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| VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  planning and environment division | |
| planning and environment LIST | vcat reference No. P1463/2019  Permit Application no. TPA/50424 |
| CATCHWORDS | |
| Section 77 *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone; Dwellings; Neighbourhood character. | |

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| APPLICANT | Pirrie Investments Pty Ltd |
| responsible authority | Monash City Council |
| SUBJECT LAND | 35 Young Street, Oakleigh |
| WHERE HELD | Melbourne |
| BEFORE | Bill Sibonis, Senior Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 30 January, 2020 |
| DATE OF ORDER | 10 March, 2020 |
| CITATION | Pirrie Investments Pty Ltd v Monash CC [2020] VCAT 290 |

# Order

1. In application P1463/2019 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/50424 no permit is granted.

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| Bill Sibonis  **Senior Member** |  |  |

# Appearances

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| For Pirrie Investments Pty Ltd | Mr J Barnfather, Town Planner of Squareback Pty Ltd |
| For Monash City Council | Mr J Turner, Town Planner |

# Information

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| Description of proposal | The construction of two, two-storey attached dwellings. |
| 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 (**Planning Scheme**) |
| Zone and overlays | General Residential Zone – Schedule 3, Garden City Suburbs (**GRZ3**)  Special Building Overlay (**SBO**) |
| Permit requirements | Cl. 32.08-6 (the construction of two or more dwellings on a lot in GRZ3)  Cl. 44.05-1 (the construction of a building and the construction and carrying out of works on land in SBO) |
| Key scheme policies and provisions | Cl. 11, 15, 21, 22.01, 52.06, 55 and 65 |
| Land description | The review site is located on the west side of Young Street in Oakleigh, between North Road and Wilson Street. It is a regular lot with a 17.98 metre frontage, a depth of 36.27 metres and an overall area of approximately 651 square metres. The property is occupied by a single-storey detached brick dwelling. To the north and south are two-dwelling developments, comprised of single-storey dwellings, sited one behind the other. To the rear are two properties with frontage to Andrew Street. Each supports a single-storey dwelling. On the opposite side of Young Street are further single dwellings. |
| Tribunal inspection | A site inspection was undertaken after the hearing. |

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

## What is this proceeding about?

1. The Monash City Council (Council) has refused to grant a permit for the construction of two, two-storey attached dwellings on the review site. The grounds of refusal refer to matters of neighbourhood character, site layout, building massing, amenity, access and detailed design.
2. This is an application to the Tribunal for a review of the Council’s decision.
3. On the basis of the submissions, the key issue in this proceeding is whether the development will contribute to the preferred neighbourhood character.
4. Having considered the submissions, with regard to the relevant policies and provisions of the Planning Scheme, I have determined to affirm the Council’s decision. My reasons follow.

## what is the relevant Planning context?

1. A purpose of the GRZ3 is:

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

1. The schedule to the GRZ3 has 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 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.

1. The decision guidelines at clause 7.0 of the schedule are:

* Whether the development provides an appropriate transition to built form on adjoining sites.
* The robustness of proposed materials and finishes.
* The impact of the shape and dimensions of the lot on the ability of the development to meet any requirements of this schedule.
* The location and number of vehicle crossovers.
* The impact of the development on nature strips and street trees.
* The location, quantity and species of vegetation provided.

1. Clause 21.04 of the Municipal Strategic Statement (**MSS**) details the objectives and strategies for residential development. An objective is to encourage a variety of housing types and sizes to accommodate a variety of housing needs that complement and enhance the garden city character. A further objective refers to revegetating new residential developments to maintain and enhance the garden city character of the municipality. Related strategies include:

* 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. Clause 22.01 details the Planning Scheme’s Residential Development and Character Policy. Relevant objectives 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 applicable preferred future character statement for the area.

1. The preferred future character statements are provided at clause 22.01-4. The review site and surrounds are within the ‘Garden City Suburbs (Southern)’ residential character type. The preferred character statement for this character type is:

Modest dwellings with simple pitched rooflines and articulated facades will continue the prevailing development themes. On larger sites, low rise apartment development may be appropriate, provided the development is sited within generous open spaces, is well landscaped, retains the ‘open landscape character’ of the garden suburban setting and tapers down in scale close to the boundaries of the site.

While the housing mix within this area will continue to evolve to meet the changing needs of the community, new development will complement the scale and siting of the original housing within the area. In doing so, it will enhance the generous spacious, open, landscaped character of the area.

This character area will be notable for its spacious garden settings, tall canopy trees, consistency in front setbacks and the maintenance of setbacks from at least one boundary and from the rear of the site. New dwellings will address the street and upper levels will be recessed and/or articulated to minimise the impression of building scale.

Front fences will be low to enable vegetation to be visible from the street, allow clear views of buildings and give the street an open quality. Fencing will complement the architecture of the building in design, colour and materials.

Existing mature trees and shrubs within properties should be retained and additional tree planting proposed to gradually create a tree canopy in the private domain, including at the rear of properties. This will create a visually permeable buffer between the house and street. The soft quality of the street that is derived from the wide nature strips and street planting will be maintained by ensuring that there is only one crossover per lot frontage.

Expanses of blank, or continuous, walls will be avoided, particularly when adjacent to public parks or creating the appearance of a continuous building mass. The character of existing public open space within the area will be protected by ensuring that buildings directly adjacent are set back and buffered with planting that complements that within the public open space.

Sympathetically designed architecture is encouraged in preference to imitations of historic styles.

1. The Council’s principal concerns are in respect of the attached side-by-side nature of the development, the provision of two crossovers, and the massing of the built form as it presents to the street. The Council described the existing character of Young Street as comprising ‘squat single-storey dwellings within landscaped front yards which merge into the naturestrip and create a sense of space within the street’. It considers that the lengthways division of the lot has the potential to alter the existing streetscape in an adverse manner by effectively reducing the width of lot frontages. Related to this concern is the proposal to provide two crossovers and driveways, which the Council says will result in the frontage being dominated by hard surfaces rather than trees and landscaping, causing fragmentation of the streetscape. With respect to the appearance of the development, the Council submitted that the cumulative bulk, scale and mass of the buildings is inconsistent with the modest scale of surrounding dwellings and overall neighbourhood character.
2. In support of the proposal, the applicant’s submission referred to the following:
   * the two-storey scale is consistent with the more recently constructed dwellings in the area
   * the side-by-side nature of the development contributes to the variety of housing types and sizes in the neighbourhood, and both dwellings will address the street
   * the first-floor levels are recessed and articulated
   * habitable room windows at both ground and first floor levels face the street
   * the minimum 7.6 metre front setback meets the requirements of the schedule to GRZ3 and allows for the planting of canopy trees
   * planting is to be provided on both sides of the driveways to soften the presentation of hard pavement
   * the openness of the frontage will be maintained as no front fencing is proposed
   * the garages are recessed behind the principal façade, and the construction of one garage on the side boundary is consistent with the pattern of development in the neighbourhood, as is the 1.2 metre setback from the other side boundary.
3. The applicant acknowledged that the proposed provision of two crossovers is not in keeping with the preferred character statement, but noted that this does not mean that such an outcome is prohibited. In the applicant’s opinion, the provision of a second crossover is acceptable in this instance for a number of reasons. It was submitted that the width of the review site, at 17.98 metres, is wider than the majority of lots in the street, which have a frontage of 15.84 metres. According to the applicant, this makes it more conducive to a second crossover as there is more space for crossovers, driveways and landscaping without causing ‘unreasonable disruption to the streetscape’. Further reasons advanced in support of the design response include compliance with standard B14 at clause 55.03-9;[[2]](#footnote-2) the northern crossover will combine with the adjoining one to create a double crossover, which are common in the area; the southern crossover will be positioned to allow for two on-street car parking spaces between it and the crossover to the south, meaning there will be no loss of on-street parking.
4. The relevant preferred character statement was provided earlier in these reasons. The reference to the number of crossovers is with respect to the nature strip. Specifically, the reference reads:

The soft quality of the street that is derived from the wide nature strips and street planting will be maintained by ensuring that there is only one crossover per lot frontage.

1. Pursuant to clause 22.01-1-3, it is policy to:
   * 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.
   * Maximise landscaping in front setback areas by minimising the number of crossovers.
2. The applicant undertook an analysis to demonstrate that the resultant area for planting would be comparable to what would be the case for a single dwelling development with a single crossover and driveway leading to a double garage on one of the 15.84 metre wide lots that prevail in the street. The application plans include a landscape concept plan which shows planting in the front setback of three canopy trees with a minimum height at maturity of 8 metres, and a further five small trees and shrubs. That analysis also included comparison of the proposal with two single garages to a single dwelling development with a single garage, demonstrating that the area available for landscaping is comparable.
3. In combination, the two crossovers/driveways, two garages presenting to the street, the expansive elevations at both levels and contemporary design manifest an outcome that will be at odds with the existing neighbourhood character and will not contribute to the preferred neighbourhood character. I agree with the Council that the development does not sufficiently respect the neighbourhood character which comprises modest dwellings within garden settings. It will have a bold presence, emphasised by its contemporary forms. It will stand in marked contrast within its context and will not integrate successfully. The street and neighbourhood are characterised by single crossovers and driveways, with the majority of the front setback used for a garden.
4. The proposal does not respect this characteristic, but will introduce a new element, being the second driveway that, by its nature will reduce opportunities for landscaping. It will not enhance the spacious open garden character of the area. The two garages within the front façade are a further element that is not found in the street or immediate neighbourhood. This is not only out of keeping with what characterises the area, but will further draw attention to the uncharacteristic driveways and crossovers.
5. The development will not complement the scale and siting of the original housing in the area. It is a large built form that extends almost the entire width of this lot, which is significant given that this is one of, if not, the widest lots in the street. This siting has the effect of emphasising its presence and its discordant nature in a context of modest dwelling forms. Its side-by-side nature of two very different architectural styles further distinguishes it from the traditional domestic residential forms which characterise the neighbourhood. This is particularly the case for the southern dwelling, given its use of a flat roof and uniform vertical cladding that is applied to both levels in the front elevation.

## conclusion

1. For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

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| Bill Sibonis  **Senior Member** |  |  |

1. 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-1)
2. As the frontage is less than 20 metres, standard B14 allows for the width of accessways to occupy up to 40 per cent of the frontage. The proposed accessways will occupy 33 per cent of the frontage. [↑](#footnote-ref-2)