifications to accompany the construction certificate application are to indicate a minimum floor level that is above the flood planning level.

The plans and specifications to accompany the construction certificate application are also to indicate the use of flood compatible materials, fixtures and power outlets where used in the building below the flood planning level. The flood compatible materials, fixtures and power outlets are recommended to be those components listed as "suitable" in *Table 10 - Flood Proofing Code* of Part K – Flood Liable Lands of Development Control Plan 2002.

7) Developer Contributions to be paid

Contributions set out in the attached Schedule are to be paid to Council. Contributions are levied in accordance with the Byron Shire Council Section 94 Development Contribution Plan 2005 dated June 2005 and Byron Shire Council Section 94 Development Contribution Plan 2005 Amendment No. 1 dated 20 July 2005 for Community Facilities, Open Space, Roads, Car Parking, Cycleways, Civic & Urban Improvements, Shire Support Facilities and Administration. The Plan may be viewed during office hours at the Council Offices located at Station Street, Mullumbimby.

The contributions payable will be adjusted in accordance with relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.

PAYMENTS WILL ONLY BE ACCEPTED BY CASH OR BANK CHEQUE.

8) Bond required to guarantee against damage to public land

A bond of **\$500** is to be paid to Council as guarantee against damage to surrounding public land and infrastructure during construction of the proposed development. Evidence is to be provided to Council indicating the pre development condition of the surrounding public land and infrastructure. Such evidence must include photographs. The proponent will be held responsible for the repair of any damage to roads, kerb and gutters, footpaths, driveway crossovers or other assets.

Such bond will be held until Council is satisfied that the infrastructure is maintained/repaired to pre development conditions and that no further work is to be carried out that may result in damage to Council's roads, footpaths etc.

The following conditions are to be complied with prior to commencement of building works

9) Construction times

Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible from adjoining residential premises, can only occur:

- a) Monday to Friday, from 7 am to 6 pm.
- b) Saturday, from 8 am to 1 pm.

No construction work to take place on Saturdays and Sundays adjacent to Public Holidays and Public Holidays and the Construction Industry Awarded Rostered Days Off (RDO) adjacent to Public Holidays.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

The following conditions are to be complied with during construction

10) Wiring in flood prone buildings

All wiring, power outlets, switches, etc., must to the maximum extent possible, be located above the flood planning level. All electrical wiring installed below the flood planning level must be suitable for continuous submergence in water and must contain no fibrous components. Only submersible-type splices are to be used below flood planning level. All conduits located below flood planning level are to be so installed that they will be self-draining if subjected to flooding.

11) Construction Noise

Construction noise is to be limited as follows:

- a) For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
- b) For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A)

Note: Council may impose on-the-spot fines for non-compliance with this condition.

12) Builders rubbish to be contained on site

All builders rubbish is to be contained on the site in a 'Builders Skips' or an enclosure. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

The following conditions are to be complied with prior to occupation of the building

13) Works to be completed prior to issue of a Final Occupation Certificate

All of the works indicated on the plans and approved by this consent, including any other consents that are necessary for the completion of this development, is to be completed and approved by the relevant consent authority/s prior to the issue of a Final Occupation Certificate.

Any Security bond paid for this application will be held until Council is satisfied that no further works are to be carried out that may result in damage to Councils road/footpath reserve.

14) Car parking areas to be completed and signs to be provided.

The car parking areas are to be delineated in accordance with the approved plans. Signs are to be erected clearly indicating the availability of off-street parking and the location of entry/exit points, visible from both the street and the subject site.

15) Stormwater disposal

Stormwater must be collected and disposed of in a controlled manner such that stormwater flows are:

- a) Clear of buildings and infrastructure,
- b) Not onto adjoining land.

16) Floor Levels

Prior to the issue of an occupation certificate the owner/builder of a development is to confirm in writing to Council the as-built levels are as per the approved designs (ie. the heights are confirmed by a registered surveyor). The heights which should be provided would be the floor levels.

The following conditions are to be complied with at all times

17) Car Parking spaces are to be available for the approved use

A minimum of eight (8) car parking spaces are to be provided and maintained, together with all necessary access driveways and turning areas, to the satisfaction of Council.

Tenants and customers of the development must have unrestricted access to the car parking spaces on a daily basis during business hours of the development.

18) Loading and unloading not to occur on the street

The loading and unloading area must be available at all times for the loading and unloading of goods for the development. All loading and unloading is to take place within the curtilage of the premises.

Notes:

Occupation Certificate required:

The building must not be occupied until the Principal Certifying Authority has issued an Occupation Certificate.

Principal Certifying Authority:

Work must not commence until the applicant has:-

appointed a Principal Certifying Authority (if the Council is not the PCA); and

given the Council at least two days notice of their intention to commence the erection of the building. Notice must be given by using the prescribed 'Form 7'.

notified the Principal Certifying Authority of the Compliance with Part 6 of the Home Building Act 1989.

Schedule of Development Contributions

The following contributions are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the **amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.** The current contribution rates are available from Council offices during office hours. **Payments will only be accepted by cash or bank cheque.**

TOURIST, RETAIL, COMMERCIAL & INDUSTRIAL DEVELOPMENT **SCHEDULE OF CONTRIBUTIONS PURSUANT TO SECTION 94 OF THE** **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

(Office Use Only)						
Civic & Urban Improvements	(IM-ML)	1.38	SDU @	\$1,520.84	=	\$2,099
Administration	(OF-SW)	1.38	SDU @	\$784.91	=	\$1,083
		Total			=	\$3,182

Certificate of Compliance – Water Management Act 2000

A Certificate of Compliance will be issued on completion of construction of water management works to serve the development and/or on payment of developer charges for water and sewer as calculated in accordance with Byron Shire Council and Rous Water Development Servicing Plans.

Note: Copies of the application forms for Certificates of Compliance are available on Council's website www.byron.nsw.gov.au or from Council's Administration Office. Copies of Byron Shire Council's Development Servicing Plans are available at Council's Administration Office.

The following charges are indicative only. Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment. A check must be made with Council to ascertain the current rates.

INDICATIVE CHARGES PURSUANT TO THE WATER MANAGEMENT ACT, 2000

(Office Use Only)						
Water (S64W Mull)	0.20	ET @	\$8,035.78	=		\$1,607
Bulk Water				=		
Sewer (S64S Other)	0.20	ET @	\$9,507.75	=		\$1,902
		Total			=	\$3,509

BYRON SHIRE COUNCIL - MEMORANDUM

MEMO TO: Executive Manager Planning and Environmental Services

MEMO FROM: Principal Engineer System Planning Water

SUBJECT: Sewerage Entitlement Assessment - Alteration / additions to existing post office
Development Application: 10.2010.328.1
LOT: 1 DP: 717762, Dalley Street MULLUMBIMBY

DATE: 22 July 2010

FILE NO(s): 18160D x 10.2010.328.1 /#987732

The sewerage entitlement for the above property is:

The sewerage, water and bulk water entitlement for a developed lot is 1 ET.

The existing sewerage, water and bulk water entitlement for the existing post office is 1 ET

Development	Area	ET Rate	ET
Existing Post Office	310 m ²	0.003 ET / m ²	0.93
Existing Enclosed Dock	29 m ²	0.003 ET / m ²	0.09
Total			1.02 = 1.0 ET

The water, sewerage and bulk water load from the proposed development is 1.2 ET (taken from plan DACC1004101 – 30/06/10)

Development	Area	ET Rate	ET
Existing Post Office	310 m ²	0.003 ET / m ²	0.93
Existing Enclosed Dock	29 m ²	0.003 ET / m ²	0.09
Proposed New Building	72 m ²	0.003 ET / m ²	0.22
Total			1.24 = 1.2 ET

The proposed development generates a sewerage load of 1.2 ET, this is greater than the 1 ET entitlement. Council is therefore unable to provide sewerage services to the proposed development during the sewerage moratorium.

The sewerage load of any development on this property during the moratorium must be limited to 1 ET.

These figures are at today's date

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Principal Engineer Systems Planning - Water

Paula Poon - Mullumbimby Post Office

From: "Geoff Goodyer" <geoffg@symonsgoodyer.com.au>
To: "'Paula Poon'" <Paula.Poon@planning.nsw.gov.au>
Date: 22/10/2010 4:07 PM
Subject: Mullumbimby Post Office
CC: "'Bonfante, Guy'" <Guy.Bonfante@auspost.com.au>, "'NALIN PERERA'" <nalin@pereradesign.com>

Paula,

Australia Post, as applicant, does not agree to the imposition of condition 7 in the draft conditions of consent, which seeks the payment of Section 94 Contributions and water/sewer servicing charges. The proposal does not increase the demand for such services as no additional employees are proposed and there is no intensification to the use of the land that would justify such contributions.

Australia Post emphasises that this proposal is to improve the efficiency of the use of the site and to provide an essential public service (ie: postal delivery services). There is no increase in the load on the local sewage system as no additional employees or customers will result from the proposal. The proposal does not create a precedent as it is for an essential public service and can therefore be distinguished from other commercial / retail proposals.

As there is no increase in employees or customers there is no increase in the demand for off-street car parking (noting that no car parking has previously been required to be provided). Notwithstanding this, Australia Post is satisfied with draft conditions 14 and 17 which confirm the details of the proposal including the provision of 8 off-street car parking spaces.

If you have any queries please feel free to contact me.

Regards,

Geoff Goodyer | Principal Town Planner | Symons Goodyer Pty Ltd
Town Planning and Development Consultants
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