VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P1718/2019  Permit Application no. TPA/50010 |
| CATCHWORDS | |
| Section 77 of the *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone; Construction of two dwellings; Subdivision into two lots; Policy; ResCode; Car parking design standards | |

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| APPLICANT | Sankaran Swarminatha |
| responsible authority | Monash City Council |
| SUBJECT LAND | 668 Springvale Road, Mulgrave |
| WHERE HELD | Melbourne |
| BEFORE | Geoffrey Code, Senior Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 4 March 2020 |
| DATE OF ORDER | 19 March 2020 |
| CITATION | Swarminatha v Monash CC [2020] VCAT 357 |

# Order

### Permit application amended

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: | Simon Shaw Architect |
| * Drawing numbers: | 01 – 07 (inclusive) |
| * Dated: | Undated (but attached to the application to amend the permit application filed with the Tribunal on 17 December 2019) |

### Decision affirmed

1. The decision of the responsible authority is affirmed.

### No permit granted

1. In planning permit application TPA/50010 no permit is granted.

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| Geoffrey Code  **Senior Member** |  |  |

# Appearances

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| For Sankaran Swarminatha | Mr Glenn Kell, town planner, Planning Central |
| For Monash City Council | Mr Gerard Gilfedder, town planner, Currie & Brown (Australia) Pty Ltd |

# Information

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| Brief description of proposal | Construction of a single-storey dwellings behind an existing dwelling and alterations to the existing dwelling and subdivide the land into two lots |
| 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 (**GRZ**) Schedule 2 (*Monash Residential Areas*) (**GRZ2**) |
| Permit requirements | Clause 32.08-3 (subdivision of land in GRZ)  Clause 32.08-6 (construction of a dwelling in GRZ if there is at least one dwelling existing on the lot) |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 21.01, 21.04, 21.06, 22.01, 22.04, 22.05, 32.08, 52.06, 55, 56, 65 & 71.02 |
| Background documents | Plan Melbourne  Monash Housing Strategy 2014 |
| Land description | The land is on the east side of Springvale Road, about 25 metres south of Clunies Ross Crescent, about 4 km south of Glen Waverley activity centre. It is irregular in shape with a frontage of 16.76 metres and a depth about 43 metres to the easternmost point of a triangle at the rear of the land. It has an area of about 660 square metres. The land is developed with a single storey brick veneer dwelling and at the rear of that dwelling, what the Council describes as a ‘habitable outbuilding’. |

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

1. The subject land is developed with a single-storey, three-bedroom detached dwelling. In the backyard is what may be described as a ‘sleep out’ or ‘habitable outbuilding’ of about 35 square metres floor area.
2. The applicant proposes to alter and extend the ‘sleep out’ to create a detached two-bedroom dwelling and to alter the existing dwelling to create a two-bedroom dwelling.
3. As part of these changes, the applicant also proposes to demolish the existing dwelling’s carport and construct two new single carports (under single car port roof) for each dwelling. The new carports are located also on the north side of the existing dwelling and set back 9.7 metres from the street and projecting about one metre in front of the façade of the existing dwelling.
4. Pedestrian access to the dwelling at the rear is via a one metre wide path between the two carports that includes a gate with intercom. Pedestrian access to the dwelling at the front is relocated from a door facing north behind a front bedroom to a new door facing the street located in that front bedroom that is remodelled as part entrance and part carport.
5. The applicant has applied to review a decision by the Monash City Council (the **Council**) to refuse to grant a permit under the Monash Planning Scheme (the **Scheme**) to carry out the development.
6. The Council is correct in accepting that the project is a very modest intensification of housing on the subject land and that the application is supported by State and local policies relating to additional housing in established areas, housing diversity, additional housing in a Principal Public Transport Network Area and additional housing along a main road such as Springvale Road.
7. The Council’s reasons for refusing a permit relate to the application’s response to character policy, *ResCode* objectives and car parking standards. In other words, the Council found the design response in the application to be unsatisfactory.
8. I find the Council made the correct and preferable decision. This is an example of when the retention of an existing dwelling compromises the achievement of an acceptable design for a two-dwelling development. In this case, the preference for well-designed and sensitive multi-dwelling development in the preferred character statement for the relevant character area is not achieved.
9. Most of the problems emanate from the two new carports.
10. Although the carport is a single structure with a tiled pitched roof to match the existing roof of the front dwelling, it is a poor urban design outcome. As it extends to the south to cover the entry, it is about 10.3 metres wide and dwarfs the façade of the balance of the front dwelling, being only about 4.5 metres. Its prominence is heightened by its projection about one metre in front of that façade.
11. The front dwelling’s carport is located immediately abutting its living room. The wall of that room contains the sole window in that room. The window is street-facing. There is no setback of the 6 metre long carport from the wall. This results in non-compliance with the *ResCode* daylight to existing windows objective and standard and the *ResCode* parking location objective. It is also a poor internal amenity outcome because the presence of a vehicle and carport roof results in no effective outlook from the room.
12. The applicant sought to address this problem at the hearing by including a skylight in the living room. This is an unsatisfactory response.
13. The pedestrian access to the rear dwelling via the common driveway and between two carport spaces under the carport roof is inconvenient and undesirable.
14. The details of the carports are uncertain. The width and length of each car space within the carport is marked on the plans as 3.5 metres and 6 metres, respectively. These dimensions comply with the car parking design standard in the Scheme. However, two problems emerge from the plans.
15. First, it is unclear whether the width of carport 2 would be 3.5 metres. On drawing no. 03, the width of carport 2 is noticeably narrower than carport 1. Carport 2 scales at only 3 metres internal width.
16. Second, carport 2 has a chamfered south-east corner that scales at 1.2 metres. The chamfering creates pedestrian access from the gated passage between the two carport spaces and is needed because there is no carport setback from the living room of the front dwelling. The reduction in space in carport 2 does not comply with clearance requirements in the Scheme and makes the space inconvenient and with an effective length of only 4.8 metres.
17. It is unnecessary to refer to other problems with the design response. The above carport-related issues are sufficient to warrant affirming the Council’s decision. It suffices to mention there are other problems including secluded private open space, poor entry to the rear dwelling, and external storage.

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| Geoffrey Code  **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)