VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P725/2018Permit APPLICATION no. TPA/48296 |

|  |
| --- |
| CATCHWORDS |
| Section 77 of the *Planning and Environment Act* 1987; Monash Planning Scheme; General Residential Zone GRZ2; Character Area C; Garden City Character; Response to Neighbourhood Character; Streetscape Presentation; Building Scale and Massing; Landscape Response; Internal Amenity. |

|  |  |
| --- | --- |
| APPLICANT | Serena Yau |
| responsible authority | Monash City Council |
| responDENTS | Hannah & Khian Be |
| SUBJECT LAND | No. 8 Armstrong Street, Mt Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Margaret Baird, Senior Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 19 February 2019 |
| DATE OF ORDER | 7 March 2019 |
| CITATION | Yau v Monash CC [2019] VCAT 301 |

# Order

### No permit granted

1. The decision of the Responsible Authority is affirmed.
2. In permit application no. TPA/48296, no permit is granted.

|  |  |  |
| --- | --- | --- |
| **Margaret Baird****Senior Member** |  |  |

# seal_black_textAPPEARANCES

|  |  |
| --- | --- |
| For Serena Yau | Mr N Crawford, solicitor, TP Legal. He called the following persons to present expert evidence:* Mr D Bowden, town planner.
* Mr E Dimitropoulos, landscape architect.
 |
| For Monash City Council | Ms A Kellock, planning consultant. |
| For Hannah & Khian Be | No appearance. |

# INFORMATION [[1]](#footnote-1)

|  |  |
| --- | --- |
| Description of proposal | Side-by-side, two and three storey dwellings. No vegetation is proposed to be removed. A street tree is to be retained. |
| Nature of application | Application under Section 77 of the *Planning and Environment Act* 1987 – to review the refusal to grant a permit.  |
| Planning scheme  | Monash Planning Scheme [scheme]. |
| Zone and overlays  | General Residential Zone [GRZ] Schedule 2. Vegetation Protection Overlay VPO1. |
| Permit requirements  | Clause 32.08-6 to construct two or more dwellings on a lot.  |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 21, 22.01, 22.04, 22.05, 32.08, 52.06, 55, 65 and 71.  |
| Land description | The vacant subject land is on the south side of Armstrong Street. It is 808m2 with a frontage of 17.68 metres. The land falls from the front to the rear by some 5.4 metres and has a crossfall of around 1 metre. |
| Tribunal inspection | 24 February 2019 (unaccompanied). |
| Case referred to | *Be v Monash CC* [2012] VCAT 919. |

# seal_black_textReasons[[2]](#footnote-2)

## What is this proceeding about?

1. Serena Yau proposes to develop two, side-by-side dwellings on the subject land. The four bedroom dwellings each have a double garage with separate vehicle access points. The dwellings are two to three storeys in scale, with flat and skillion roof forms.
2. Monash City Council refused a permit for this proposal on multiple grounds that, primarily, contend the design response fails in terms of neighbourhood character. This is because of the building scale, bulk, dominance of garaging, and lack of space for canopy planting. The Council also identifies other issues with respect to impacts on neighbouring properties, overshadowing and overlooking within the site, and energy efficiency.
3. The permit applicant has brought this proceeding to the Tribunal asking to set aside the Council’s decision. It challenges all grounds argued by the Council and other persons opposing the permit application. Relying on expert planning and landscape evidence, the applicant submits the development of the land with two dwellings is appropriate and meets clause 55 requirements. The proposal’s scale, form and presentation are a comfortable fit. The applicant says the design responds appropriately to the character of the area, topography, and amenity of neighbours. It submits a side-by-side format is appropriate and will maintain the rear garden character. The building is similar in scale and proportions as the side-by-side development to the east, at No. 10 Armstrong Street. The applicant submits the design achieves the landscape outcomes sought by the scheme.
4. Respondents’ grounds raise some similar concerns as the Council. They identify issues relating to the building’s street setback, flat roof form, setbacks, overlooking, overshadowing of solar panels, lack of planting area and stormwater management.
5. I must decide whether the proposal achieves an acceptable planning outcome having regard to the relevant policies and provisions of the scheme. Clause 71 requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.
6. The key matter for my determination is:
* Whether the proposal respects the neighbourhood character and contributes to the preferred character.
1. Other matters include whether off-site amenity impacts are acceptable, whether the design achieves an acceptable level of internal amenity, and whether any other matters warrant refusal of a permit.

## seal_black_textWHAT ARE THE RELEVANT PHYSICAL AND PLANNING CONTEXTS?

### Physical setting

1. The subject land is in an established residential area, as shown in the Nearmap aerial image below. Two storey dwellings abut the land to its east and west. The property to the east is a pair of side-by-side dwellings at No. 10 Armstrong Street approved by another division of the Tribunal in 2012.

 

Subject Land

1. The Tribunal’s decision in 2012 relating to the land at No. 10 Armstrong Street contained a description of the area that the parties rely upon as still being relevant today:[[3]](#footnote-3)

Armstrong Street is a pleasant residential street comprising a mix of one and two storey dwellings. The prevailing built form includes a wide mix of architectural styles, materials and colours. The house on the review site and its immediate neighbour are older and modest in scale, site coverage, design and materials. The street includes newer dwellings that have a more robust and imposing height and scale. They are two storeys, with sheer walls in both their front façades and the side elevations. Some dwellings on the north side of both High Street Road and Armstrong Street are particularly imposing as they sit high and proud above the street due to the slope of their land. The neighbourhood character comprises dwellings that are robust, proud, and some could be described as imposing. ….

1. Key character influences are the topography (with dwellings variously responding to the slope), the contribution of street trees and front gardens to the landscape, and the mix of two storey housing styles.
2. I agree with comments made by the Tribunal that unifying features of this neighbourhood are the consistent front setbacks and established front gardens.[[4]](#footnote-4) The Tribunal also commented on the character of the area with respect to garaging:[[5]](#footnote-5)

The responsible authority submitted that double width garages would be inconsistent with the character of the area. In my view, double width garages are a significant part of the neighbourhood’s character. Most dwellings in this section of High Street Road, St Johns Wood Road, Armstrong Street and The Close have very prominent double garage doors, which are very visible from the street. In some dwellings, two single garage doors in the same facade have the visual effect of a double width door. Many garage doors are set back only a short distance from the street, and even those located towards the side or rear of the dwellings are prominent when viewed from the street.

1. I agree with this observation with respect to garages associated with single dwellings. In the wider area there are some dual occupancy developments in a tandem format while the now constructed development at No. 10 Armstrong Street is a pair of side-by-side dwellings with two double garages presented to the street.
2. I was informed at the hearing of a permit issued for the land at No. 9 Armstrong Street by the Council and the Council’s refusal of a permit relating to No. 5 Armstrong Street that is being brought to the Tribunal.

### Planning context

#### Existing scheme provisions and policy

1. Broadly, there are two key strategic directions relating to the development of land.[[6]](#footnote-6) One relates to housing growth, diversification and affordability. The other relates to respect for neighbourhood character and, particularly, maintenance and enhancement of the “Garden City” character. I refer to these next.
2. The subject land is within the GRZ Schedule 2 Monash Residential Areas. The purpose of the GRZ includes:
* 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.
1. Key considerations in assessing the Garden City character are set out in clause 21.01-3. This garden character is regarded as a “core value”. I have considered the matters in clause 21.01.
2. Neighbourhood character objectives in clause 22.01 include:
* 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 desired future character statement for the applicable residential Character Type.
* To encourage the provision of a variety of housing types to accommodate future housing needs and preferences that are energy efficient and sustainable.
1. General character policies include:
* Development complements the current character statement and contributory elements and satisfies the intent of the desired future character statement for the applicable residential Character Type identified in Clause 22.01-4.
* The quality and style of surrounding development be respected, including the maintenance of consistent setbacks in areas where incremental change is expected.
* The treed character of areas be complemented and preserved.
* The Garden City and streetscape character of the neighbourhood be maintained and enhanced.
* The impact of bulk and scale of development be minimised, where possible.
1. Other policies in clause 22.01-3 relate to matters such as vehicle crossings and the location of garages and car spaces, built form and scale of development, private open space, landscaping, car parking and additional decision guidelines. I have considered them but do not recite all of them. Some that are particularly relevant to the issues in this case are:

Building setbacks

* Building design reflect the spacing and rhythm of existing streetscapes.
* The Garden City Character be maintained by providing front garden space in which upper canopy trees can develop.

Vehicle crossings and location of garages, car ports and car spaces

* The Garden City Character of residential areas be retained by discouraging car parking and accessways that have a significant impact on or cause fragmentation of the streetscape.
* The number of vehicle crossings be minimised to maintain existing kerb side parking and green spaces in both front setback areas and in naturestrips.
* Hardening of the streetscape through the provision of additional crossovers is discouraged.
* Landscaping in the front setback areas of properties is to be maintained by minimising the number of crossovers provided on larger multi unit sites and placing vehicle parking to the rear on sites accommodating small to medium multi developments.
* Garages, carports and associated visitor spaces be designed so that they do not dominate or visually disrupt the streetscape.

Built form and scale of development

* Building spacings and setbacks off side boundaries maintain the spacing and rhythm of existing dwellings to respect the built form character of the streetscape.
* Creative and quality design solutions be provided, particularly in relation to bulk of buildings having regard to boundary setbacks.

Landscaping

* Planting of semi-mature canopy trees with spreading crowns be incorporated in open space areas, along boundaries adjacent to neighbouring open space and in front setback areas to reinforce the Garden City Character of the area.
* Minimal pavement areas be provided within the front setback area to maximise landscaping to enhance the Garden City Character of the streetscape.
* Landscaping be provided down both sides of driveways to reduce the visual impact of development.
1. The subject land is within Character Area ‘C’ through clauses 21.04 and 22.01 where the Garden City character is being pursued. General and Character Area policies are relevant[[7]](#footnote-7) and the desired future character is articulated. Decision guidelines at clause 22.01-4 have also been considered in my assessment.
2. The following extracts from the desired future character statement are particularly relevant to the arguments and evidence presented in this case:

The neighbourhood character of this area will develop within a pleasant leafy framework of well-planted front gardens and large canopy trees.

Architecture, including new buildings and extensions, will, in the majority of cases, be secondary in visual significance to the landscape of the Character Type from the street. However, in neighbourhoods that currently have a large proportion of two storey houses, the architecture will gradually become more dominant, although it will always be buffered from the street by a well planted front garden that will ensure the soft leafy nature of the street will be perpetuated.

Setbacks will be generous and consistent within individual streets.

Building heights will vary between neighbourhoods. Those neighbourhoods where the diverse topography and well developed mature tree canopy provide a framework within which redevelopment can occur will have a larger proportion of two storey houses. ….

The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. …

Streets which have a majority of gardens currently lacking fences will continue to do so. Walls and fences in other streets will be low to allow plants in the front garden to be visible from the street. …

The soft quality of streets derived from the nature strips will be protected by ensuring that each lot frontage has only one single crossover. …

1. Other relevant provisions and policies[[8]](#footnote-8) are listed in the ‘Information’ section of these reasons and include:
* Clause 55, including variations to Standards B6, B28 and B32 that apply through the GRZ Schedule 2.
* Clause 52.06 relating to parking supply and design.
* Clause 22.05, a policy relating to tree conservation. Among other policies, it seeks to retain and to plant additional semi mature and mature canopy trees, particularly in the front setback areas.
* Clause 22.04, a policy relating to stormwater management.
* The general decision guidelines at clause 65.

#### Monash Housing Strategy and Amendment C125

1. The *Monash Housing Strategy* October 2014 forms the basis of Amendment C125. Part 1 of the Amendment has been gazetted. The *Monash Housing Strategy* is cited in clause 21.04.
2. The subject land and surrounds are proposed to be included within a GRZ Schedule 3 [GRZ3]. GRZ3 proposes variations to some standards in clauses 54 and 55. I was provided with a copy of the adopted provisions and associated changes to clause 22.01.
3. While I appreciate that the Amendment is adopted by the planning authority, the Amendment has been split by the Minister for Planning. Part 2 has not been gazetted. It is unknown at this stage as to what form Amendment C125 Part 2 will take if it is gazetted. As I understand it, revised character statements have not been introduced into the scheme.
4. Variations to clause 55 in the proposed GRZ3 differ from those currently applying to the subject land. It is appropriate to have regard to the proposed provisions in the adopted version of the Amendment under section 60 of the *Planning and Environment Act 1987*. In this context, and despite the outcome of Part 2 being uncertain, it appears that the proposal would meet GRZ3’s varied numerical provisions (front setback, landscaping and permeability) or could be modified to so do (to achieve the site coverage, if it was determined that the relevant objective was not met).

#### Context for the approval of the dwellings at No. 10 Armstrong Street

1. As there has been a strong focus on the pair of dwellings abutting the subject land at No. 10 Armstrong Street, it is relevant to note that:
* There does not appear to have been significant changes in the physical setting since the time of the Tribunal’s decision in 2012.
* The subject land and surrounds were, at that time, within the Residential 1 Zone. The purpose was similar to the current GRZ to encourage residential development that respects the neighbourhood character. [The purpose also was to provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households].
1. A key issue in that case was the presentation of double garages and two crossovers (this was not, however, the only issue). The Council had argued that the two double garages, driveways and crossovers at the front of the land would be inconsistent with policy as they restrict opportunities for replacement landscaping.
2. The Tribunal acknowledged concerns with dual double garages, saying in part: [[9]](#footnote-9)

Generally, I do not favour the provision of two double garage doors and driveways in side by side developments. I think they can present an unduly blank and inward looking interface to the street. This façade can be out of place in streetscapes with open gardens and single carport and garages at the side of or behind the dwellings. Often I have required the double garages to be replaced with a tandem parking arrangement, and the entry to the dwellings to be augmented by a habitable room such as a study with front windows to create a more interactive facade. I think that many side by side developments are adopting this approach.

Another reason often advanced not to support two double garage doors in the front façades of side by side dwellings is that they diminish the legibility of the dwelling entries. They also diminish opportunities for casual surveillance of the street. Blank double garages can be a built form that creates an impression that the dwellings are an inward fortress, disinterested and cut off from the public realm.

In this development, in this particular neighbourhood, I think the two double garages facing the street would be acceptable. I have noted that garage doors are a prominent feature of this neighbourhood. The two proposed garage doors would be partly screened from the street by the slope of the land, the relatively deep setback to the front of the dwelling and the generous landscaping.

1. The Tribunal found in favour of this aspect of the design response for the following additional reasons:[[10]](#footnote-10)

The front setback area available for landscaping would be 9 metres deep and have a width from 5.3 metres to 11 metres. Additional 3 metre wide landscape areas are provided along the east and west boundaries.

…

I am also satisfied that the double crossovers would also be a satisfactory fit into the streetscape. The crossovers would be approximately 12 metres apart. The two crossovers would be visually separated by the existing mature street tree. I do not think that one additional crossover in this street would appear overwhelming or inconsistent with the rhythm of the crossovers in the street.

1. Overall, in character terms, the Tribunal concluded:

I am satisfied that whilst the proposed dwellings are large, they would fit well into this neighbourhood that comprises large dwellings, many of which have limited articulation and where double garage doors and driveways are a characteristic of the streetscape. I am also satisfied that the development provides adequate opportunities for canopy trees that will augment the landscape in the public realm and screen the dwellings.

## DOES THE PROPOSAL RESPECT NEIGHBOURHOOD CHARACTER AND CONTRIBUTE TO THE PREFERRED CHARACTER?

1. The development of two dwellings on the land is acceptable. Scheme policy encourages housing growth and diversity in this location. This is not in dispute between the parties in this proceeding.
2. The applicant’s case emphasises the proposal’s compliance with the numerical standards in clause 55, its similar scale and form to No. 10 Armstrong Street, the landscaping opportunities provided, and the way in which the design responds well to the rhythm and spacing of adjacent dwellings. The proposal, it submits, sits well with the look and feel of the neighbourhood, mindful of the topography and various forms of architecture, including roof styles. There are opportunities to plant canopy trees, particularly to the front and rear of the land, as sought by the desired future character statement, the applicant submits. It further contends the building scale is no different to surrounding dwellings, particularly those to the east and west of the subject land. Moreover, the side-by-side approach allows a deep rear setback to maintain a rear garden spine.
3. The Council and respondent do not agree with these and related submissions made by the applicant. The Council submits that the scale, bulk and visual mass of the development is excessive. Double garages will present as an overly prominent element in the streetscape and the layout has insufficient space for canopy planting. The proposal does not achieve an acceptable character outcome in the Council’s view because there are insufficient opportunities to create a garden setting in the front and rear the site and the proposed setbacks and building mass do not respect the neighbourhood character. The slope exacerbates the visual impact of the development’s scale and massing. The Council says there is a minor non-compliance with Standard B17, which is not conceded in Mr Bowden’s expert evidence.
4. As the Tribunal frequently states, meeting clause 55’s numerical standards is a relevant consideration in assessing the merits of the permit application. However, it does not guarantee a design that responds to specific local character features. I have referred to some of the key character features above as well as the desired future character contained in policy.
5. The proposed dwellings are side-by-side in their format, each with a double garage and separate vehicle access points. Unit 1 is to the west or high side of the subject land. It is around one metre higher than Unit 2 to the east, which abuts the dwellings downslope at No. 10 Armstrong Street. There is a shallow stagger in the dwellings’ front setbacks. The proposed units are two to three storeys and, like the dwellings at No. 10 Armstrong Street, the highest part of the development is centrally within the land. The dwellings step down toward the rear where the land falls to the south. This is where some views are obtained and, consequently, balconies are proposed to the first level living rooms and second floor bedrooms.
6. Elements of the proposed design are acceptable in principle. These include:
* The two storey presentation to the street, which responds to the many two storey dwellings adjacent and nearby.
* The principle of a stepped built form to respond to the slope and crossfall.
* Compliance with Standard B6, which is exceeded.
* A contemporary design response including materials and finishes and a skillion roof form.
* The lack of a front fence to maximise the opportunity for landscaping in the front garden to contribute to the neighbourhood character.
1. When considered overall, the scale and massing of the proposed development is not dissimilar to the pair of dwellings at No. 10 Armstrong Street. Mr Crawford acknowledges that the proposed development takes a lead from that adjacent site. He submits a side-by-side project is appropriate and can achieve an acceptable outcome.
2. On my assessment, there are, however, differences in the way in which the proposed development presents to the street compared with that constructed project. Among them are the following:
* Nos. 10A and 10B Armstrong Street are set back from both side boundaries with landscaping beds of over one metre in width adjacent to these boundaries. The proposed development is setback from one side boundary by one metre and abuts the western boundary.
* As described by the Tribunal in 2012, the central landscape area within the front garden is some 11 metres wide at the site frontage. By contrast, the proposed development has separate landscape spaces of 4 metres in width abutting the street with two pedestrian pathways This means more hard surfacing, less continuous landscaped space, and a stronger presence of the two, double, garages.
* Nos. 10A and 10B Armstrong Street each have a front setback of 9.1 metres to the garages with portico elements protruding forward by around one metre. By contrast, the proposal adopts garage setbacks of 8.3 metres to 9 metres from the street with protruding porticos.
* There are more opportunities for canopy trees around the dwellings at Nos. 10A and 10B Armstrong Street, as demonstrated in the landscape plan for that land, compared with the subject land which has to deal with a more significant grade along the western boundary requiring retaining walls and stairs.
1. On one view, these differences may not be considered by some as significant. However, in my assessment, in this location, and with this design response, the proposal extends over more of the lot width, has fewer landscaping opportunities, and sits forward of the adjacent development. Moreover, notwithstanding the use of cedar panelling and a crafted architectural response to the garages, the wider garage for one dwelling and the standard double garage for the second together result in some 12.7 metres of the front façade being occupied with these elements. This does not accord with the preferred character and is at odds with the existing character features.
2. I accept that the landform will influence how the front façade will present in the street, coupled with the retention of the street tree. However, when read with the dwellings at No. 10 Armstrong Street, and considered in the site’s broader context, I find the proposed development does not achieve an appropriate fit, unlike other new development that has been able to achieve an acceptable outcome in this location.
3. In addition, I find that:
* While many houses in the street do not have planting along both side boundaries, there is an evident sense of space and separation. The proposal does not maintain the sense of building spacing and rhythm which is an evident character feature in this location.
* The substantial scale of the development is not sufficiently offset by setback opportunities for planting to provide the garden character outcome sought for this location, as the building presents to the street and adjacent to the rear portion of the proposed dwellings.
1. For these reasons, I find the proposal does not satisfy either the purpose of clause 32.08 to respect the neighbourhood character or Standard B1 and its objective at clause 55.02-1.

##  WHAT ARE THE tRIBUNAL’S FINDINGS ON OTHER MATTERS?

1. Next I address other matters raised in grounds, submissions and evidence.

### Visual bulk to neighbours

1. The Council submits the proposal would present unreasonable visual bulk for adjacent properties, particularly to the rear, downslope. It also considers Standard B17 is not fully met. Mr Bowden disagrees and considers the proposal achieves an acceptable interface, mindful of the deep rear setback and stepped built form.
2. Development on the properties to the east and west of the subject land is substantial in scale. Land abutting the rear is relatively undeveloped and would be exposed to the three storey form of the proposed dwelling, albeit in a stepped manner. The rear setback, with landscaping proposed in the landscape plan, would assist to ameliorate this impact.
3. To the extent that there is a non-compliance with Standard B17 along part of the eastern boundary, this could be modified if necessary. Such a change would have the necessary benefit of reducing the impact on the amenity of No. 10 Armstrong Street with less shadowing to that property at 3pm. If I had determined to grant a permit, having considered the decision guidelines and objective in clause 55.04-1, a permit condition could have required this part of the building to be modified.

### Shadowing of solar panels at No. 10A Armstrong Street

1. The proposal’s impact on solar panels on the eastern and northern roof of No. 10A Armstrong Street is raised as an issue in the respondents’ statement of grounds. This is a relevant matter under clause 32.08-13. Planning Practice Note PPN88 *Planning considerations for existing residential rooftop solar energy facilities* assists my consideration of this matter.
2. The Council and applicant submit that the proposal will not have an unacceptable impact on the solar panels having regard to the shadow diagrams and section included in the application material.
3. I have no information about the solar panel array on the western side of the roof of No. 10A Armstrong Street other than to observe its extent and location. Given the height of the panels, and shadowing information before me, it is unlikely that the proposal will have an unreasonable impact on the panels’ performance.

### seal_black_textOverlooking to neighbours

1. The Council suggests screening is required to several windows in the development, to limit overlooking to abutting lots. These include the rear balconies and east-facing kitchen and bedroom 4 windows. Mr Bowden suggests a screen shown on the plans serving Unit 2’s dining room could be deleted. Ms Kellock also refers to the west elevation of the development that has omitted a window for bedroom 1. Mr Bowden suggests this could be a highlight window.
2. Having considered the decision guidelines and objective in clause 55.04-6, I find screening is required to the balconies and windows in issue. I would not support removing the dining room screening. While these matters could potentially be dealt with by permit conditions, a consequential issue is the extent to which windows in the development would be screened.
3. I note the applicant’s submission referring to a preference to limit screening on the basis that the objective in clause 55.04-6 is met. If the applicant prefers to limit the amount of screening required in accordance with Standard B22 I suggest a design response be developed to find more creative ways to position windows and design balconies such as through greater building articulation and/or setbacks.

### Internal overlooking

1. Standard B23 of clause 55.04-7 states that windows and balconies should be designed to prevent overlooking of more than 50% of the secluded private open space of a lower-level dwelling or residential building directly below and within the same development. This does not appear to be met with respect to the rear balconies, as discussed at the hearing.
2. The objective of clause 55.04-7 is to limit views into the secluded private open space and habitable room windows of dwellings and residential buildings within a development. On my assessment, and having considered the decision guidelines, the balconies require various levels of screening to limit views to each other and to secluded private open space. I agree with the applicant that there would be ways to do so while allowing outward views.

### Shadowing of private open space within the development

1. The parties agree the proposal complies with Standard B29 with respect to the rear building setback. I accept this is so. However, the useable ground level rear open space for both proposed dwellings will experience considerable shadowing. Landscaping occupies the area most exposed to sun. The extent to which paved areas are shadowed throughout the day is apparent in the shadow diagrams. There is a first floor balcony associated with the main living room in each unit which will enjoy an outlook but this is extensively shadowed as demonstrated in the shadow diagrams.

### seal_black_textTree protection

1. The parties agree that the protection of trees on abutting properties can be addressed through permit conditions.

### Drainage

1. The respondents refer to the need for a permit condition relating to stormwater runoff/drainage for the Council’s approval. This could have been required if a permit had been granted,

## What is the Tribunal’s conclusion?

1. For the above reasons, I will affirm the Responsible Authority’s decision.
2. I am not persuaded that the design response sufficiently respects the neighbourhood character and it will not positively contribute to the desired future character. There are some additional issues relating to the layout that require improvement, notably shadowing of private open space within the development and the extent of screening. Both affect the level of internal amenity for the proposed dwellings.
3. I have considered whether modifications could be made by permit conditions to overcome my concerns. I have taken into account the applicant’s submission that the client wishes to proceed with the project as designed although changes could be made if felt necessary by the Tribunal. While some matters could be addressed by permit conditions, the combination of changes necessary would have consequences for the remainder of the development. On balance, a fresh design response is necessary. Therefore, no permit is granted.

|  |  |  |
| --- | --- | --- |
| **Margaret Baird****Senior Member** |  |  |

1. The land is within an area of Aboriginal heritage sensitivity. The development of two dwellings is not a high impact activity. In addition, given the size of the site, the requirements of the *Aboriginal Heritage Act 2006* and *Aboriginal Heritage Regulations 2018* are not triggered. [↑](#footnote-ref-1)
2. I have considered the submissions of all parties, all written and oral evidence, all exhibits tendered by the parties, and all statements of grounds filed. I do not recite or refer to all of the contents of those documents in these reasons. Orders to substitute plans were made at a Practice Day Hearing. [↑](#footnote-ref-2)
3. *Be v Monash CC* [2012] VCAT 919, [21]. [↑](#footnote-ref-3)
4. *Be v Monash CC* [2012] VCAT 919, [25]. [↑](#footnote-ref-4)
5. *Be v Monash CC* [2012] VCAT 919, [22]. [↑](#footnote-ref-5)
6. Consistent with clause 11.02-1S. There are no other constraints of the type set out in the clause. [↑](#footnote-ref-6)
7. Clause 22.01. [↑](#footnote-ref-7)
8. Clause 22.13 is a relevant policy relating to environmental sustainability. The proposal is not of the type listed in Table 1. [↑](#footnote-ref-8)
9. *Be v Monash CC* [2012] VCAT 919, [23] – [25]. [↑](#footnote-ref-9)
10. *Be v Monash CC* [2012] VCAT 919, [30] and [31]]. [↑](#footnote-ref-10)