

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Local Government:** Livingstone Shire Council.

**Site Address:** 118 Schofield Parade, Keppel Sands; on land described as Lot 12 RP 602607.

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**Nature of Appeal:** Appeal under Chapter 4 Part 2 of the Integrated Planning Act 1997 and Section 21 of the Standard Building Regulation 1993 against the decision of the Livingstone Shire Council to refuse a Preliminary Application for a relaxation of the Standard Building Regulation 1993 to enable a proposed garage and store room to be located 1500 mm from the Limpus Avenue road boundary and 998 mm from the southern side boundary.

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**Date and Place of Hearing:** 11.00 am on Friday 8<sup>th</sup> August 2003 on the site at 118 Schofield Parade, Keppel Sands.

**Tribunal:** Nigel Daniels, Reg Arch, MAIBS.

**Present:** Owner.  
Tom Butler, Livingstone Shire Council .  
Bradley Crooke, Livingstone Shire Council.

Following the Tribunal hearing, a discussion took place with the owners of the neighbouring property to address their concerns about the proposed development.

**Decision:** Under the provisions of Section 4.2.34 of the Integrated Planning Act 1997, the decision of the Tribunal is to set aside the decision appealed against and to make a decision replacing the decision set aside, consistent with the agreement between the parties reached during the course of the hearing; as follows:

The upper storey of the two-storey building must comply with the siting requirements of the Standard Building Regulation 1993, which in this case provide that the distance from the road boundary must be not less than 6 metres, and distances from side boundaries must be not less than 2 metres; and

The lower storey of the building must be not less than 1.5 metres from the road boundary, and not less than 0.9 metres from the southern side boundary.

The Tribunal noted that the proposed distance of the lower storey from the northern side boundary is 2.1 metres, and that the wall of the building at ground level (the lower storey) is to be kept at least 4.0 metres from the absorption trenches to the east (up hill) of the proposed building.

**Background:**

The appeal was made against the decision of the Livingstone Shire Council to refuse an application for approval of distances from the proposed building to the Limpus Avenue road boundary and to the southern side boundary less than required by the provisions of the Standard Building Regulation.

The site is effectively at two levels (as is the neighbouring site) the principal building platform on which the existing dwellings are built being at a substantially higher level than the part of the site facing Limpus Avenue at the rear.

The proposed building was to be two storeys in height; the lower storey containing garages and facing Limpus Avenue would be below the principal building platform on the site. It was considered that the upper storey of the proposed building would obstruct the view from the neighbouring property to the north; the upper storey being at the level of the principal building platform.

The neighbours of the property to the north had also expressed concerns that the proposed development would obstruct the view.

**Material considered:**

- ❖ Written appeal notice and supporting documentation from the applicant;
- ❖ Written advice of the Council's decision;
- ❖ Written and verbal comments from the adjoining owners at 116 Schofield Parade, Keppel Sands, the adjacent property to the north.
- ❖ Information gained from the Tribunal hearing and from an inspection of the site.

**Findings of Fact:**

- ❖ The upper storey of the proposed building would block views from the neighbouring property; with potential hindrance to any future development of that property. However, when compared with the blocking of view caused by a building complying with the siting requirements of the Standard Building Regulation 1993, the difference is not likely to unduly obstruct the outlook from the adjoining allotment.
- ❖ It is feasible to construct a building in which the upper storey complies with the required boundary distances for a building up to 7.5 metres in height.
- ❖ The lower storey does not obstruct the view, being below the upper ground level of the neighbouring property.

**Reasons:**

- ❖ It is feasible to construct a building in which the upper storey complies with the required boundary distances for a building up to 7.5 metres in height.
- ❖ The lower storey may be built at lesser distances from the boundaries because at the lesser distances there would be no undue obstruction to the outlook from the adjoining property.

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**Nigel Daniels, Dip Arch, Reg Arch, MAIBS,  
Building and Development  
Tribunal Referee  
Date: 18 August 2003.**

## **Appeal Rights**

Section 4.1.37. of the Integrated Planning Act 1997 provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground -

- (a) of error or mistake in law on the part of the Tribunal; or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:-

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Local Government and Planning  
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