



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal number:	36-10
Applicant:	Chris and Vanessa Barnes
Assessment manager:	Sunshine Coast Regional Council
Concurrence agency: (if applicable)	N/A
Site Address:	10 Ku-ring Gai Court, Kuluin and described as Lot 1 on RP 858501 Portion 265 — the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Sunshine Coast Regional Council, as the assessment manager, to refuse a siting variation for a double carport to be constructed to within less than one metre of the road boundary of the subject site.

Date of hearing:	Tuesday 29 June 2010
Place of hearing:	The subject site
Committee:	Mr Geoff Cornish – Chair
Present:	Mr Chris Barnes – Applicant Mr Fred Vicary – Sunshine Coast Regional Council

Decision:

The Committee, in accordance with section 564 of the SPA, **confirms** the decision appealed against and dismisses the appeal.

Background

The matter concerns the decision of the assessment manager not to grant a siting variation to enable the construction of a double carport within the prescribed road boundary setback at the front of the subject site.

The existing dwelling on the site contains a section that was previously an enclosed garage that has been converted to habitable space without referral to, or the approval of, Council. A temporary carport structure has been erected in the proposed permanent location. The applicants contend that the amenity of the street would not be affected by the construction of the proposed carport.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for appeal/declaration', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 27 May 2010.
2. Verbal submission from the applicant at the hearing.
3. Verbal submission from the Council representative at the hearing.
4. The SPA.
5. The *Building Act 1975*.
6. The Queensland Development Code.
7. Maroochy Plan 2000 and its attached codes, in particular the Code for Detached Houses.

Findings of Fact

The Committee makes the following findings of fact:

- The original dwelling contained a single enclosed garage accessed via the driveway constructed in conjunction with it.
- The original enclosed garage has been converted to habitable use without the knowledge or approval of Council, so that now the existing dwelling no longer contains any approved permanent covered car accommodation.
- Covered car accommodation is currently being provided on site by way of a temporary structure erected over the existing driveway.
- An alternative location exists on the subject site between the eastern boundary and the dwelling for the provision of permanent covered car accommodation.

Reasons for the Decision

- In the proposed location, the carport would have significant exposure to the street, in particular to residents exiting from Elanda Court directly opposite the subject site.
- As Ku-ring Gai Court is a narrow street, given its horizontal alignment persons exiting the Court from the east would also look directly at the carport in its proposed location.
- The applicants chose to convert the original covered car accommodation in favour of providing additional habitable space within the dwelling.
- In accordance with the provisions of the QDC, a viable alternative location exists on the subject site between the eastern boundary and the dwelling for the provision of a new complying covered car accommodation.

Geoff Cornish
Building and Development Committee Chair
Date: 6 July 2010
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:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Infrastructure and Planning
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