VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

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

APPLICANT	Leila Romanos
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	4 Andrew Street MOUNT WAVERLEY VIC 3149
WHERE HELD	Melbourne
HEARING TYPE	Hearing
DATE OF HEARING	4 March 2024
DATE OF ORDER	5 March 2024
CITATION	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



APPEARANCES

For Leila Romanos	Mark Waldon, Town Planner of St-wise Pty Ltd.
For Monash City Council	Nicolas Rocca, Statutory Planner.

ORAL DECISION AND REASONS GIVEN¹

- Monash City Council ("council") has approved a permit for the construction of a ground floor extension to an existing shop and construction of a double storey dwelling above. The one condition in dispute 1a) requires the rear setback of all storeys to be a minimum of 8.8 metres.
- 2 After having heard from parties and taken a brief adjournment, I gave an oral decision to vary council's decision and delete condition 1a). What follows is a summary of the reasons given orally.
- 3 The site is located within a small group of commercial 'shop' buildings located on the eastern side of Andrew Street. The site is occupied by a single storey building used as a beauty salon with an open rear yard behind. A 3.6 metre wide laneway along the rear of the commercial premises provides access to these sites and separates the commercial centre from land in the General Residential 3 Zone to the east.
- 4 The residential site on the eastern side of the laneway has been developed for a series of triple storey apartments with garages accessed from the laneway. The garages are set back approximately 3 metres from the laneway but balconies above cantilever out to the laneway boundary. The top floor of those dwellings cantilever over the balconies with screened and opaque glazed windows facing west towards the commercial centre.
- 5 As now designed, the proposed dwelling abuts the laneway at ground level and is set back 3 metres from the laneway at first and second floors. East facing highlight windows are provided to the bedroom at the second floor with no windows at first floor. First floor at this end of the building is a void above the garage, included to provide sufficient headroom for vehicles parked on the sloping site.
- 6 At second floor a west facing balcony off the living/dining/kitchen area provides unimpeded views to the west over Andrew Street. A small north facing balcony off the family room is provided at first floor.
- 7 Council is seeking an increased rear boundary setback to improve the impact on the dwellings to the east and the proposed dwelling at No 6 Andrew Street. The 8.8 metre setback would match the setback of the

¹ The submissions 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.

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

