



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	17 - 15
Applicant:	Tarah Toohey
Assessment Manager:	Building Approvals United
Concurrence Agency:	Sunshine Coast Regional Council (Council)
(if applicable)	
Site Address:	1 Bosun Place, Wurtulla described as Lot 127 on W93255 (subject site)

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Development Application (the Application) for building work to convert an existing carport to a secondary dwelling (class1a) and carport (class 10a). The decision followed a Concurrence Agency (Council) response directing the Assessment Manager to refuse the Application.

Date and time of hearing:	Monday 3 August 2015 at 10am
Place of hearing:	Subject Site
Committee:	Shane Adamson – Chair
Present:	Tarah Toohey (Applicant) and Joel Toohey Vince Whitburn – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision by the Assessment Manager to refuse the Application.

Background

The appeal relates to the decision of the Assessment Manager to refuse an Application for the conversion of an existing carport to a secondary dwelling (class 1a) and the siting of a carport on the subject land. The refusal was based on the Concurrence Agency response from the Council.

The subject site, is located on the southern side of Bosun Place, which leads to a cul-de-sac. The subject site is also located on the bend in Bosun Place, which means the land effectively has two (2) frontages.

The land is improved by a dwelling, which mainly faces towards the north, while the existing carport is located around the bend and faces towards the west. The carport has a similar pitched roof to that of the dwelling and is supported by brick piers and is considered a substantial structure. Despite the

existing carport containing roller doors and lattice screening to the side walls, the carport generally remains an open structure.

There are two aspects to the development proposal. These include converting the existing carport fronting the subject site to a secondary dwelling and erecting a carport on the northern side of the proposed secondary dwelling.

The proposal plans show that the secondary dwelling will be fully contained within the existing carport, which is about 7.120m across the frontage and about 5.860m deep. The proposed secondary dwelling is to be located about 1.750m from the frontage at the northern end at the closet point and about 3.908m at the southern end.

The proposed carport is to be an open lightweight structure, being about 2.6m in width at the frontage and about 5.9m deep. The carport is to have a skillion roof with a pitch of about 5% and will be located about 0.505m from the road frontage at the closet point.

On 27 April 2015, Council directed the Application be refused for the following reasons:

The Carport does not comply and cannot be conditioned to comply with the Sunshine Coast Planning Scheme 2014, Performance Outcomes PO2 for Garages Carports and Sheds.

- (a) Preserve the amenity of adjacent land and dwelling houses;*
- (b) Do not dominate the streetscape;*
- ~~(c) Maintain an adequate area suitable for landscapes adjacent to the road frontage; and~~*
- ~~(d) Maintain the visual continuity and pattern of buildings and landscape elements within the street.~~*

The secondary dwelling does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code, performance outcome PO3:

Where located in a residential zone, the dwelling house is set back from any road frontage so as to:

- ~~(a) achieve a close relationship with, and high level of passive surveillance of, the street;~~*
- ~~(b) create a coherent and consistent streetscape, with no or only minor variations in frontage depth;~~*
- ~~(c) make efficient use of the site, with opportunities for large back yards;~~*
- ~~(d) provide reasonable privacy to residents and neighbours on adjoining lots; and~~*
- ~~(e) maintain reasonable access to views and vistas, prevailing breezes and sunlight for each dwelling house.~~*

On 2 June 2015, the Assessment Manager issued a Decision Notice refusing the Application as directed by the Council.

On 3 June 2015, the Applicant lodged a 'Form 10 - Appeal Notice and provided grounds of appeal and accompanying correspondence.

On 6 August 2015, the Registrar provided additional information received from the Applicant as requested by the Chair at the hearing. The further plan provides additional information showing the extent of building work that would protrude into the 4.5m setback area at the road frontage.

A site inspection revealed that there are a number of other carports located within the front building setback area of Bosun Court. These carports appear to be generally double sized carports and are open lightweight structures. It would appear that the dwellings in the street are mostly setback about 6m from the front property boundary, including any garages.

It was noted that a relatively new garage has recently been constructed at 6 Halyard Drive, which is located on the southern corner of Halyard Drive and Bosun Court. This garage adjoins the subject land and fronts Bosun Place. This new garage is a fully enclosed structure, which appears to be setback about 4.5m from the front boundary.

The Applicant advised at the hearing that in their opinion, the enclosing of the secondary dwelling would not have a significant impact upon the streetscape because the carport, which is to be enclosed is already existing. Further, if need be, the proposed carport could be deleted from the Application. Despite the above comment being made, the Application has not been amended by the Applicant.

The Council representative confirmed at the hearing that in his opinion, the proposed secondary dwelling would present as a fully enclosed structure, which would have an impact on the street, because of the significant encroachment into the front building setback area.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 3 June 2015.
2. The Concurrence Agency response dated 27 April 2015 from Council.
3. The Decision Notice issued by the Certifier dated 2 June 2015.
4. Verbal submissions made by the Applicant/s at the hearing.
5. Verbal submissions made by the Council representative at the hearing.
6. A further Site Plan prepared by the Applicant and forwarded under separate cover by email from the Registrar of the Building and Development Dispute Resolution Committee, dated 8 August 2015.
7. The *Sustainable Planning Act 2009* (SPA).
8. Part 9.3.6 - Dwelling House Code under the Sunshine Coast Planning Scheme 2014.

Findings of Fact

The Committee makes the following findings of fact:

1. The site is located in an established urban area comprised of dwellings with garages, which generally maintain a 6m building setback to Bosun Place. Some of the properties contain double carports that are within the front boundary building setback area, but these structures are generally not dominating, being open lightweight structures, that are not enclosed.
2. The visual continuity and pattern of buildings in Bosun Place is characterised by dwellings and garages mostly maintaining a 6m building setback. While some of the dwellings contain open carports located within the 6m building setback area, these structures are not dominating.
3. At least one dwelling, which is located on the corner of Halyard Drive and Bosun Place, has an enclosed garage located about 4.5m from the Bosun Place frontage.
4. While the proposed carport is to comply with Performance Outcome PO2 (above), under the Acceptable Outcome AO2.1, the proposed carport is to be setback at least 6 metres from any road frontage, not exceed a height of 3.6 metres and have a total floor area that does not exceed 56m².
5. The proposed carport complies with the height requirement, does not exceed 56m², but extends to within 0.505m of the front property boundary, at the closet point.
6. While the proposed secondary dwelling is to comply with Performance Outcome PO3 (above), under the Acceptable Outcome AO3, the dwelling house, including the secondary dwelling, is to have a setback to any road frontage of at least 4.5m for the ground storey.

7. The proposed secondary dwelling is setback 1.750m from the boundary at the northern end and 3.908m from the road boundary at the southern end. From the proposal plan provided by the Applicant, a significant portion of the secondary dwelling is located within the 4.5m setback area.

Reasons for the Decision

1. While the proposed development is for two aspects being for a carport and a secondary dwelling, the Application needs to be considered as a whole having regard to the relevant provisions under the Dwelling House Code.
2. The existing character of the immediate area in Bosun Place is comprised mostly of dwellings with garages that generally maintain a 6m building setback from the front property boundary.
3. While some of the properties in Bosun Place contain carports constructed within the 6m setback area, these are open lightweight structures, which do not dominate the streetscape.
4. In terms of the existing built form in Bosun Place, the existing streetscape is coherent and consistent, in terms of maintaining the building setback for enclosed structures.
5. The proposed development to construct the secondary dwelling, and in particular the enclosure of the existing carport, will increase the impact of building bulk near the frontage and will have some adverse impact upon the streetscape.
6. The proposed open carport is unlikely to adversely impact on the amenity of adjacent dwellings or the streetscape.

The Committee upholds the decision of the Assessment Manager to refuse the Application because he proposed secondary dwelling will not maintain a coherent and consistent streetscape pursuant to part (b) of performance outcome PO3 of the Dwelling House Code, under the Sunshine Coast Planning Scheme 2014.

Shane Adamson
Building and Development Committee Chair
Date: 7 September 2015

Appeal Rights

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Committee's decision is given to the party.

Enquiries

All correspondence should be addressed to:

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Building Codes Queensland
Department of Housing and Public Works
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