 VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P4/2021  Permit Application no. TPA/51030 |
| CATCHWORDS | |
| Application under section 77 of the *Planning and Environment Act 1987*; Review the refusal to grant a permit; Monash Planning Scheme; General Residential Zone – Schedule 3; Construction of two dwellings on a lot; Neighbourhood character; Landscaping; Basement garage. | |

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| **Applicant** | Joseph Chong |

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| **Responsible Authority** | Monash City Council |

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| SUBJECT LAND | 12 Mawarra Crescent  CHADSTONE VIC 3148 |

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| HEARING TYPE | Hearing |

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| DATE OF HEARING | 21 July 2021 |

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| DATE OF ORDER | 29 September 2021 |

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| CITATION | Chong v Monash CC [2021] VCAT 1097 |

# Order

### Amend permit application

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

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| * Prepared by: | Smart SIPs Pty Ltd |
| * Drawing numbers: | 1-21 to 21-21 |
| * Dated: | 1/6/2021 |

### No permit granted

1. In application P4/2021 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/51030 no permit is granted.

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| S McDonald  **Member** |  |  |

# Appearances

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| For applicant | Hew Gerrard, town planner, Glossop Town Planning.  He called the following witness:   * David Beaton, traffic engineer, Quantum Traffic Pty Ltd. |
| For responsible authority | Gerard Gilfedder, town planner, Currie & Brown. |

# Information

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| Description of proposal | Construction of two dwellings on a lot. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning scheme | Monash Planning Scheme. |
| Zone and overlays | General Residential Zone – Schedule 3 (**GRZ3**). |
| Permit requirements | Clause 32.08-6: Construct two or more dwellings on a lot in the GRZ3. |
| Key scheme policies and provisions | Clauses 11, 15, 16, 21.01, 21.04, 22.01, 22.05, 32.08, 52.06, 55, 65 and 71. |
| Land description | The review site is located on the south-western side of Mawarra Crescent, Chadstone. The land is rectangular, with a frontage of 15.24 metres, a depth of 39.6 metres, and area of 609 square metres.  The land falls from north-east to south-west by approximately 2.11 metres. There is a 1.83 metre wide drainage and sewerage easement adjacent to the south-western boundary.  The site is occupied by a single storey dwelling with a detached outbuilding. An existing crossover along the south-eastern boundary provides vehicle access to the site. The secluded private open space is located at the rear of the dwelling. The front boundary is unfenced. |
| Land description (continued) | The surrounding area is residential in nature, comprising properties of a similar size to the review site. Existing development is a mix of single detached houses and multi-dwelling developments. The original housing stock is predominantly single storey, and newer development is predominantly double storey.  The adjoining property to the south-east (14 Mawarra Crescent) contains a single storey dwelling. The adjoining property to the north-west (10 Mawarra Crescent) contains a double storey dwelling. To the south-west (rear) the adjoining property (129 Power Avenue) contains a single storey dwelling.  Figure 1: Review site and surrounding context[[1]](#footnote-2) |

# Reasons[[2]](#footnote-3)

## What is this proceeding about?

1. Mr Chong (the applicant) is seeking a planning permit to construct two dwellings on the land at 12 Mawarra Crescent, Chadstone (the review site).
2. The Monash City Council (the Council) decided to refuse the permit application. Its grounds of refusal relate to, in summary, building design and neighbourhood character, landscaping, internal amenity and vehicle egress from the site.
3. The applicant has sought this review of the Council’s decision. Their statement of grounds counters the grounds of refusal.
4. Before the hearing the applicant circulated amended plans of the proposal and sought an amendment to the permit application to substitute the amended plans for the permit application plans. There being no objection from the Council, I have substituted the amended plans for the permit application plans. It is on these plans that my decision is based.
5. Despite the amendments to the application plans the Council maintains its opposition to the proposal. The Council submits, in summary, that the proposal:

* does not provide an appropriate built form consistent with the character of the area;
* provides insufficient opportunity for landscaping given the extent of built form and basement; and
* will provide a poor level of internal amenity.

1. The Council no longer relies on its fifth ground of refusal relating to vehicles not being able to exit the site in a forward direction.
2. The submissions for the applicant include, in summary:

* The proposal fits in with the emerging built form character while remaining respectful of the original housing stock.
* The design response achieves relevant planning policy objectives and will assist towards the creation of a ‘garden city’ sought by local planning policy.
* The proposal will provide for both a positive built form and landscape contribution.
* The proposal achieves the neighbourhood character objectives of the General Residential Zone – Schedule 3 (GRZ3) and accords with the local variations to the clause 55 standards of the Monash Planning Scheme (the planning scheme).
* Off-site amenity impacts are limited and a high level of internal amenity is achieved.
* There are no traffic engineering reasons to refuse the grant of a planning permit.
* The proposal is consistent with the provisions of the planning scheme.

1. The applicant relies on the traffic engineering evidence of Mr David Beaton of Quantum Traffic Pty Ltd in support of his submission.
2. The Council received one objection to the planning permit application from the property owner/occupier of the adjoining property to the south-east (14 Mawarra Crescent). The objector has filed a statement of grounds opposing the proposal, although they are not a party to this proceeding. Their grounds relate to the impacts of the construction of the basement on their dwelling, and noise and privacy impacts during construction. I am satisfied that these matters are not relevant considerations under the planning scheme.
3. The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. In doing so I must consider whether the proposal will produce ‘acceptable outcomes’,[[3]](#footnote-4) rather than optimal or preferable outcomes, in relation to the relevant policies and provisions of the planning scheme.

## What are the key issues?

1. Based on the relevant policies and provisions of the planning scheme, and the submissions of and evidence for the parties, I consider the key issues to be determined are:

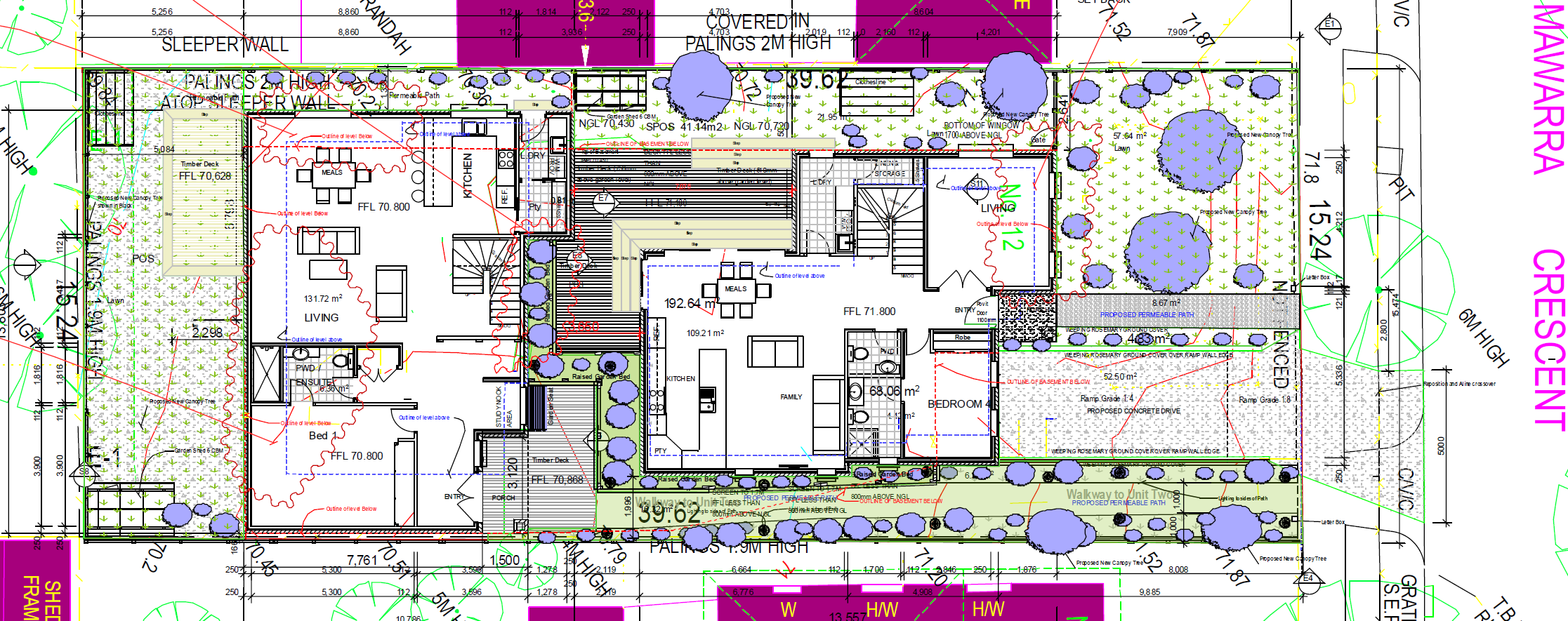
* Does the proposal provide an acceptable design and landscaping response to the preferred neighbourhood character?
* Does the proposal provide an acceptable level of amenity for the proposed dwellings?

1. Having considered the submissions and statements of grounds, and relevant policies and provisions of the planning scheme, and undertaken an inspection of the subject land and surrounding area, I have decided to affirm the decision of the responsible authority and direct that no planning permit be issued. My reasons relate to the proposal not providing an acceptable response to the preferred neighbourhood character or a net community benefit. My detailed reasons follow.

## What is being proposed?

1. The proposed dwellings are sited one behind the other. Unit 1 fronts Mawarra Crescent and unit 2 is set behind unit 1. Unit 1 is set back 7.9 metres from the front boundary, and is set off each side boundary. Unit 2 is set back approximately 25 metres from the front boundary and 3.5 metres behind the rear of unit 1. Unit 2 is set off one side boundary, but built along the south-eastern side boundary. The dwellings are detached from each other at both ground and first floor levels.
2. A shared basement level accommodates car parking and storage areas for each of the dwellings. The basement is accessed by a single ramped driveway located within the front setback area. The ramp is approximately 3.6 metres wide, 9.9 metres long, and descends to a depth of approximately 2 metres below the ground level under the front of unit 1 (which sits over the basement entry). The driveway ramp is set in approximately 2.5 metres in from the south-eastern side boundary. It is bounded on either side by solid retaining walls topped by 1.0 metre high fences. The fences either side of the ramp extend from approximately 1 metre behind the front property boundary back to the front wall of unit 1.
3. The pedestrian path access to unit 1 is located adjacent to the north-west of the driveway ramp and the pedestrian path to unit 2 is adjacent to the south-east of the driveway ramp.
4. Both dwellings are two storeys, plus the shared basement level car park that sits below the ground level. Each dwelling comprises four bedrooms.

Figure 2: Proposed ground floor level layout[[4]](#footnote-5)



## What is the relevant planning context?

1. The key planning policies and provisions of the planning scheme relevant to the key issues in dispute are as follows.

### Planning policies

1. The Planning Policy Framework (PPF) includes a range of policy objectives and strategies that encourage the intensification of housing in established areas, and increasing housing supply and diversity.[[5]](#footnote-6) State, metropolitan and local planning policies in the PPF also seek to ensure that development responds to an area’s context and character, and respects the existing or preferred neighbourhood character.[[6]](#footnote-7)
2. These policies are supported by the local planning statement and policies at clause 21 and 22.
3. The municipal profile at clause 21.01 outlines that the City of Monash is known for its garden city character with a vision of a green and naturally rich city that keeps its green leafy character and values open spaces.
4. Under the Residential Development framework at clause 21.04 the site is included in an area designated as ‘Category 8: Garden City Suburbs’, which are areas with ‘incremental change’ development potential. The land on the northern side of Mawarra Crescent is within ‘Category 2 – Accessible Areas’, which is an area with future development potential.
5. Objectives and strategies at clause 21.04-3 of relevance to the key issues in dispute include:

* To encourage the provision of a variety of housing types and sizes that will accommodate a diversity of future housing needs and preferences that complement and enhance the garden city character of the city.
* To recognise the need to conserve treed environments and revegetate new residential developments to maintain and enhance the garden city character of the municipality.
* To encourage a high standard of architectural design in buildings and landscaping associated with residential development that takes into account environmentally sustainable development.
* Ensure that new residential development enhances the character of the neighbourhood, having regard to the preferred future character statements contained within clause 22.01.
* Ensure that development enhances the garden city and landscaped streetscape character of the neighbourhood, responds to the features of the site and surrounding area and promotes good streetscape design.
* Encourage vegetation retention and provision on development sites.
* Ensure that new residential development provides a high level of amenity including internal amenity, privacy for occupants and neighbours, access to sunlight, high quality private and public open space, canopy tree cover, and effective traffic management and parking.

1. These objectives and strategies are to be implemented through, among other things, using the Residential Development and Character Policy at clause 22.01, and applying the residential zones, including specific schedules to achieve preferred development outcomes.
2. The Residential Development and Character Policy at clause 22.01 applies to all residential land within the municipality. The policy objectives at 22.01-2 include, as relevant to the key issues:

* To build upon the important contribution that landscaping makes to the garden city character of Monash.
* To encourage new development to achieve architectural and urban design outcomes that positively contribute to neighbourhood character having particular regard to the applicable preferred future character statement for the area.
* To encourage the provision of a variety of housing types to accommodate future housing needs and preferences.

1. The policy at clause 22.01-3 includes general policies as well as a range of policies relating to specific design matters. These include policies relating to street setback, landscaping, side and rear setbacks, private open space, fences, vehicle crossings, and built form and scale of development. Some of the policies of relevance to the key issues include:

* Ensure development is consistent with the preferred future character statement identified in clause 22.01-4.
* Respect the character of surrounding development, including the maintenance of consistent setbacks.
* Preserve and enhance the treed character of Monash.
* Minimise the impact of the scale and massing of development.
* Provide spacious and well vegetated street setbacks capable of supporting canopy trees that soften the appearance of the built form and contribute to landscape character.
* Ensure the extent of site coverage and hard paving respects the neighbourhood character.
* Exclude hard paving such as car parking, turning circles, driveways and basement car parking within street setback areas.
* Minimise hard paving throughout the site by limiting driveway widths and lengths, providing landscaping on both sides of driveways, and restricting the extent of paving within open space areas.
* Retain or plant canopy trees, particularly within front setbacks to soften the appearance of the built form and contribute to the landscape character of the area.
* Ensure street trees are retained and protected.
* Provide side and rear setbacks capable of supporting canopy trees.
* Provide a separation between dwellings constructed on the same site to break up built form and support additional landscaping.
* Limit hard surface paving and decks that occupy a large proportion of private open space areas.
* Provide no front fence where more than 75% of properties in the immediate neighbourhood have no front fence (immediate neighbourhood is the five properties on either side of the proposed development on both sides of the street, or five properties on either side of the development on both sides of the street, including intersections and if the proposed development is on a corner lot with dwellings fronting the side street, five properties in the side street).
* Maximise landscaping in front setback areas by minimising the number of crossovers.
* Respect the height, scale and massing of existing dwellings in the neighbourhood.
* Ensure the front doors and windows of buildings face the street and entrances are legible, accessible and sheltered to maximise accessibility, safety and amenity for occupants, visitors and those using the public streets.

1. The review site is in the ‘Garden City Suburbs Northern Areas’ character area. The preferred future character statement for the Garden City Suburbs Northern Areas is:

Although there will be changes to some of the houses within this area, including the development of well-designed and sensitive unit development and, on suitable sites, some apartment development, these will take place within a pleasant leafy framework of well-vegetated front and rear gardens and large canopy trees.

Setbacks will be generous and consistent within individual streets. Building heights will vary between neighbourhoods. Neighbourhoods with diverse topography and a well-developed mature tree canopy will have a larger proportion of two storey buildings. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrast between buildings. ……

Architecture, including new buildings and extensions, will usually be secondary in visual significance to the landscape of the area when viewed from the street. New development will be screened from the street and neighbouring properties by well planted gardens that will ensure the soft leafy nature of the street is retained.

Gardens will consist of open lawns, planted with a mix of native and exotic vegetation and trees. Existing mature trees and shrubs will be retained and additional tree planting within streets and private gardens will add to the tree canopy of the area.

Buildings will be clearly visible through these low garden settings, and nonexistent or transparent front fences. Additional vehicle crossovers will be discouraged.

The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. ……[[7]](#footnote-8)

1. The decision guidelines at clause 22.01-5 require me to consider, among other things:

* The applicable preferred future character statement; and
* Whether the development will have an adverse impact on neighbourhood character.

1. The Tree Conservation policy at clause 22.05 relates to both tree retention and new tree planting. The policy objectives are:

* To maintain, enhance and extend the Garden City Character throughout Monash by ensuring that new development and redevelopment is consistent with and contributes to the Garden City Character as set out in the Municipal Strategic Statement.
* To promote the retention of mature trees and encourage the planting of new canopy trees with spreading crowns throughout Monash.

#### General Residential Zone – Schedule 3

1. The review site and surrounding area is zoned GRZ3. A permit is required to construct two or more dwelling on a lot in the GRZ3.[[8]](#footnote-9)
2. The purpose of the GRZ3 includes, as relevant to the key issues:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To encourage development that respects the neighbourhood character of the area.

To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.[[9]](#footnote-10)

1. The GRZ3 schedule applies to ‘Garden City Suburbs’. The schedule includes the following neighbourhood character objectives:

To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.

To promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas.

To support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks, landscaping in the front setback and breaks and recesses in the built form.

To support new development that locates garages and carports behind the front walls of buildings.[[10]](#footnote-11)

1. The GRZ3 schedule includes local variations to the following standards at clause 55 – Minimum street setback (standard B6), Site coverage (standard B8), permeability (standard B9), Landscaping (standard B13), Side and rear setbacks (standard B17), Walls on boundaries (Standard B18), Private open space (Standard B28), and Front fence height (standard B32).[[11]](#footnote-12) The proposal complies with these local variations.[[12]](#footnote-13) Of particular relevance to the issues in dispute is the local variation to the landscaping standard B13 at clause 55.03-8.
2. Among other things, the provisions of the GRZ3 include requirements for the minimum garden area[[13]](#footnote-14) to be provided and the maximum building height.[[14]](#footnote-15) The proposal complies with these requirements.
3. The zone provisions[[15]](#footnote-16) and the GRZ3 schedule include various decision guidelines that must be considered as appropriate. I have had regard to these in reaching my findings.

#### Clause 55

1. Clause 55 applies to development of two or more dwellings on a lot and residential buildings. It includes a range of objectives, standards and decision guidelines relating to a range of matters.
2. The neighbourhood character objectives and standard B1 at clause 55.02-1 are:

To ensure that the design respects the existing neighbourhood character or contributes to a preferred neighbourhood character.

To ensure that development responds to the features of the site and the surrounding area.

Standard B1

The design response must be appropriate to the neighbourhood and the site.

The proposed design must respect the existing or preferred neighbourhood character and respond to the features of the site.

1. I address other relevant objectives and standards in my findings below.

## What are my findings?

1. There is no dispute that the review site is suitable for development of more than one dwelling. The review site is in a ‘Category 8: Garden City Suburbs’ area under the residential development framework at clause 21.04. Incremental change is supported in these areas. The purpose of the GRZ3 encourages a diversity of housing types and housing growth.[[16]](#footnote-17)
2. The Council says that the issue is not so much about whether the site is suitable for more than one dwelling, but whether the proposal is suitable to the character of the area.
3. The issues with this proposal relate to the design response and landscaping of the proposal.

### Does the proposal provide an acceptable design and landscaping response to the preferred neighbourhood character?

1. In principle, I am satisfied that the development of two, double storey detached dwellings is acceptable in the site’s neighbourhood context. Although the original housing stock within the neighbourhood comprises modest, single storey detached houses, the Residential Development statement at clause 21.04 supports incremental housing change and encourages the provision of a variety of housing types and sizes that will accommodate a diversity of future housing needs and preferences.
2. Although different to the character of the original housing stock, the double storey scale and form of the proposed dwellings is consistent with the emerging character within Mawarra Crescent. There are several examples of recent developments within Mawarra Crescent that comprise double storey building forms, as well as multi-dwelling developments through the depth of their lots. This is particularly so on the south-western side of Mawarra Crescent where the properties at numbers 4-8, 18 and 20 all have multi-dwelling developments. Examples of double storey building forms include the multi-dwelling developments at numbers 4-8 and 18, and the detached dwellings at 10 and 11 Mawarra Crescent.
3. It is evident that this area is undergoing housing change and that a different building form and character to that of the original housing stock is emerging, as is anticipated by the residential development statement at clause 21.04.
4. What is also evident is that few properties in Mawarra Crescent feature extensive landscaping. The landscaping of front setbacks of most properties comprises lawns with a few shrubs and occasionally small to medium trees. This is particularly so for the more recent developments, and especially the dwellings at 4-8 and 10 Mawarra Crescent. The dwelling on the adjoining property at 10 Mawarra Crescent has extensive paving in its front setback, with its driveway and a paved sports court in front of the dwelling. The properties on the north-eastern side of Mawarra Crescent typically feature more landscaping, including trees. The character of landscaping within the street typically reflects the preferred character statement for Garden City Suburbs (Northern) areas that includes that ‘gardens will consist of open lawns planted with a mix of native and exotic vegetation and trees’, and that ‘buildings will be clearly visible through these low garden settings, and nonexistent or transparent front fences’.[[17]](#footnote-18)
5. In this context I am generally satisfied that the proposal provides an acceptable built form and landscape response consistent with the preferred neighbourhood character. In this regard I note the following:
6. The double storey building form is consistent with the emerging character within the streetscape.
7. The articulation of the buildings through recessed upper storeys, varied building setbacks, varied materials and finishes, and window fenestration contribute to minimising the visual bulk of the dwellings.
8. The setbacks of the first floor levels of each of the proposed units, although relatively minimal, are consistent with that of the more recent developments within the street.
9. The proposed landscaping plan demonstrates that there are opportunities for landscaping within the front and rear setbacks, and along both side boundaries. The extent of proposed tree planting within the front setback area exceeds that of most other properties within the street.
10. The proposed landscaping is consistent with the local variation to the landscaping standard B13[[18]](#footnote-19) under the GRZ3 schedule.[[19]](#footnote-20) Under the local variation the proposal requires four canopy trees. The proposed landscaping plan provides a total of seven canopy trees and six narrow/upright trees. This includes four trees within the front setback area plus six trees (three either side) along the driveway ramp, one tree along the north-western side setback of unit 1, and two trees in the rear setback of unit 2. Although only three of these trees have a mature height at least equal to the maximum building height, rather than four trees as required by the local variation to standard B13, I am satisfied it is acceptable. The mature heights of the remainder of the proposed trees are less than 1 metre below the maximum height of the proposed dwellings.
11. Despite these findings, I find the driveway ramp to the basement is inconsistent with the streetscape and neighbourhood character. I acknowledge that the provision of a single driveway to provide access for both dwellings limits the extent of driveways and hard paving within the street setback and throughout the site is consistent with the policies at clause 22.01-3. However, the ramped driveway to the basement will introduce a new typology that is foreign to the Mawarra Crescent streetscape.
12. The character of the Mawarra Crescent streetscape is for driveways to be at natural ground level and typically located adjacent to a side boundary. The driveway ramp will create a void space within the front setback, which is inconsistent with the at-grade level driveways and front gardens of the other dwellings within the street. The substantial retaining walls along the sides of the ramp and additional fencing on top will be visually disruptive when viewed within streetscape, particularly from the pedestrian path. I also consider the location of the driveway ramp approximately mid-point along the street will result in it being more visually disruptive within the streetscape.
13. The visual impact of the driveway ramp will be compounded by the separate pedestrian paths to each of the units extending along either side. This results in approximately 50% of the street frontage width being occupied by paved surfaces with only narrow strips of vegetation between.
14. I acknowledge that the landscape plan proposes weeping ground covers over the ramp wall edge, and narrow/upright trees either side of the driveway ramp. These will no doubt assist in softening the visual impact of the basement ramp. However, these trees are to be planted in narrow (approximately 0.5 metre wide) garden beds between the basement ramp retaining walls and pedestrian footpaths. They will need to be trimmed to be no wider than the garden beds to provide unimpeded access along the pedestrian paths and driveway. This will reduce the contribution these trees could make to minimising the visual impact of the driveway ramp and the fences above, as well as to the landscaping outcome.
15. It is David Beaton’s evidence that the width of the driveway ramp could be reduced to 3 metres. However, I am not satisfied that reducing the ramp width by 0.6 metres will make a sufficient difference to its visual impact within its streetscape setting.
16. The applicant relies on the Tribunal decision *Likos Investments Pty Ltd v Monash CC [2021]* VCAT 370 (the Likos decision). In that decision a different division of the Tribunal approved a development of two dwellings (in a side by side configuration) with a basement car park. I am not persuaded that decision supports the proposal before me. While the site in the Likos decision is in Chadstone and within the Garden City Suburbs (Northern) character area like the review site, it is subject to a different zone than the review site. The site in the Likos decision is zoned General Residential Zone – Schedule 2 (GRZ2). The GRZ2 does not include neighbourhood character objectives or a local variation to the landscaping standard B13. Based on these zoning differences, it is apparent there are different character expectations between the area of the site in the Likos decision and the review site in the matter I am considering.
17. Overall, I am not satisfied the proposed driveway ramp will provide the sense of a garden consisting of open lawn (as sought by the preferred neighbourhood character statement) or spacious garden (as sought by the GRZ3 neighbourhood character objectives). Nor does it respect the character of surrounding development (as sought by the general policies at clause 22.01-3).
18. I note that the rectangular shape and the dimensions and area of the review site are typical of suburban residential lots. The shape, dimensions and area do not unduly constrain the review site to necessitate the proposed design response.
19. My findings should not be interpreted to mean that a proposal that includes a basement could never be acceptable in this or a similar context. Rather, it is the design response of this proposed driveway ramp in the context of the review site and the relevant planning policies and provisions that I find is not acceptable.

### Does the proposal provide an acceptable level of amenity for the proposed dwellings?

1. The Council raises various issues that it submits result in a poor level of amenity for the proposed dwellings. These relate to the dwelling entry, the use of window screens to minimise overlooking, daylight to windows, and safety concerns about the basement.
2. I am not concerned about the screening of the bedroom windows at first floor level of the units. Although not ideal, these are not the primary living spaces of the dwellings. The ground floor level bedrooms and living rooms do not require screening.
3. In relation to the dwelling entry to unit 2, the applicant submits that its pedestrian path is clearly visible at the street and that there is a direct line of sight along the pathway to the dwelling entry. He also says that the separate letterbox adjacent to the pathway will provide further visual identification of this as the entryway to the dwelling.
4. I am satisfied that the entry porch to unit 2 and the surrounding deck provides a transitional space to this dwelling. However, the entry is remote from the street frontage, being set back behind unit 1 and approximately 25 metres from the front boundary. While lighting is proposed along the pathway, there are limited opportunities for passive surveillance of the pathway from either unit 1 or 2. The three windows in the south-eastern side of unit 1 that face the pathway are screened. Only the front entry door of unit 2 faces and has a line of sight along the pathway. There are no habitable room windows at either ground or the first floor level that provide observation of this pathway. These aspects of the dwelling entry are inconsistent with standard B12 of the safety objective at clause 55.03-7. Standard B12 requires, among other things and in summary, that dwelling entrances should not be obscured or isolated from the street and internal accessways, and that developments should be designed to provide good lighting, visibility and surveillance of internal accessways.
5. There are other aspects of the design response relating to the internal amenity and functionality of the dwellings that concern me. These include:
6. The lack of clarity about how the raised garden bed areas along the pathway and between units 1 and 2 is to be allocated and managed. For example, it is unclear whether and where fencing to seclude and secure unit 1’s private open space from the entry area of unit 2 is to be provided. This has implications for what spaces will benefit from the landscaping proposed in raised garden beds.
7. The proximity of unit 1 windows to spaces that notionally appear to form part of the ‘envelope’ of unit 2 and its entry path. These include three ground floor level windows in the south-eastern wall of unit 1 that have an interface to unit 2’s pedestrian path.
8. Whether the layout of the dwellings and secluded private open spaces are oriented to make appropriate use of solar energy, are located on the north side, and maximise the solar access to north facing windows. For example, the siting and layout of unit 2 focuses the living room windows and secluded private open space to the south-west of the dwelling. While the living room also has a north-west facing window, it is set back only 1.3 metres from the boundary fence that is 2 metres high on top of a retaining wall.
9. While I would not refuse the proposal on the basis of these individual matters, in combination they indicate to me that the design response is not well resolved or responsive to the site context.

### Are there any other issues?

#### Vehicle egress from the site

1. Mr Beaton’s evidence persuades me that, although not ideal, the angled vehicle crossover provides for acceptable vehicle access to and from the site. However, if the proposal is approved, the Council requires the vehicle crossover to be straightened, rather than angled between the road and the front boundary. Based on Mr Beaton’s evidence, I am satisfied that the vehicle crossover could be realigned and still provide acceptable vehicle access. However, the realignment of the vehicle crossover will require part of the driveway ramp to be realigned. This will narrow the width of the street frontage of the unit 2 envelope to 1.59 metres. I am not satisfied this will provide an acceptable ‘entry’ to unit 2, as required by the dwelling entry objective and standard B26 at clause 55.05-2. It will also reduce the landscaping opportunities along the sides of the pedestrian path and driveway ramp.

#### Plans

1. I have not been assisted by the details and accuracy of the amended application plans. They are difficult to read due to various colours, hatching and unnecessary details that obscure dimensions and text details on the plans. Of greatest issue is that there are discrepancies between the ground and first floor layout plans and the elevation plans regarding window locations, as well as an incorrect calculation of the site permeability of the proposal. The plans also did not include details such as dimensions relevant to the issues in dispute.[[20]](#footnote-21) Some of these issues were addressed at the hearing, however some remain unresolved. Any future application should ensure coherent and accurate plans are provided.

## Conclusion

1. In having regard to the planning policy framework, I must endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.[[21]](#footnote-22)
2. I am satisfied that the proposal will contribute to the increase and diversification of housing in this existing urban area, albeit in a minor way. However, I am not satisfied that the benefit of providing one additional dwelling on the review site strikes an acceptable balance against the proposal’s impact on the neighbourhood character, or the issues relating to the internal amenity and design response.
3. For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

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| S McDonald  **Member** |  |  |

1. Source: Council’s written submission, at Figure 2. [↑](#footnote-ref-2)
2. The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons. [↑](#footnote-ref-3)
3. Having regard to the decision guidelines at clause 65 of the planning scheme. [↑](#footnote-ref-4)
4. Source: Plans prepared by Smart SIPs Pty Ltd, drawing number 10-21, dated 1/6/2021. [↑](#footnote-ref-5)
5. For example, clauses 16.01-1S Housing supply, 16.01-1R Housing supply – Metropolitan Melbourne, 16.01-2S Housing affordability. [↑](#footnote-ref-6)
6. For example, clauses 15.01-1S (Urban design), 15.01-2S (Building design) and 15.01-5S (Neighbourhood character). [↑](#footnote-ref-7)
7. Clause 22.01-4. [↑](#footnote-ref-8)
8. Clause 32.08-6. [↑](#footnote-ref-9)
9. Clause 32.08. [↑](#footnote-ref-10)
10. Clause 1.0 of the GRZ3 schedule. [↑](#footnote-ref-11)
11. Clause 4.0 of the GRZ3 schedule. [↑](#footnote-ref-12)
12. The permeability calculation included in the amended plans is incorrect. As part of his written submission, the applicant provided information correcting the permeability calculation. The Council does not dispute the corrected permeability calculation. [↑](#footnote-ref-13)
13. Clause 32.08-4. [↑](#footnote-ref-14)
14. Clause 32.08-10. [↑](#footnote-ref-15)
15. Clause 32.08-13. [↑](#footnote-ref-16)
16. Clause 32.08. [↑](#footnote-ref-17)
17. Clause 22.01-4. [↑](#footnote-ref-18)
18. Under clause 55.03-8 Landscaping objectives. [↑](#footnote-ref-19)
19. At clause 4.0. [↑](#footnote-ref-20)
20. Such as the driveway ramp width, and the widths of garden beds [↑](#footnote-ref-21)
21. Clause 71.02-3 (Integrated decision making). [↑](#footnote-ref-22)