

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1489/2023  
PERMIT APPLICATION NO. TPA/54885

<b>APPLICANT</b>	Leila Romanos
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>SUBJECT LAND</b>	4 Andrew Street MOUNT WAVERLEY VIC 3149
<b>WHERE HELD</b>	Melbourne
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	4 March 2024
<b>DATE OF ORDER</b>	5 March 2024
<b>CITATION</b>	Romanos v Monash CC [2024] VCAT 201

### ORDER

- 1 The decision of the Responsible Authority is varied.
- 2 The Tribunal directs that Permit No. TPA/54885 must contain the conditions set out in Permit No. TPA/54885 issued by the Responsible Authority on 2/10/2023 but with the following modification:
  - (a) Condition 1a) is deleted.
- 3 The Responsible Authority is directed to issue a modified permit in accordance with this order.

J A Bennett  
**Senior Member**





approved, but yet to be constructed, development to the south at No 6 Andrew Street. I record that proposal includes extensions to the existing single storey shop building and the construction of two new levels containing a two bedroom dwelling.

- 8 I am not persuaded an additional 8.8 metre setback is warranted on the subject land.
- 9 Decision guidelines for buildings and works in the Commercial 1 Zone requires consideration of, amongst other matters, overlooking and overshadowing affecting adjoining land in the General Residential Zone. It does not require such consideration for adjoining sites in the Commercial 1 Zone. I note there are no specific height or setback requirements listed for the Commercial 1 Zone.
- 10 Shadow diagrams indicate that shadowing occurs to the properties to the east from just before 2pm. However, this shadow is at ground level and therefore has no impact on the balconies above. At 3pm there is some shadow beyond the front of the garages, but it is my assessment that this shadow will largely, if not entirely, fall on the garage doors rather than extend upwards onto the first floor balconies. This is an acceptable outcome.
- 11 Although council is concerned about shadowing to the yet to be built dwellings to the south at No 6 Andrew Street, as previously noted, the decision guidelines do not list that as a consideration for properties in the Commercial 1 Zone. As discussed at the hearing, I am also somewhat surprised at the inclusion of east facing balconies in that development given the constraints that potentially arise from that design response.
- 12 I am also not concerned about the potential for unreasonable overlooking across the laneway. Although the separation distance across the laneway is 6.6 metres, the proposed dwelling does not contain balconies or unscreened windows which would create overlooking opportunities to those unscreened west facing balconies of the existing dwellings.
- 13 I can perhaps understand why an additional setback may have been required if the proposal had included east facing balconies, such as those proposed at No 6 Andrew Street to the south, but that is not the case here.
- 14 In relation to visual bulk, this is an interface site between commercial and residential zones. The zero setback at ground level is opposite the ground level garages to the east and will not have any amenity impact at that level. The turning circle diagram indicates that an additional ground level setback is not required for the practical movement of turning vehicles. Council's traffic engineers have not raised a concern in this regard.
- 15 Due to the width of the laneway, the effective separation between the first and second floors and the balconies is 6.6 metres. I acknowledge the proposal introduces new built form. However when viewed from the balconies it presents as a benign, non-activated two storey wall. I do not



agree that it presents as a three storey wall that will overwhelm viewers on these west facing balconies.

- 16 Given this is an interface site, and that there are no unreasonable overlooking or overshadowing impacts when assessed against clause 55 standards, I cannot support a condition requiring an 8.8 metre setback.
- 17 Given all the above comments, I will delete condition 1a) and direct that a modified permit be issued.

J A Bennett  
**Senior Member**

