VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P477/2020Permit Application no. TPA/43950 |

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| APPLICANT | Sanjayan Sivasubramaniam |
| responsible authority | Monash City Council |
| SUBJECT LAND | 30 Tamarisk Avenue, Glen Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Jane Tait, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 14 August 2020 |
| DATE OF ORDER | 20 August 2020 |
| CITATION | Sivasubramaniam v Monash CC [2020] VCAT 885 |

# Order

1. In application P477/2020 the decision of the responsible authority is set aside.
2. That Council endorse plans prepared by R Architecture Drawing TP05 Revision D dated 12 December 2019 to form part of endorsed plans accompanying Permit TPA/43950.

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| **Jane Tait****Member** |  |  |



# Appearances

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| For Mr Sanjayan Sivasubramaniam  | Mr Mark Waldon, town planner, Street-Wise Pty Ltd |
| For Monash City Council  | Mr James Turner, Principal Planner- Appeals Advisor |

# Information

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| Description of proposal | Retrospective application to amend the endorsed plans for Permit TPA/43950 to alter the roof form and façade of Dwelling 2. The endorsed plans indicate construction of a hipped roof with an eave whereas the amended plans propose construction of a first floor parapet and shallower pitched roof.  |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant an amended permit. |
| Planning scheme | Monash Planning Scheme  |
| Zone and overlays | General Residential Zone Schedule 2 (GRZ2) |
| Permit requirements | Clause 32.08-6 – Construct two or more dwellings on a lot |
| Land description | The subject site is located on the south side of Tamarisk Drive, Mount Waverley. The site has an 18.29 metre frontage, depth of 36.58 metres and site area of 669 square metres.The site is occupied by two recently completed two storey attached houses. There is no fencing along the frontage and the landscaping has been completed.Surrounding land uses include a mixture of single and two storey detached houses. Multi-dwelling development is found in the street and wider area. |
| Tribunal inspection | An unaccompanied site inspection was conducted prior to the hearing. |

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

## What is this proceeding about?

1. Mr Sanjayan Sivasubramaniam (‘the applicant’) applied for a planning permit to amend the endorsed plans for planning permit TPA/43950 to alter the roof line and façade of Dwelling 2. Monash City Council (the ‘Council’) refused to grant an amended permit and the applicant is seeking a review of this decision.
2. Council refused the application on grounds the proposal was inconsistent with the neighbourhood character objectives of Clause 55.02-1, design detail objectives of Clause 55.06-1 and the neighbourhood character policy at Clause 22.01.

### What is the background of this application?

1. The planning permit was issued in July 2016, at the direction of the Tribunal (P2050/2015) as Council had refused the application on neighbourhood character grounds including the side-by-side configuration of the dwellings.
2. The endorsed plans showed the façade of Dwelling 2 with a hipped roof and eaves and Dwelling 1 with a flat roof.
3. Dwelling 2 has not been constructed in accordance with the plans as it includes a parapet at first floor level and gentler pitched roof. This application is seeking to amend the plans to enable a building permit to be issued.

### What does Council say?

1. Council argues the proposed amendment would deliver a development that is inconsistent with both the existing and preferred neighbourhood character. It says the contrast between the two differing roof forms that was approved provided further articulation of the development than the reduced box-like style of the contemporary architectural design.
2. Council also submits the pitched roofing of Dwelling 2 provided a transition between the pitched roof forms and eaves in the surrounding area and the contemporary flat roof and parapets of the first floor of Dwelling 1.

### What does the Applicant say?

1. The applicant acknowledged the approved roof design and façade was a better response in an Incremental Change Area than the current plans. He conceded that the pitched roof form of Dwelling 2 provided a better transition between the traditional architecture of buildings further east and the modern architectural design of Dwelling 1.
2. The applicant says the altered roof form was required as the roof of Dwelling 1 required a box gutter along the central party wall. He said his client determined the structure would not be able to support a box gutter safely and therefore a change to the façade of Dwelling 2 and roof pitch was a minor alteration that would address the structural concerns.
3. The applicant admits the development was managed in the wrong way but the main issue is whether the amended design is so alien to the streetscape that warrants reversion back to the original design. He argues that whilst the proposed plans are not the best outcome, the Planning Scheme requires an acceptable outcome that meets the objectives of the planning scheme.
4. The applicant argues this neighbourhood is currently undergoing change from the original houses to larger infill houses and multi-dwelling developments, some of which include parapet forms and flat roofing. He submits the design includes adequate articulation and the new landscaping will provide some screening over time.

## What are the key issues?

1. Having considered the submissions and inspected the subject land and locality, I find the following key issues in this matter are:
* What is the policy context of this site?
* What impact will the amendment have on the streetscape character?
1. I have decided to set aside the decision of Council and direct the amended plans be endorsed. My reasons follow.

### What is the policy context of the site?

1. My decision has considered the purposes of the GRZ2, Clause 15.01-1S, Clause 55 and the Local Planning Policy Framework (LPPF). I have also reviewed the findings in the previous Tribunal decision.
2. Council drew my attention to Clause 15.01-1S that seeks to support and protect neighbourhood character. It also highlighted Clause 21.04 of the LPPF that identifies the site is within a Garden City. This is reiterated in Clause 22.02 that notes the site is within a Garden City Suburbs Northern Area.
3. I note that Clause 22.01-3 states that it is policy for all residential areas to:
* Retain human scale, and by the inclusion of significant breaks and recesses in building massing, avoid large block like structures dominating the streetscape.
* Respect the roof forms and pitches of existing dwellings in the neighbourhood.
* Discourage reproduction or mock-historic building styles incorporating superficial detailing whilst promoting contemporary designs of the present era.
1. Clause 22.01-4 contains the preferred character for the northern area and notes:

New development will complement the established buildings through consistent siting, articulated facades and use of materials.

## What impact will the amendment have on the streetscape character?

1. Both parties agree the question before me is whether the change in the roof form and introduction of the parapet to the first floor façade of Dwelling 2 will have a detrimental impact on the streetscape and wider character of this neighbourhood.
2. Whilst it is disappointing the applicant did not amend his plans prior to construction, the completion of the dwelling has not been a factor in my determination.
3. I inspected the site and surrounding area prior to this hearing. I observed there is a dominance of pitched roof forms and eaves for existing detached, infill dwellings and multi-dwelling development nearby.
4. I acknowledge the parapet roof form is not a common feature of this neighbourhood but I have come to the conclusion the amended roof form/façade design is acceptable for the following reasons:
* The subject site is not located in a Heritage Overlay or Neighbourhood Character Overlay that would normally be the policy tools used to ensure consistency of roof forms and materials in a specific area. I note the preferred character of the Garden City Suburbs Northern Area does not specifically mention roof forms but the consistent siting, articulated facades and use of materials. I find this is achieved in this design. Council has not raised any concerns regarding the materials of the façade.
* Dwelling 2 retains a pitched roof that is visible from an oblique angle when viewed further south-east in the streetscape and over the frontage of the adjoining dwelling at 28 Tamarisk Avenue. This roof is also still partially visible above the parapet of the dwelling from directly in front of the site on the opposite side of the road.
* There are a variety of roof styles and forms in the wider area. This includes ground floor parapet roofing and flat roofs over garages, including at 2 Tamarisk Avenue.
* The design of the roof does not mimic existing original dwellings nearby and suitably reflects the contemporary design of the dwellings. This design is becoming more common in the wider area and reflects the change in building styles that is occurring over time.
* The design of the Dwelling 1 is distinctly different than Dwelling 2 in terms of materials, colours and window openings. These dwellings will read as individual dwellings in the streetscape. As noted by the applicant, the design includes a central recess/niche, staggered frontage setbacks, different window openings and different render colours. The first floors are also set back from the side boundaries to provide some relief/articulation in the side elevations when viewed in the oblique. In find these measures provide a suitable level of visual interest and articulation in the built form when viewed in the streetscape and from abutting properties.
* The completion of the landscaping in the frontage and along the driveways will, over time ensure the frontage reflects the existing Garden Character and it will filter views of the façade in the streetscape.
* The retention of the pitched roof behind the parapet of the dwelling will still provide a suitable transition to the pitched roof forms and eaves of surrounding dwellings given its visibility in the streetscape.
* The previous Tribunal decision did not identify roof forms as a significant feature of this neighbourhood. The member also did not make any comment about the contemporary design of the dwellings in comparison with the existing housing stock in the area.

## Conclusion

1. For the reasons given above, I find the amended plan is an acceptable response in this streetscape that will complement the evolving character of this neighbourhood.
2. The decision of the responsible authority is set aside and Council is directed to endorse the amended plans to form part of Permit TPA/43950.

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| **Jane Tait****Member** |  |  |

1. The submissions 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)