

**STATUTORY PLANNING COMMITTEE**  
**11 AUGUST 2008**

<b>B2</b>	<b>61 FITZROY STREET, ST.KILDA</b>
<b>ADDRESS:</b>	61 Fitzroy Street, St. Kilda
<b>PROPOSAL:</b>	Demolition of existing buildings, construction of a five storey building containing a nightclub, a restaurant, a convenience restaurant (cafe), a shop and 39 dwellings with a reduction in car parking provision and waiver of a loading facility & sale/consumption of liquor.
<b>WARD:</b>	St. Kilda
<b>NEIGHBOURHOOD</b>	St. Kilda
<b>TRIGGER FOR DETERMINATION BY STANDING COMMITTEE:</b>	Parking dispensation.
<b>APPLICATION NO.:</b>	1249/2006
<b>APPLICANT:</b>	Virgon Developments
<b>EXISTING USE:</b>	Nightclub and convenience restaurant (cafe)
<b>ABUTTING USES:</b>	Retail, Residential Hotel, dwelling
<b>ZONING:</b>	Business 1
<b>OVERLAYS:</b>	HO 5, DDO6-2, part SBO 2 (Council)
<b>STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL</b>	Expired.
<b>RESPONSIBLE EXECUTIVE DIRECTOR:</b>	Geoff Oulton, Executive Director Community Development & Planning
<b>AUTHOR:</b>	Phillip Beard, Senior Planner

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**1. EXECUTIVE SUMMARY**

- 1.1. It is proposed to demolish existing buildings and construct a five storey above ground building (plus basement) and to use the building for the purposes of retail (shop), convenience restaurant (café), restaurant and dwellings.
- 1.2. Key issues relate to the likely amenity impacts of the proposal (overlooking, overshadowing, noise, visual bulk and scale) and impact of providing 27 dwellings without car parking.
- 1.3. It is recommended that a Notice of Decision to Grant a Permit be issued, subject to a reduction in the number of dwellings proposed.

**KEY ISSUES**

1. Intensity of use, site layout
2. Car parking
3. Amenity impacts

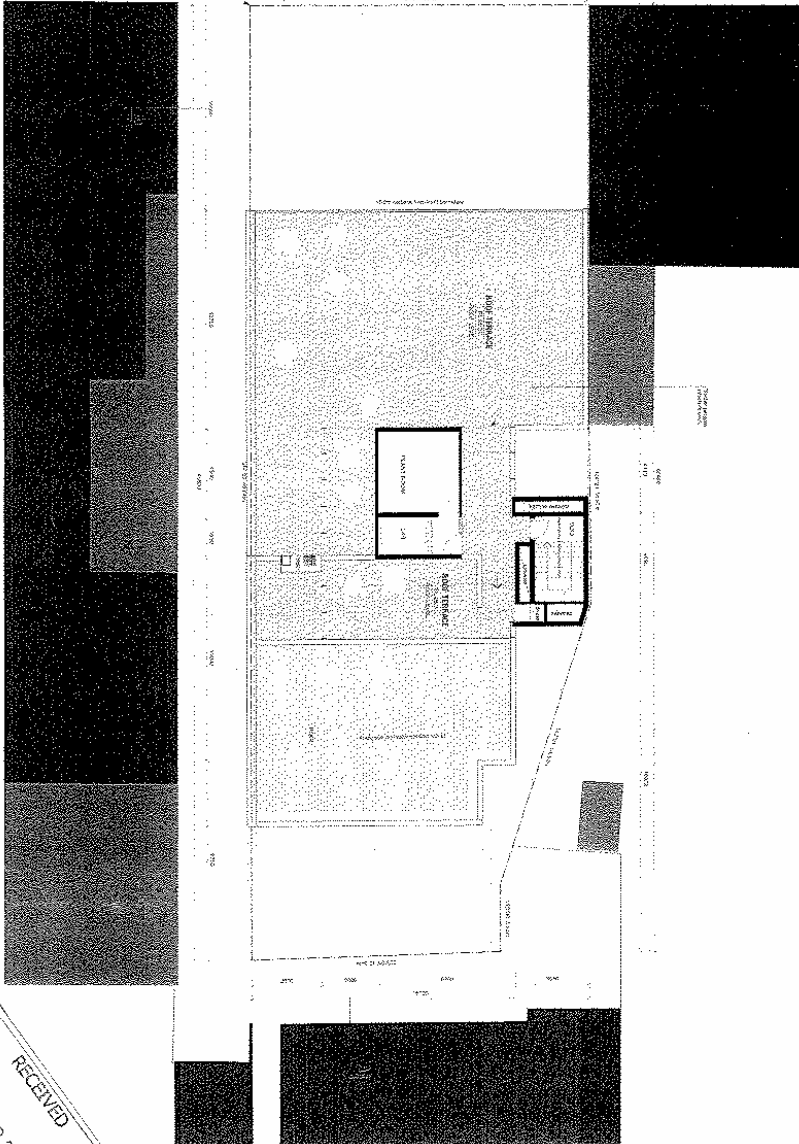


Subject Property       Objectors       Supporters

**AKV Developments** 61 Fitzroy Street, St. Kilda

Proposed Roof Plan 1:100 @A1

Proposed Roof Plan  
1:100 @A1



Roof Plan 20 December 2007  
1:200 @A3 1:100 @A1

AKV'S ARCHITECTURE

**TP11c**



**AKV Developments** 61 Fitzroy Street, St. Kilda

Forkins Architects 757-4201 Street, Brighton 3187 Phone 9887 7350 Email [forkins@forkins.com.au](mailto:forkins@forkins.com.au)

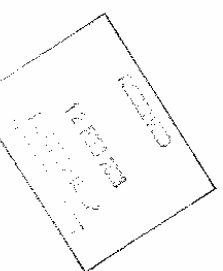
North



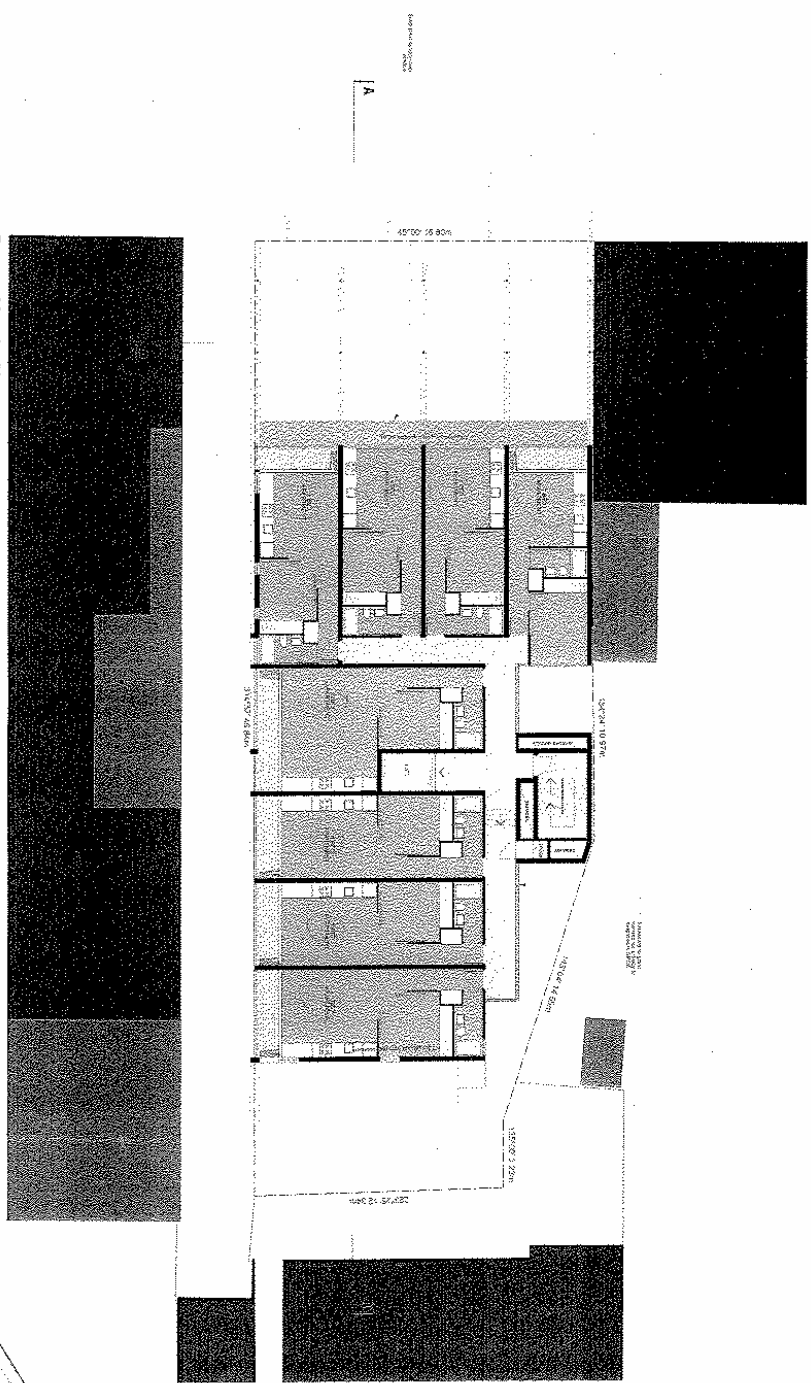
Level 4 Floor Plan  
1:200 (A1)

20 December 2007  
ANN/FS/SA/00001003

**TP10c**



Proposed Level 4 Plan  
1:100 (A1)





**AKV Developments** 61 Fitzroy Street, St. Kilda

Perkins+Will 1031 High Street, Hobart TAS 7000 T: 0511 03007 F: 0511 03007 E: [perkinswill.com.au](mailto:perkinswill.com.au)

Arch

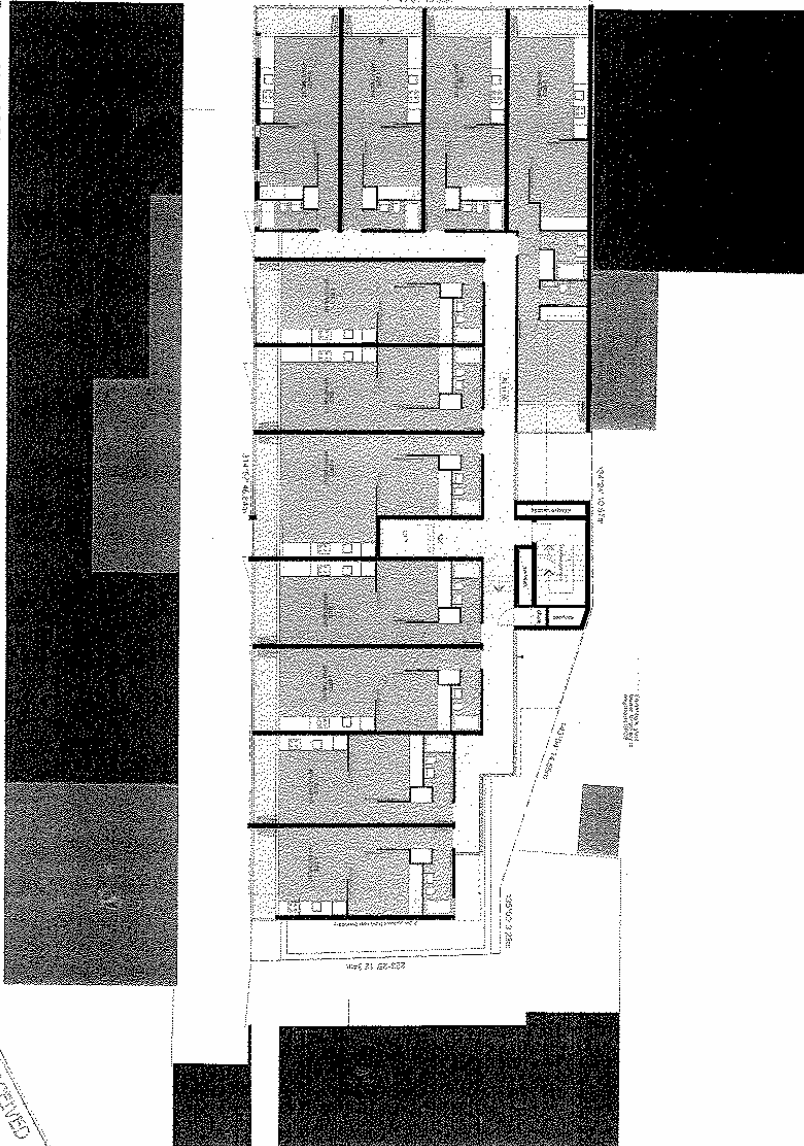


Level 2 Floor Plan  
1:200 (AKV) / 1:100 (DWG)

20 December 2007  
AKV FS-04-dwg/plan/02

**TP08c**

Proposed Level 2 Plan  
1:100 (DWG)



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PLANNING DEPT

**AKV Developments** 61 Fitzroy Street, St. Kilda

Perkins+Will Architects 132 High Street, Prahran 3181. Ph: 03 9887 7888. Fax: 03 9887 7889. Email: akv@perkinswill.com.au

North

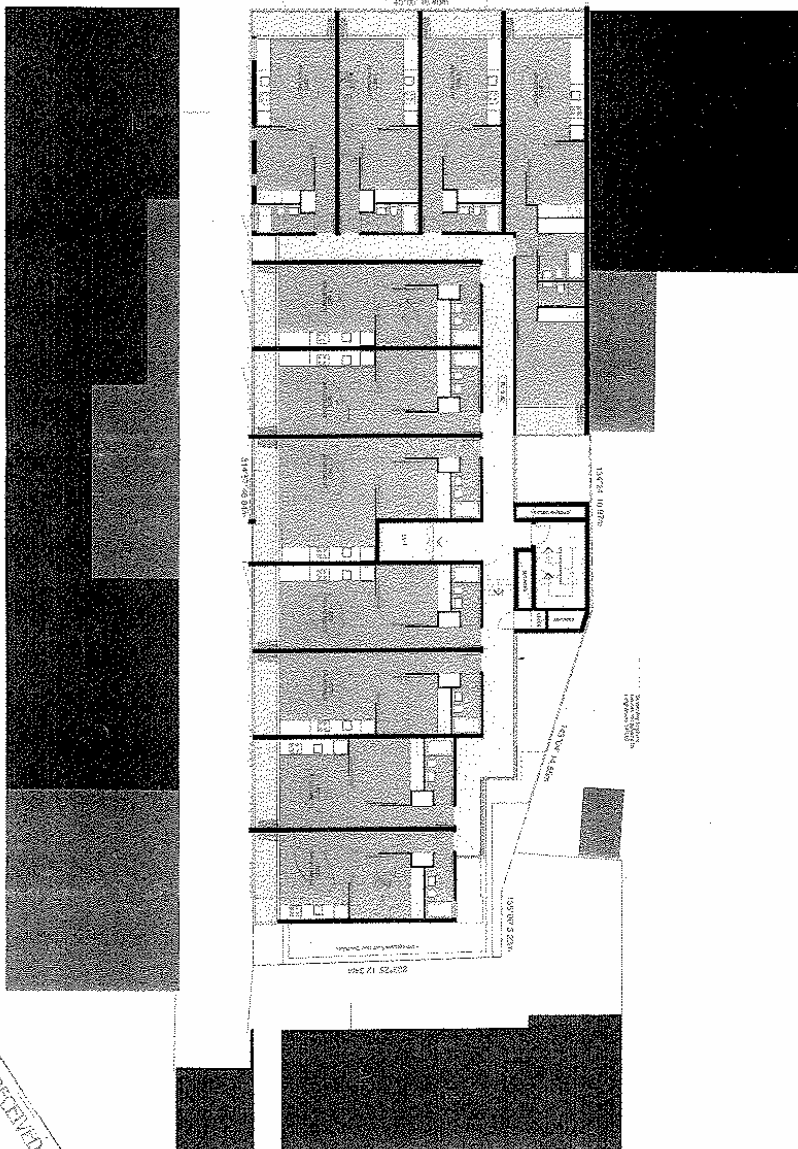


Level 1 Floor Plan  
1:200 (A3) / 1:100 (A4)

20 December 2007  
AKV/TS-sk-08/08/0001

**TP07c**

Proposed Level 1 Plan  
1:100 (A4)



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**AKV Developments** 61 Fitzroy Street, St. Kilda

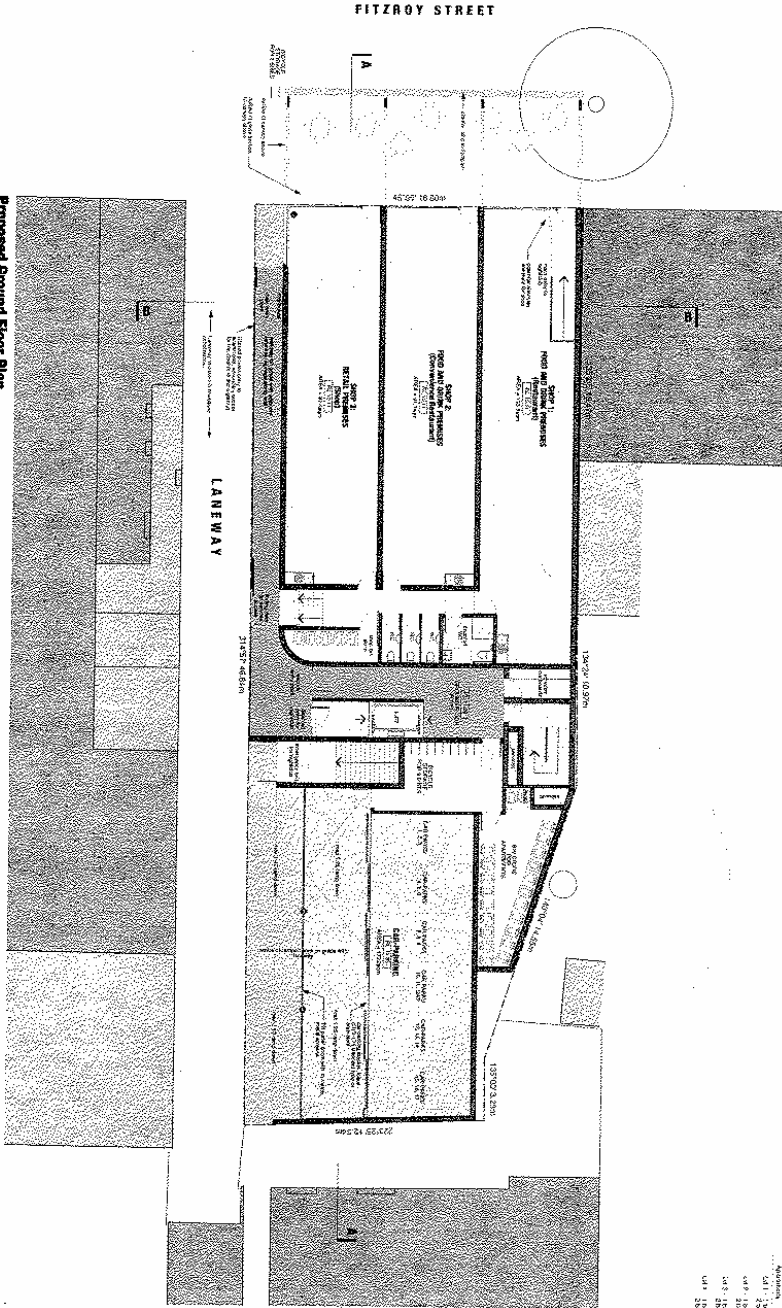
Perkins+Williams 153 Roper Street Fitzroy 3187 P: 03 9379 9027 F: 03 9379 8888 E: perkins@perkinswilliams.com.au



Ground Floor Plan 6 February 2008  
1:200 (A3) / 1:100 (A4)  
AKV FS-0091-09-07-0-08-006

**06**  
12 FEB 2008  
POINT PRODUCTIONS  
AKV FS-0091-09-07-0-08-006

**Proposed Ground Floor Plan**  
1:100 @A1



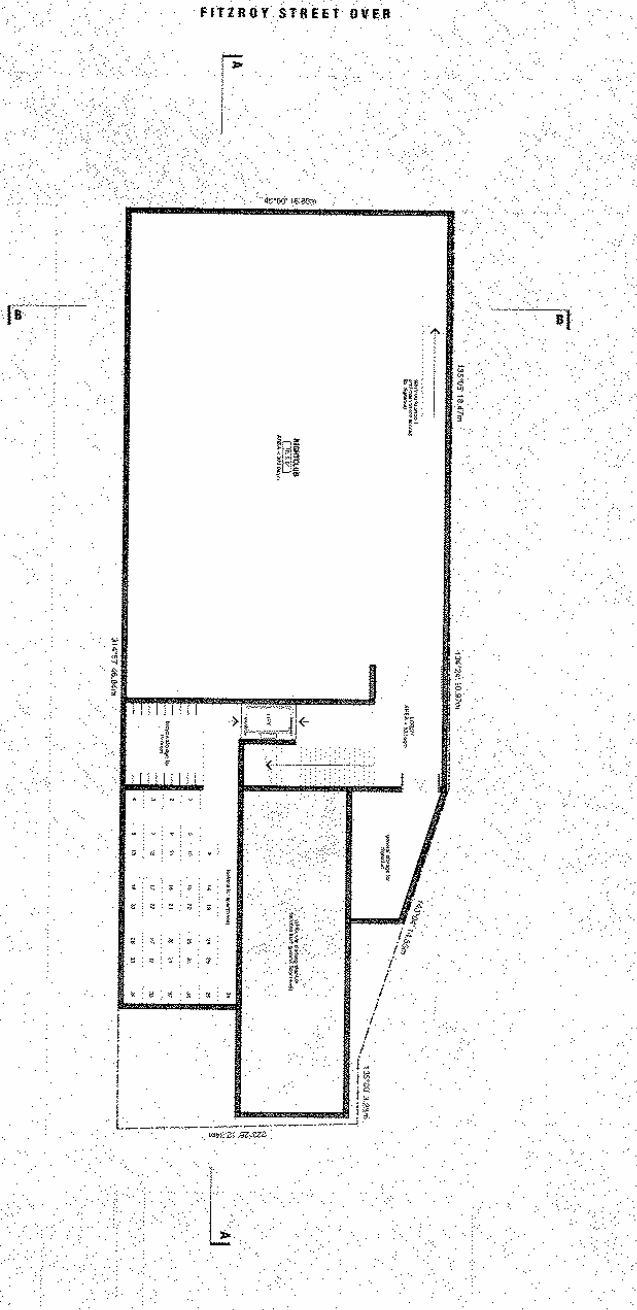
**Area Summary**

Code	Description	Area (sqm)
001	Shop 1	1,200.00
002	Shop 2	1,200.00
003	Office	1,200.00
004	Reception	1,200.00
005	Stairs	1,200.00
006	Toilets	1,200.00
007	Other	1,200.00
008	External	1,200.00
009	Internal	1,200.00
010	Roof	1,200.00
011	Subtotal	12,000.00
012	Grand Total	12,000.00

**AKV Developments 61 Fitzroy Street, St. Kilda**

Perkins+Williams Architects Pty Ltd 1200 @A1 1:100 @A1

**Proposed Basement Level Plan**  
1:100 @A1



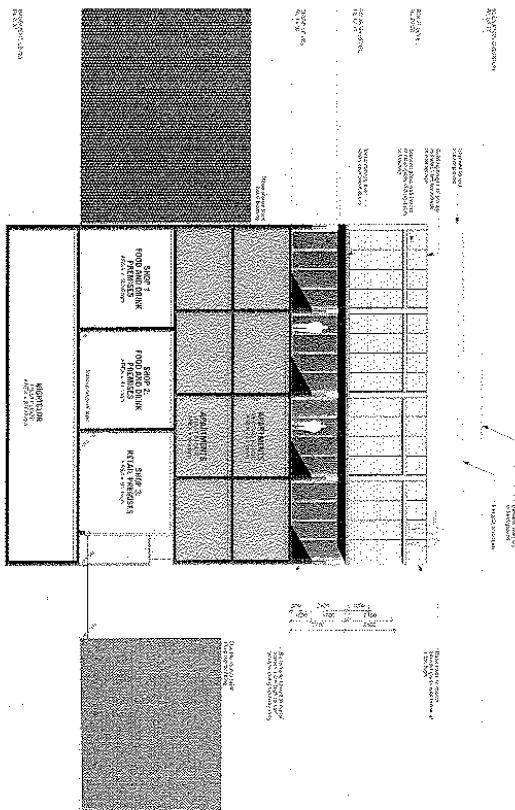
Basement Plan 6 February 2008  
1:200 @A3 / 1:100 @A1

AKV'S 0255-086-076-086  
1:200 @A3 / 1:100 @A1

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12 FEB 2008  
CITY OF PHILLIP  
11:27 AM

**AKV Developments 61 Fitzroy Street, St. Kilda**

Perkins+Will 125 High Street, Melbourne VIC 3002 P: 031 3807 P: 031 3807 E: akv@perkinswill.com.au



**Proposed Section B**  
1:100 (S&A)

North

1:200 (S&A) 1:100 (S&A)

Section B 20 December 2007

AKV P5-1029-09-10-11

**TP18c**



**AKV Developments 61 Fitzroy Street, St. Kilda**

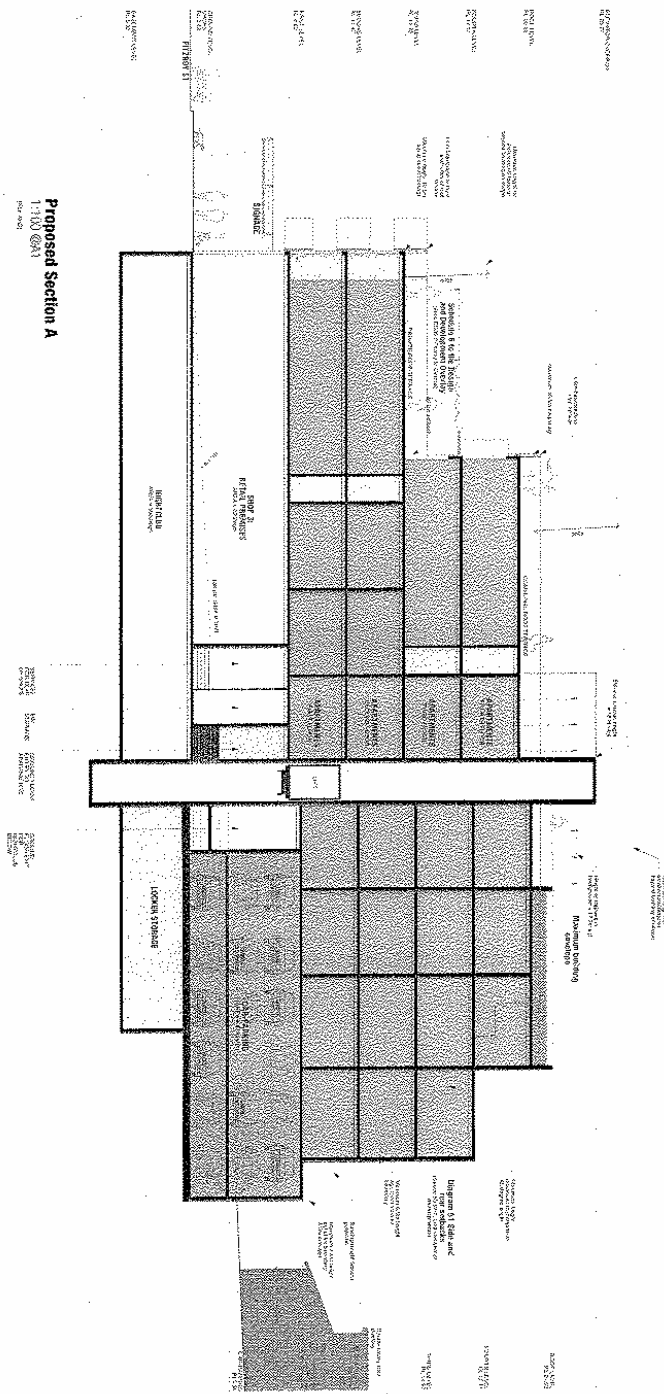
Perkins+Will 1231 19th Street, Philadelphia, PA 19103-3097, USA  
 P: 215 765 8855 E: phil@perkinswill.com

North

Section A  
 1:250 (B&S) / 1:100 (G&A)

20 December 2007  
 AKV FS #2007-024-T06-11

**FP17c**



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 12 FEB 2008  
 10:17 AM  
 11/10/07

**AKV Developments 61 Fitzroy Street, St. Kilda**

Perkins Architects 153 High Street, Melbourne 3121 P: 031 03877 F: 031 03858 E: perkins@perkins.com.au

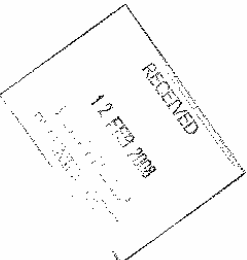
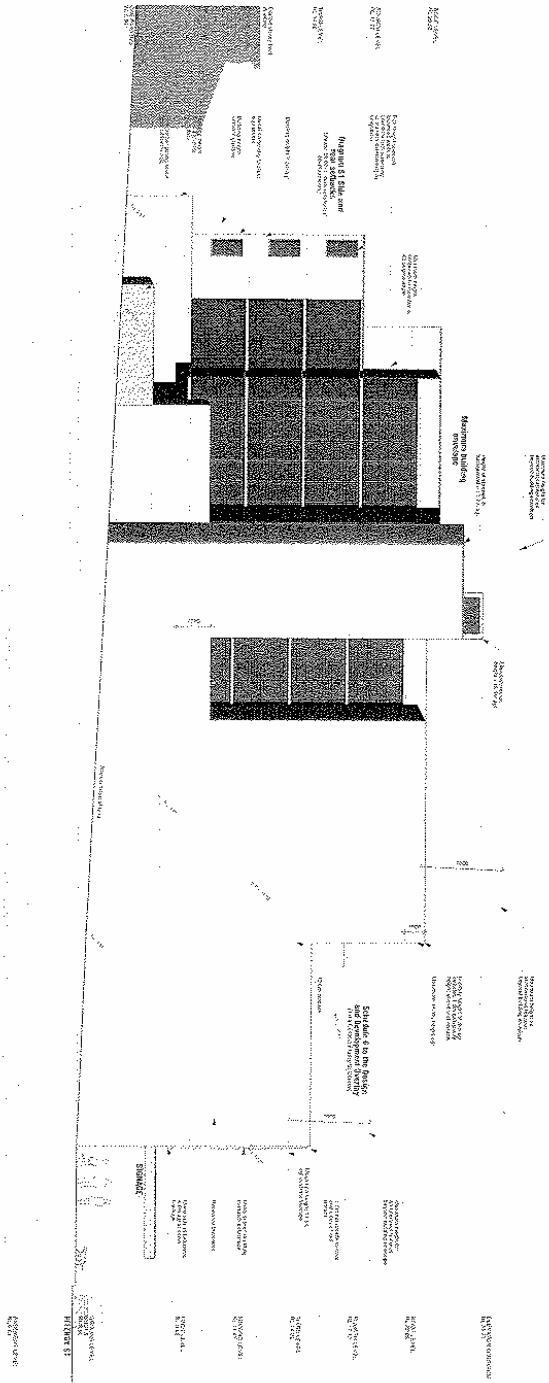
North

North East Elevation  
1:200 (SAS 7:1) (03/04)

20 December 2007  
AKVTS: (408) 055-108-11

**TP16c**

**Proposed North East Elevation**  
1:100 (04)





**AKV Developments 61 Fitzroy Street, St. Kilda**

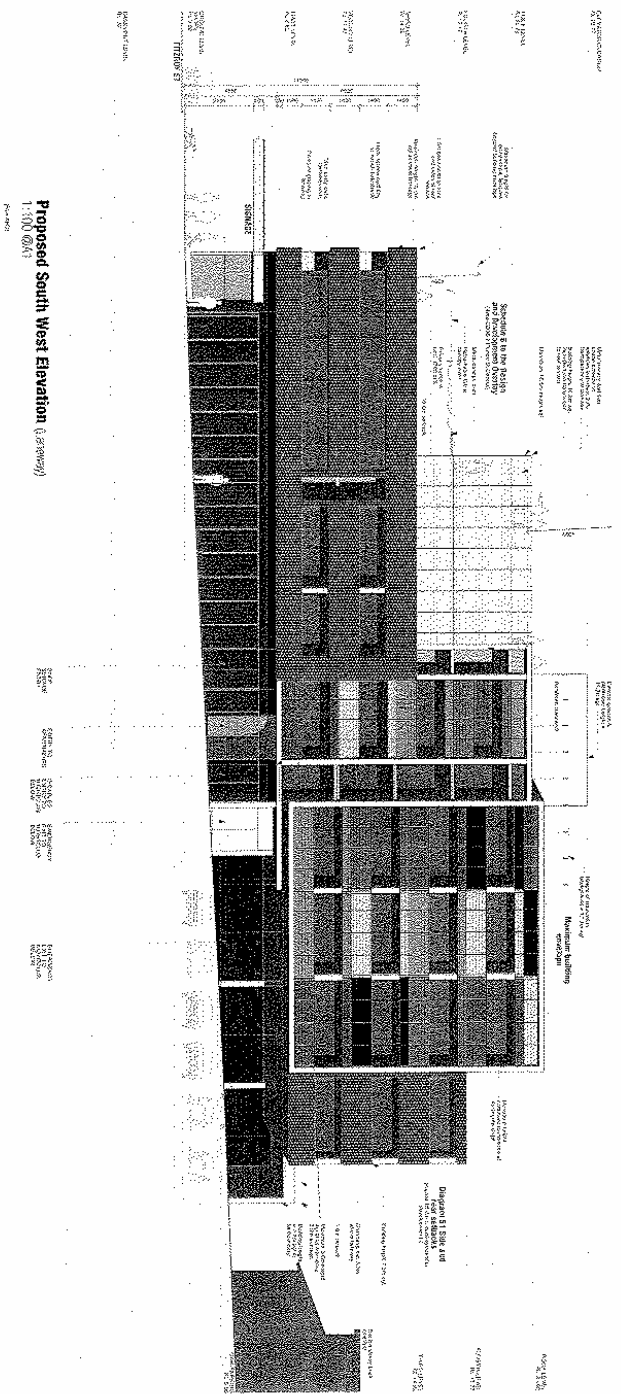
Perkins + Rowe Architects 153 High Street, Tower 3101 Ph: 9570 9897 Fax: 9570 9895 Email: akv@perkinsrowe.com.au

North

South West Elevation  
1:200 (A3) / 1:100 (A4)

20 December 2007  
AKV FS skfsh-03h-10g-1

**TP14c**



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12 FEB 2008  
11 AM 11:12 AM  
STATUTORY PLANNING UNIT



Existing Streetscape Elevation  
Appendix 1.200 @A1



Proposed Streetscape Elevation  
Appendix 1.200 @A1  
1/1/2008

**AKV Developments 61 Fitzroy Street, St. Kilda**

Perkins+Korndorff 3103 Fitzroy Street, Kew VIC 3142 P:95103987 F:95103859 E:perkins@perkins.com.au

North



Streetscape Elevations  
1-400963 / 1.200@A1

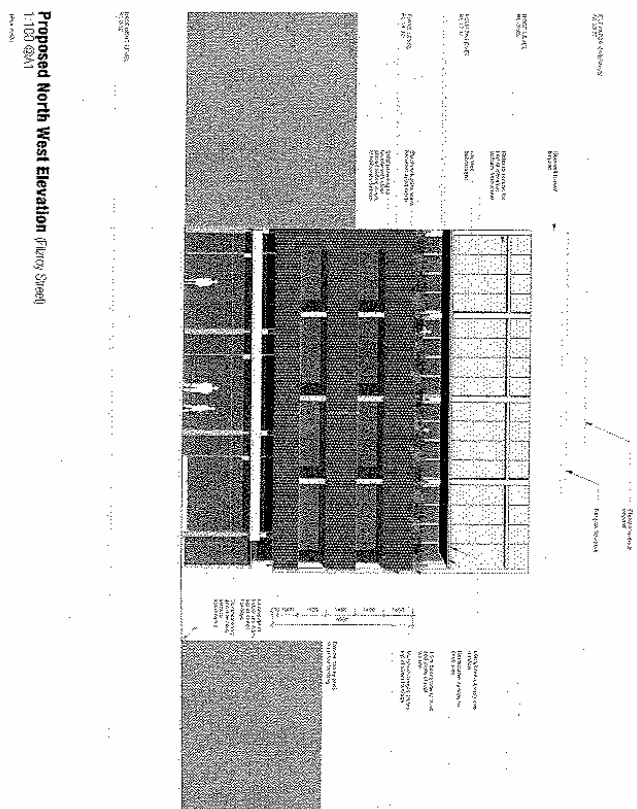
20 December 2007  
AKV F/S - Jp-silverfox Brnoy

**TP12B**

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12 DEC 2008  
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PLANNING DEPT

**AKV Developments** 61 Fitzroy Street, St. Kilda

Permits/Plans: 153 High Street, Princes 3187, P45103697, P45103698, P45103699, P45103700, P45103701, P45103702, P45103703, P45103704, P45103705, P45103706, P45103707, P45103708, P45103709, P45103710, P45103711, P45103712, P45103713, P45103714, P45103715, P45103716, P45103717, P45103718, P45103719, P45103720, P45103721, P45103722, P45103723, P45103724, P45103725, P45103726, P45103727, P45103728, P45103729, P45103730, P45103731, P45103732, P45103733, P45103734, P45103735, P45103736, P45103737, P45103738, P45103739, P45103740, P45103741, P45103742, P45103743, P45103744, P45103745, P45103746, P45103747, P45103748, P45103749, P45103750, P45103751, P45103752, P45103753, P45103754, P45103755, P45103756, P45103757, P45103758, P45103759, P45103760, P45103761, P45103762, P45103763, P45103764, P45103765, P45103766, P45103767, P45103768, P45103769, P45103770, P45103771, P45103772, P45103773, P45103774, P45103775, P45103776, P45103777, P45103778, P45103779, P45103780, P45103781, P45103782, P45103783, P45103784, P45103785, P45103786, P45103787, P45103788, P45103789, P45103790, P45103791, P45103792, P45103793, P45103794, P45103795, P45103796, P45103797, P45103798, P45103799, P45103800, P45103801, P45103802, P45103803, P45103804, P45103805, P45103806, P45103807, P45103808, P45103809, P45103810, P45103811, P45103812, P45103813, P45103814, P45103815, P45103816, P45103817, P45103818, P45103819, P45103820, P45103821, P45103822, P45103823, P45103824, P45103825, P45103826, P45103827, P45103828, P45103829, P45103830, P45103831, P45103832, P45103833, P45103834, P45103835, P45103836, P45103837, P45103838, P45103839, P45103840, P45103841, P45103842, P45103843, P45103844, P45103845, P45103846, P45103847, P45103848, P45103849, P45103850, P45103851, P45103852, P45103853, P45103854, P45103855, P45103856, P45103857, P45103858, P45103859, P45103860, P45103861, P45103862, P45103863, P45103864, P45103865, P45103866, P45103867, P45103868, P45103869, P45103870, P45103871, P45103872, P45103873, P45103874, P45103875, P45103876, P45103877, P45103878, P45103879, P45103880, P45103881, P45103882, P45103883, P45103884, P45103885, P45103886, P45103887, P45103888, P45103889, P45103890, P45103891, P45103892, P45103893, P45103894, P45103895, P45103896, P45103897, P45103898, P45103899, P45103900, P45103901, P45103902, P45103903, P45103904, P45103905, P45103906, P45103907, P45103908, P45103909, P45103910, P45103911, P45103912, P45103913, P45103914, P45103915, P45103916, P45103917, P45103918, P45103919, P45103920, P45103921, P45103922, P45103923, P45103924, P45103925, P45103926, P45103927, P45103928, P45103929, P45103930, P45103931, P45103932, P45103933, P45103934, P45103935, P45103936, P45103937, P45103938, P45103939, P45103940, P45103941, P45103942, P45103943, P45103944, P45103945, P45103946, P45103947, P45103948, P45103949, P45103950, P45103951, P45103952, P45103953, P45103954, P45103955, P45103956, P45103957, P45103958, P45103959, P45103960, P45103961, P45103962, P45103963, P45103964, P45103965, P45103966, P45103967, P45103968, P45103969, P45103970, P45103971, P45103972, P45103973, P45103974, P45103975, P45103976, P45103977, P45103978, P45103979, P45103980, P45103981, P45103982, P45103983, P45103984, P45103985, P45103986, P45103987, P45103988, P45103989, P45103990, P45103991, P45103992, P45103993, P45103994, P45103995, P45103996, P45103997, P45103998, P45103999, P45104000



North West Elevation  
1:200 (A3) / 1:100 (A1)

20 December 2007  
AKV ES-8009-009-109-1  
**TP13c**



**2. PROPOSAL**

- 2.1. The plans originally submitted showed demolition of the existing two storey dwelling on the site, (an altered commercial building), and construction of a five storey above ground building (plus basement) comprising three ground level commercial tenancies, a basement nightclub and a 60 room backpacker lodge of 206 beds. A total of 17 on site car parking spaces were proposed.
- 2.2. Following the consultation meeting, the proposal was revised. There have been detailed changes to various pedestrian access points, which will be outlined later, but the key revision was the deletion of the backpacker lodge component which has been replaced with 39 dwellings. The revised plans were formally re-advertised and therefore, they supercede the previous plans. The new plans form the basis of this assessment and are described below.

Basement:

- 2.3. The basement would have an area of approximately 395m<sup>2</sup> and would be used for nightclub purposes. It would occupy the front half of the site and would have a patron limit of 300. In essence, it would replace the existing nightclub currently on the site. The current operating hours would also be mimicked, with 24 hour operation currently permitted, except for Sundays (10am to 7am) and Good Friday/Anzac Day (midday to 7am). These hours are stipulated on the current liquor licence.
- 2.4. The rear portion of this level would contain bicycle storage (19 spaces), locker storage for the dwellings, a lobby area and the pit for the car stackers.
- 2.5. This level would be accessed via stairs from Fitzroy Street within the footprint of the north shop tenancy, but separated from it.

Ground Floor:

- 2.6. This level would contain three tenancies fronting Fitzroy Street. They would occupy most of the site's frontage, apart from a 1.5m wide strip along the south boundary of the site parallel with the abutting laneway. This would be used for enclosed pedestrian access from Fitzroy Street to the lobby at the centre of the site. The three tenancies would be used for a restaurant, a convenience restaurant (café) and a shop. The tenancies would have areas of between 91m<sup>2</sup> and 104m<sup>2</sup>.
- 2.7. This level would also contain back-of-house facilities for the tenancies and a lobby generally at the centre of the site. The lobby would give access to the dwellings. Behind would be various stair areas, the dwelling's bin store and the car park. There would be 17 car spaces proposed in the form of triple stackers. These would be accessed from the abutting side lane.
- 2.8. The building would have a zero setback from the front, north and east (rear) boundaries at this level. A canopy is proposed over the footpath and would be approximately 5.4m wide.

Levels 1 and 2:

- 2.9. Eleven dwellings would be provided at each of these levels. All but one of the dwellings per level would have one bedroom, with the remaining dwelling having two bedrooms. The single bedroom dwellings would mostly have areas between approximately 38m<sup>2</sup> and 42m<sup>2</sup>, excluding balconies. One of the single bedroom dwellings per floor would have an area of approximately 50m<sup>2</sup>. At both these levels, the building would be setback (to its main wall) approximately 1.4m to Fitzroy Street, between zero and 1.2m to the south boundary, partly zero and partly up to approximately 3m to the angled section of the north boundary and generally 1.8m to the rear boundary.
- 2.10. All dwellings facing either Fitzroy Street or the side lane would have balconies. These would occupy the full width of each dwelling and consequently, the full width of the Fitzroy Street frontage and the majority of the laneway (south) frontage.

Level 3

- 2.11. This level would have a similar layout to the levels below, except for the front of the site, where the main wall would be setback approximately 10m from Fitzroy Street. This setback space would be occupied by balconies, one for each of the four dwellings facing Fitzroy Street. This level would contain nine dwellings mostly between 38m<sup>2</sup> and 42m<sup>2</sup>, but with one at approximately 50m<sup>2</sup> in area. The dwellings facing the side lane would continue to have full width balconies facing that lane.
- 2.12. Apart from the front setback, other setbacks would be the same as the levels below.

Level 4

- 2.13. This level would contain eight dwellings, all with a single bedroom generally between 36m<sup>2</sup> to 40m<sup>2</sup> in size, with one dwelling at approximately 50m<sup>2</sup>. The same 10m setback to Fitzroy Street as the level below would apply, except that no balconies would be provided in the intervening space. Balconies would continue to face the side lane. Compared to the level below, a greater rear setback would be provided being approximately 6.5m.

Roof level

- 2.14. A roof terrace generally occupying the centre of the site together with a plant room would be provided at this level. The roof terrace would be approximately 305m<sup>2</sup> in area and would be communal in nature. It would be setback 10m to the front boundary, 15.5m to the rear boundary and would abut the south side (laneway) boundary.

Building Height and Design

- 2.15. As facing Fitzroy Street and the side lane, the proposal would be visually expressed as three elements. Ground, first and second levels would consist of metal screening at zero setbacks forming horizontal bands acting as balustrades for the balconies behind. This element, sitting at the front of the site, would have a strong horizontal emphasis and rectangular character.

- 2.16. Secondly, there would be a 'box' element setback 10m from Fitzroy Street. It would contain the front dwellings of levels three and four and would be clad in 25% transparent sun shades/screens. Behind that element would be a more 'conventional' treatment facing the side lane. This would relate to all levels above ground and would include balustrade screening approximately 1m high. It would have a combination of horizontal and vertical elements with windows being visible behind the balcony balustrades.
- 2.17. The remaining elevations would be very utilitarian in their character and would be dominated by rendered blockwork with relatively small punctuations for stair and corridor windows.
- 2.18. The site slopes notably upwards away from Fitzroy Street and therefore, heights vary across the site.
- 2.19. The building would have a maximum height to its lift overrun and plant room of approximately 18.9m above adjacent ground level. The main roof level of the building would be between 16m and 17m above ground. The front section of the building would be 11.5m above footpath level. The building would be flat roofed.

### **3. SUBJECT SITE AND SURROUNDS**

- 3.1. For convenience, the following descriptions are based on Fitzroy Street being described as running east-west. The subject site is located on the south side of Fitzroy Street, generally midway between Acland and Jackson Streets. The site is an irregular shape with a frontage to Fitzroy Street of 16.8m and a rear boundary of 12.3m. The site has a total area of approximately 738m<sup>2</sup> and a rise of approximately 2m from north (front) to south (rear).
- 3.2. The site currently contains a much altered commercial two storey building. It currently contains two café/take away food premises at the ground level with portion of a nightclub use. The first floor is used for the remainder of the nightclub use with a maximum patron capacity of 300.
- 3.3. The building itself is a relatively simple commercial structure with a two storey section at the front and single storey section behind. The front section abuts Fitzroy Street. The single storey section has a small setback (a concrete apron) to the side lane used for garbage storage. Behind the various buildings is an open at-grade parking area with space for six or seven cars. This car park is accessed from the laneway.
- 3.4. The site to the east is occupied by a 1960s three storey structure used as a residential hotel. The building sits on the front portion of the site, generally aligning with the two storey portion of the building on the subject site. At the rear of the residential hotel site is an expansive open car park.

- 3.5. Behind (south) and diagonally behind the subject site are areas of private open space relating to two dwellings being Nos. 24 and 26 Jackson Street. These open space areas separate the subject site from the dwellings at those two properties, which are double and single storey dwellings respectively. The intervening open space immediately behind is approximately 3m deep. The nearest portion of the building at No. 26 Jackson Street is approximately 10m from the rear boundary of the subject site. No. 24 Jackson Street is the closest residential interface and has various habitable room windows facing the subject site.
- 3.6. There is some reasonably well established vegetation within the abutting sites behind, but the interface to the site remains relatively open.
- 3.7. To the west of the site is a laneway approximately 3.5m wide. This lane separates the site from No. 55 Fitzroy Street, which contains a mainly double storey commercial building with a zero setback to the lane. At the end of the lane is a single garage relating to No. 24 Jackson Street. Diagonally opposite to the west is No. 22 Jackson Street. This site has open space at the rear and a double storey dwelling generally in the centre of that site.
- 3.8. The site is within a designated Activity Centre under Melbourne 2030.

#### 4. ADVERTISING/OBJECTIONS

- 4.1. The original proposal was advertised to abutting and nearby properties along with two signs being placed on site. This process attracted 14 objections. A consultation meeting was held on 7 August, 2007. At that meeting, it was clear that the most common objector concerns related to the backpacker use and to the various points of pedestrian access.
- 4.2. Following the consultation meeting, the applicant submitted revised plans on 12 February, 2008. These plans were formally re-advertised. This process attracted four objections. One of these was from a person who was not an original objector.
- 4.3. The following is an assessment of all key grounds of objection raised after both sets of advertising (*with officer response and assessment following in italics*):
  - Laneway is an inappropriate location for pedestrian access.

*The revised plans have relocated patron access to the nightclub from the lane to Fitzroy Street. The amendments are therefore considered to resolve this concern.*

*The proposal continues to show access to the upper floors at a point approximately half way along the lane. However, given that this was originally to have been an access point to a backpackers' lodge and that proposed use has now been replaced with proposed dwellings, it is considered that this aspect of the proposal is satisfactory. It is considered beneficial to have residential access within the lane so as to provide a level of activity and surveillance which does not currently exist.*

*A concern continues to be expressed that the revised entries would not be viable in that the lane 'emergency' entrance is quite large, whilst the Fitzroy Street entrance is comparatively small and would form a divided portion of the proposed shop tenancy.*

*There is some validity to this concern, but it is considered that this could be addressed by condition on any permit issued. (Refer condition 1 (a))*

- Inappropriate co-existence of a backpackers' lodge and nightclub.

*With the deletion of the backpackers' lodge element, this ground is no longer applicable.*

- Inappropriate site for a nightclub, generally excessive noise/poor patron behaviour.
- Lack of on-site car parking.
- Overshadowing (Rescode vs DDO) and overlooking.

*These matters are discussed in Section 6 of this report.*

- Apartments could be used as backpacker's accommodation.

*Should a permit issue, it would have a preamble/description that specifically refers to the use 'dwelling'. There would be no reference to backpacker's lodge. This could be amplified by a condition indicating that backpacker use did not form part of the approval. Any use as a backpacker's lodge would represent a breach of the planning scheme and permit and require a new permit process.*

- Excessive noise from roof terrace and balconies.

*This ground was raised in relation to the roof being a communal area related to a backpacker lodge. With the replacement of that use with apartments, it is no longer considered sustainable.*

*A roof terrace related to apartments is not considered likely to cause substantial detriment. It would be well above most nearby dwellings and there is no obvious reason to suggest that residents of these dwellings would create unreasonable levels of noise and/or activity and there would be a degree of self regulation.*

*The same analysis would apply to the balconies. With a conventional residential use proposed, it is not considered that they would be a substantial source of noise, particularly noting the relatively high background noise levels at this site.*

## 5. URBAN PLANNERS ANALYSIS OF KEY ISSUES

### 5.1. Port Phillip Planning Scheme Provisions:

#### Clause 34.01 – Business 1 Zone

A planning permit is required for all buildings and works. A permit is required for residential use if any entry is more than 2m wide. The proposed entry would be 1.6m wide. The nightclub is a section 2 use ('Place of Assembly', permit required). The uses 'restaurant', 'convenience restaurant' and 'shop' are section 1, as-of-right uses in the zone.

- Before deciding on an application, the responsible authority must consider, as appropriate (for buildings and works):
- The decision guidelines at Cl. 65.
- The SPPF and LPPF, including the MSS and local planning policies.
- The objectives, standards and decision guidelines of C155. This does not apply to development of four or more storeys.
- The movement of pedestrians, cyclists and vehicles providing supplies, waste removal, emergency services and public transport,
- The provision of car parking,
- The interface with adjoining zones, especially the relationship with residential areas,
- The streetscape, including the conservation of buildings, the design of verandahs, access from the street front, protecting active frontages to pedestrian areas, the treatment of the fronts and backs of buildings and their appurtenances, illumination of buildings or their immediate spaces and the landscaping of land adjoining a road,
- The storage of rubbish and materials for recycling,
- Defining the responsibility for the maintenance of buildings, landscaping and paved areas,
- The availability of connection to services,
- The design of buildings to provide for solar access,

At Clause 34.01-2, there are also requirements relating to "Amenity of the neighbourhood", as follows.

- Transport of materials, goods or commodities,
- Appearance of any buildings, works or materials,
- Emission of noise, artificial light, vibration, small, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
- In terms of the decision guidelines relating to use of land, the following must be taken into account.
- The State and local planning frameworks, including local policies and MSS,
- The effect that existing uses may have on the proposed use,
- The drainage of the land,
- The availability of and connection to any services,
- The effect of traffic to be generated on roads,
- The interim use of those parts of the land not required for the proposed use.

**5.2. Clause 43.01 - Heritage Overlay:**

A permit is required to demolish or remove a building, construct a building, externally alter a building by structural work, rendering, sandblasting or in any other way, construct or carry out works, externally paint a building, externally paint an unpainted surface in a Heritage Overlay area.

Relevant considerations include:

- The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.
- Any applicable heritage study and any applicable conservation policy.
- Whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place.
- Whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place.
- Whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.
- Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.

A permit is required under the provisions of Clause 52.06 to reduce the Planning Scheme parking provision requirements.

A permit is required under the provisions of Clause 52.07 to reduce or vary the requirement for on site loading facilities.

**5.3. Design and Development Overlay (DDO) – 6-2 (Fitzroy Street Central)**

A permit is required for all buildings & works.

Relevant considerations include the overall Design Objectives for DDO 6 and the specific requirements for the particular area of the DDO, in this case, area 2. Relevant overall Design Objectives in Schedule 6 include the following:

- To ensure that development achieves the preferred character, design objectives and requirements identified for each area of the schedule.
- To protect sunlight access to public places and open spaces, in particular the foreshore and significant streets, including...Fitzroy Street
- To protect and enhance the visual amenity and environment of the St. Kilda foreshore as an important natural, recreational and tourism asset of metropolitan Melbourne by ensuring development complements the foreshore and hinterland.

- To encourage retention of the streetscape elements and features that enhance the appearance of the identity and image of the St. Kilda foreshore and adjacent areas as an attractive seaside residential, entertainment and leisure area.
- To ensure the built form and building siting respects the dominant street patterns.
- To encourage high quality, well designed new buildings, works, renovations and additions that are compatible with the existing diverse architectural and streetscape character of St. Kilda and reinforce its built form.
- To create articulated, attractive and detailed facades on all visible elevations, including exposed boundary walls.
- To create active commercial and retail street frontages by increased floor to floor heights at ground floor level.
- To ensure that active frontages are achieved where relevant and are designed to provide shop entrances or display windows facing the street and avoid blank walls, non transparent detail and non retail uses.
- To ensure that façade design of new development is compatible with and respects the character of neighbouring buildings within the same streetscape.
- To ensure that any new car parking areas are not visible from public spaces, are not provided by way of open parking lots and are provided in basement structures where feasible.
- To encourage the design of new car parking spaces within buildings so that residential or commercial floor space is provided between the parking areas and public streets, so that the building does not appear as a parking station.
- To ensure that building height and form reflect the topography of the foreshore and surrounding area.
- To ensure that new development on sites containing or adjacent to a heritage place is of a form and scale that is respectful of the heritage place.
- To encourage architectural design elements which enhance the character of the area and form and provide a safe and comfortable environment for outdoor eating and promenading.

The schedule to DDO 6 also includes buildings and works requirements. It states that a permit cannot be granted to vary any of the mandatory requirements in the Table to the schedule. This does not apply to architectural features such as domes, towers, masts and building services that do not exceed the required height by more than 4m provided that their area does not exceed 10% of the gross floor area of the top of the building.

A permit may be granted to vary the discretionary requirements of the table.

In terms of the specific matters relating to Area 2 of DDO 6, the following is noted as being relevant.

**PREFERRED CHARACTER.**

- A pedestrian orientated shopping and leisure strip with a mix of uses above active frontages.
- A strip of retail properties that face a footpath with direct solar access.
- A low street wall height that allows the George Hotel to retain its visual prominence at the top of Fitzroy Street as it slopes towards the sea, terminated by the higher Prince of Wales Hotel. A street wall height that reinforces the shallow valley of the street's middle section.
- An outdoor eating and promenading precinct where the footpath area retains access to direct sunlight.

**DESIGN OBJECTIVES (as relevant).**

- To retain a street wall height that preserves the prominence of local landmarks including the George Hotel and the Prince of Wales Hotel and to accentuate the street's topography.
- To ensure upper levels provide visual connection with street level activity.
- To encourage the provision of weather protection to the footpath.
- To ensure that buildings are designed to provide casual surveillance of the street from upper levels.
- To ensure new buildings do not unreasonably overshadow the private open space of neighbouring residential properties.

**REQUIREMENTS.**

- Buildings must not exceed 16.5m in height (except with a permit for the development of the site at 29 Fitzroy Street and 2-6 Acland Street, forming the corner of Fitzroy Street, Acland Street and Jackson Street).
- Buildings must not exceed 10.5m in height for the first 10m from the Fitzroy Street frontage.
- New car parking access must not be provided from Fitzroy Street.
- Buildings should have a zero setback to Fitzroy Street.

- Buildings should have a verandah or street canopy over the Fitzroy Street frontage that complements existing weather protection structures.
- Buildings should be set back so as to not unreasonably overshadow the private open space of residential properties to the south of Fitzroy Street between 9am and 3pm on 22 September for those properties between Acland Street and the dog-leg of Jackson Street.

#### Existing use rights

The existing nightclub has existed for more than 15 years. It therefore has existing use rights.

However, under the provisions of Clause 63.10, if land has existing use rights, it must be used in conformity with the scheme if more than 50% of the floor area of a building is damaged and destroyed, unless a permit is granted to continue the use. It is open to interpretation as to whether use of the word 'conformity' intends to limit the Clause to "non-conforming" uses (uses otherwise prohibited) or refers to all existing uses. It is known that this was the intent before the VPP version of the Planning Scheme changed the provision from applying just to non-conforming uses to all uses with existing use rights.

The nightclub use is not prohibited under current controls and therefore, it is not a non-conforming use. It is a permit required or Section 2 use. If it were interpreted that Clause 63.10 applied to non-conforming uses only being able to continue if a permit were granted in the event of the building being destroyed, then it would not apply in this instance.

If the officer recommendation is accepted and a permit is issued, the nightclub use should be subject to conditions as if it were a new use. The key conditions in that respect are those relating to amenity control and the management plan.

There is also a question as to whether the existing nightclub liquor licence can be transferred to the new building. It is understood that the licence runs with the land and can therefore be transferred.

## **6. OFFICER'S COMMENTS**

### **6.1. Nightclub Use:**

The existing night club is located in the rear and upper sections of the existing building and has a patron limit under its liquor licence of 300. The proposed nightclub would be located in the basement and would have a limit of 300 patrons. Current operating hours under the liquor licence allow the venue to operate to 7am. This would not change for the new venue.

In a practical sense, the proposed nightclub would replace the existing one but would achieve a better planning outcome. The very close residential interface behind is acknowledged and the following is considered.

It would be difficult to argue that such a use should not continue to operate where it has operated for many years in the past. It is noted that Council's Planning Enforcement Department has received complaints regarding the nightclub (approximately three per year for the last five years) with the majority of complaints relating to poor patron behaviour and excessive music noise. This is considered to be a reflection of the fact that there is currently no planning permit for the use and therefore, no enforceable conditions. Given the proposed basement location of the nightclub and its Fitzroy Street entrance, it is considered that off site impacts would be improved compared to the current arrangement. A basement location allows for significant noise mitigation and would essentially place the use in a 'bunker'. This is considered preferable to the current ground and first floor location. Further, the ability to include amenity control conditions is considered to be an important mitigating factor compared to the current situation. (refer conditions 5, 9, 21-25).

The work recently carried out by ICEPT (Inner City Entertainment Precinct Taskforce) along with the changes to Clause 52.27 (Liquor Licences) is noted. These indicate that nightclubs should be subject to stricter controls and their proliferation should be limited.

Council resolved to refuse an application for an Irish pub at 129 Fitzroy Street. If it is accepted that the existing use rights have ceased under Clause 63.10, then there are parallels between the 129 Fitzroy Street proposal and this application. However, it is considered that the one key difference is that the 129 Fitzroy Street tavern would have introduced a new nightclub and would have added to the existing venues in the locality. That is, there was no 'replacement' of an existing use as there is in this case and the number of Fitzroy Street nightclubs would have increased with a consequent argument able to be made regarding proliferation.

In any case, the Tribunal determined in the case of 129 Fitzroy Street that:

*"Whilst there were a number of issues raised by the nearby residents as to the impact this would have on their amenity if permitted to be used as a tavern the location of this particular tenancy is separated from the nearby residents by other uses which from their evidence are already having an impact on them. There are a number of existing venues in close proximity which operate until 3am and 5am. It is not considered that the operation of this venue as a tavern will result in a perceptible impact on the amenity of the area.*

*Nor is there any evidence to suggest that this venue operating as a tavern in an established tourist/entertainment precinct in a Business 1 zone will not abide by the conditions imposed on a permit. Further the policies within the Port Phillip planning scheme do not indicate that this use should not be permitted in this location. "*

The Tribunal directed that a permit issue.

Council's Manager of Economic Development has verbally commented that the Council should explore the opportunity to reject the nightclub on the basis of recent concerns surrounding licensed premises in general, but acknowledged that the proposed arrangement (basement) would at least be preferable to the current one.

It is considered that controls over proposed nightclub uses are more appropriate to preventing the proliferation of these types of uses where the uses are proposed to add to the existing stock rather than replacement of established/existing nightclubs. Allowing the use to essentially continue but with amenity control conditions is considered the most appropriate outcome in this case, particularly noting the relocation of the nightclub into the basement and the recent Tribunal decision quoted above.

Objectors suggest that nearby dwellings would be in close proximity to the side entrance and noise impacts would be severe. As previously noted, the relocation of the entrance (compared to the original plans) to Fitzroy Street would appropriately address this matter.

The most widely used planning tool in order to minimise impacts of poor patron behaviour is a management plan. The permit applicants have volunteered a management plan (refer condition 5).

## **6.2. Assessment against Built Form provisions of Planning Scheme (Clause 19.03)**

- Context: Development must take into account the natural, cultural and strategic context of its location. A comprehensive site analysis should be the starting point of the design process and form the basis for consideration of height, scale and massing of new development.

Officer comment: Achieved. An appropriate analysis of the site and context was submitted.

- The public realm. The public realm, which includes main pedestrian spaces, streets, squares, parks and walkways, should be protected and enhanced.

Officer comment: Achieved. Some modest shadowing of the public realm would occur, but not greater than that of other shadows cast by other nearby buildings and their verandahs. Public surveillance and activation of the public realm would improve compared to the current building. .

- Safety. New development should create urban environments that enhance personal safety and property security and where people feel safe to live, work and move in at any time.

Officer comment: Achieved. Passive surveillance would improve by way of the new balconies, windows and terraces.

- Landmarks, views and vistas. Landmarks, views and vistas should be protected and enhanced or, where appropriate, created by new additions to the built environment.

Officer comment: Achieved. No vista or view of importance would be lost.

- Pedestrian spaces. Design of the relationship between buildings and footpaths and other pedestrian spaces, including the arrangement of adjoining activities, entrances, windows, and architectural decoration, should enhance the visual and social experience of the observer.

Officer comment: Achieved. Visual interest and surveillance of public spaces would improve compared to current conditions.

- Heritage. New development should respect, but not simply copy, historic precedents and create a worthy legacy for future generations.

Officer comment: Achieved. There would be no impact on any buildings of heritage note.

- Consolidation of sites and empty sites. New development should contribute to the “complexity” and diversity of the built environment. Site consolidation should not result in street frontages that are out of keeping with the “complexity” and “rhythm” of existing streetscapes. The development process should be managed so that sites are not in an unattractive, neglected state for excessive periods and the impacts from vacant sites are minimised.

Officer comment: Achieved. No consolidation of sites would be required and complexity and diversity of buildings in the area would be maintained.

- Light and shade. Enjoyment of the public realm should be enhanced by a desirable balance of sunlight and shade. This balance should not be compromised by undesirable overshadowing or exposure to the sun.

Officer comment: Achieved. Some additional shading would occur, but not to detrimental levels.

- Energy and resource efficiency. All building, subdivision and engineering works should promote more efficient use of resources and energy efficiency.

Officer comment: Achieved. Appropriate orientation and external claddings are proposed.

- Architectural quality. New development should aspire to the high standards in architecture and urban design. Any rooftop plant, lift over-runs, service entries, communication devices, and other technical attachment should be treated as part of the overall design.

Officer comment: Achieved. The massing of the building and its overall balance between vertical and horizontal proportions, degree of articulation and variety of cladding would all achieve appropriate quality and detailing. Rooftop plant would not cause visual intrusion.

- Landscape architecture. Recognition should be given to the setting in which buildings are designed and the integrating role of landscape architecture.

Officer comment: Achieved. No landscape planting would be appropriate and any footpath works would be to Council's satisfaction.

### **6.3. Local Planning Policy Framework:**

The following points are a summary of variations from Council Policy as identified by the assessment matrix. The matrix is retained on file as a hard copy.

- Discourage new development which may result in adverse amenity impacts from increased traffic and car parking demands.

Officer comment: Partly achieved. Council's Traffic Engineer has raised concerns that the parking dispensation would be too high. This was based on the original plans and was calculated at non-empirical rates. It is considered that the dispensation may be supportable, based on the well established principle of 'centre based' parking provision, whereby few people drive specifically to a commercial development. It is generally accepted that most patrons would already be in the immediate area for a range of reasons. However, the extent of dispensation to be granted must be carefully considered. Further discussion regarding the nightclub use and proposed parking for the dwellings occurs later in this report.

- Loading facilities on site and do not cause detriment to pedestrian amenity or traffic movement

Officer comment: Not achieved. No facilities are shown, but the side lane would continue to be used for that function. Disruption would be minimal.

### **6.4. Residential Amenity**

Overshadowing: Design and Development Overlay (DDO) versus Rescode.

Rescode does not apply to the development as it is more than four storeys high. However, Rescode provides the most appropriate standards for assessing shadow impacts on residential properties.

In addition to Rescode, in this instance there is specific reference to shadowing impacts in the Design and Development Overlay (DDO). One of the Design Objectives within the Schedule for Area 2 of DDO-6 requires that buildings do not unreasonably overshadow the private open space of neighbouring open space. This matter is also reflected in one of the formal requirements to the Schedule and uses the same words, except that it states buildings 'should' not unreasonably overshadow neighbouring private open space. The requirement goes on to state locations and times to which that requirement would apply in this case, the south side of Fitzroy Street between 9am and 3pm on 22 September.

The objection received from No. 24 Jackson Street makes specific reference to the DDO requirement and makes reference to the Minutes of Council's Policy and Review Committee dating back to 3 May 2004 and Ordinary Council on 24 May 2004. The objection indicates that those meetings considered the matter of what was considered 'unreasonable' overshadowing in the context of the DDO.

At that time, it was concluded by Council officers that shadow assessment should take account of shadows that would fall upon abutting open space between 9am and 2pm at the equinox. However, Council resolved that the measure should be extended to include the period between 2pm and 3pm. In addition, Council at that time assessed cross-sectional shadow diagrams which depicted the extent of shadow which should be cast by a building complying with the height and setback controls. This showed that for the shadow cast to be no greater than that cast by a 2m high boundary fence at 3pm, the 16.5m high point of a new building (complying with the DDO height control) would have to be set back 18m from the common boundary.

The applicant's shadow diagrams show that an area of No. 24 Jackson Street's open space of 46m<sup>2</sup> would remain clear of shadow for 5 hours between 9am and 3pm at the equinox.

The highest point of the proposed building on the revised plans would be the lift overrun, which would be 19m above ground level (not the rear or front of the site). In relation to height, this would meet with the DDO requirement regarding building services.

The highest point of the main section of the building where closest to the rear boundary would be 15.9m. The difference between a shadow at that height and 16.5m would be minimal.

The proposal would cast more of a shadow to the properties behind than would a 2m high boundary fence. The objector made submissions to the consideration of DDO-6 and was (and still is) concerned that the shadowing would be unreasonable at 3pm. The objector is concerned that the shadow produced by the proposal does not achieve the outcome intended by Council's extension of the overshadowing period to 3pm in response to his submission at that time.

However, it is considered that the 9am to 3pm test in the DDO requires a holistic approach to be taken, that is, the entire shadow pattern between 9am and 3pm needs to be assessed and the merit of the proposal considered in that light. In that context, it is considered that the most reasonable test of 'residential' levels of overshadowing would be Rescode. Having an area of 46m<sup>2</sup> of the neighbour's open space remaining clear of shadow for 5 hours between 9am and 3pm is considered 'reasonable' overshadowing at the interface of a Business 1 zone.

#### Overlooking

The submitted plans depict windows to internal corridors mostly on the east face of the building, but with some also facing south (rear). The rear elevation also depicts the narrow ends of the balconies facing the laneway.

Some potential for overlooking would exist directly and obliquely to the rear from these places. There are residential interfaces in these locations with the open space at No. 24 Jackson Street being approximately 4m from the corridor windows at levels two and three.

The plans depict these windows as having 'full height operable walls to corridor with screening to prevent overlooking to neighbour'. This indicates that the design recognises that overlooking could be blatant even though the windows in question do not relate to habitable rooms.

No details have been submitted regarding cross sections and given the close interface, this detail is recommended (refer condition 1 (b)).

It is not considered that any other sensitive interfaces exist which would require additional screening, aside from the south (rear) facing balcony ends. The plans show these as having metal cladding, but it is recommended that such cladding be of zero transparency (refer condition 1 (b)). The rear of the roof terrace would, at its closest point, be approximately 12m from the nearest open space. However, the intervening rear section of the proposed building would restrict any views from the rear of the roof terrace. Only very distant views would be available.

#### **6.5. Parking and Traffic**

The proposal was referred to Council's Sustainable Traffic Engineer who commented:

*"On street parking within a reasonable walking distance from the site is utilised at a rate of 80 - 100% during standard business hours and at capacity on Thursday to Saturday evenings. Very good public transport in a form of tram service is in Fitzroy Street and in Park Street.*

*There is a large night time secured taxi rank in Fitzroy St just a few metres from the site. The area is very well protected with a mixture of residents only parking or time limited parking that most of which residents are exempt.*

*Using empirical rates, the proposal is to provide the following off-street car parking:*

*Nightclub (300 patrons) replacement of existing use (no change) = 0 spaces.*

*Restaurant (45 seats or 104sqm) 0.3 per seat = 13 spaces.*

*Convenience. restaurant (91sqm take away shop) 4 to 100sqm = 4 spaces.*

*Shop (91sqm) 4 to 100sqm = 4 spaces.*

*Apartments (39 [1 & 2 bedroom]) 1 per apartment residents = 39 spaces, plus 0.2 for visitors = 7 spaces.*

*Total required: 68*

*Total proposed: 17*

*Shortfall: 53*

*This is a very large shortfall that will be very difficult to accommodate on street.*

*The submitted traffic engineering assessment of the proposal tries to justify the proposed car parking allocation as follows:*

- *In regard to the residential component, 12 car parking spaces to be allocated to residents (possibly no space to their visitors). The reduction is based on the site's location to very good public transport, walking distance to shops, good provision for on site bicycle parking and a condition of providing a Green Transport Plan (GTP), which is to be provided for the whole site specifically targeting each of the proposed uses, this is to be a condition of the permit). This is seen as reasonable.*
- *Convenience restaurant and shop, one staff car space for each of the two uses. Again, based on the above comments this is seen to be reasonable.*
- *Restaurant, one staff car space. This allocation requires all visitors and one or two staff to park on street or at the adjacent Prince of Wales Car park, when not fully occupied.*
- *Nightclub, two staff car spaces. This can be seen as a replacement of an existing use with a similar one, as there already is a nightclub at the site. It can also be seen as missing an opportunity to improve the existing situation, however on the other hand, it is preferable that people that go out to nightclubs (which includes drinking), do not drive. There is very good public transport in the street and a large night time taxi rank (that is supervised on Friday and Saturday nights). With a green transport plan and the area already at capacity in terms of parking occupancy, replacing existing with similar is not seen as making the situation worse.*
- *Car parking layout and access:*
- *The report states in the cl. 4.4 that the proposed layout provides for independently accessible car spaces in 'Klaus P310-175' pit stackers and that it is workable. Concerns are raised for the operation of the lane way, that is just 3.6m wide and over 35m long with no passing opportunities as well as for pedestrian safety along the Fitzroy St footpath (sightlines and priority).*

*Conclusion:*

*A Green Transport Plan is to be a condition of the permit for the whole site and for each of the proposed uses. The site will have no parking permits. The car parking allocation must be clearly shown within the car park as per the proposal. The two bike racks proposed on the footpath must be paid for by the developer and installed by Council (currently \$500 per rack). Concerns are raised for the operation of the lane way, that is just 3.6m wide and over 35m long with no passing opportunities as well as for pedestrian safety along the Fitzroy St footpath (sightlines and priority). The footpath is to be rebuilt at the lane way at the unchanged height and material and the lane way is to be constructing clearly*

*indicating a ramp to get to the top of the footpath (same principles as for new cross-overs)."*

It is noted that the above comments do not oppose the parking provision, but do raise concerns regarding the use of the laneway. It is also noted that the empirical dispensation could be 'accommodated on the street', although the comments at that time had not concluded that the proposed nightclub would essentially replace the existing one in a parking sense.

The two largest parking generation figures would be the nightclub (60 spaces) and the dwellings (46 spaces including visitors). The remaining uses would be relatively small parking generators. The following comments are made.

The site currently accommodates a nightclub of 300 patrons maximum capacity. This has been in existence for several years and has therefore been generating some parking demand. The proposal would include a nightclub also of 300 patrons maximum capacity. It is therefore reasonable to argue that the nightclub would not increase parking demand in the Fitzroy Street precinct.

Whilst the site would be developed 'from scratch' and it could consequently be argued that some parking should be provided to rectify a past inadequacy, it is nonetheless considered that the most sensible and practical approach is to assess that the proposed nightclub would replace the existing one in parking terms and therefore, that there would be no practical change in parking demand from that use.

Space currently exists for six or seven cars to be parked at the rear of the site. The allocation of these in relation to the current uses is not known.

The site currently contains two convenience restaurant/take away food premises, of approximately 120m<sup>2</sup> in area total. The proposal would include a combined total of 182m<sup>2</sup> of shop and convenience restaurant/café uses. These both have the same empirical rate of 4 spaces/100m<sup>2</sup> of area. Again, in practical terms related to parking impacts, it is assessed that 62m<sup>2</sup> of additional floor space generating parking at 4/100m<sup>2</sup> is proposed, with the remaining 120m<sup>2</sup> essentially replacing the existing uses. At 4/100m<sup>2</sup>, the empirical requirement would be two car spaces for the 62m<sup>2</sup> of floor area beyond existing.

The proposed restaurant would not replace any similar existing use and its empirical parking requirement can in a practical sense be considered 'new'. The rate of 0.3 spaces per seat is less than the 0.6 car spaces per seat that is required under Clause 52.06 of the planning scheme. The rate of 0.3 spaces was agreed to by Council's Sustainable Traffic Engineer. Its empirical requirement would be 13 car spaces. Finally, the 46 car spaces for the dwellings would also be new.

Using empirical rates together with the practical position that some of the proposal would replace existing floorspace, it is considered that the dispensation being sought is 44 car spaces. This takes account of the 17 car spaces proposed on site and the fact that the empirical requirement for the nightclub (60 car spaces) is not included in any parking total. The 44 space dispensation is therefore reached as follows:

Use	Measure	Empirical Rate	Spaces Required	Spaces Proposed
<b>Shop/ conv restaurant</b>	62m <sup>2</sup>	4/100m <sup>2</sup>	2	2
	Additional			
	45 seats	0.3/seat	13	1
<b>Nightclub</b>	300 patrons	No change to existing conditions	0	2
<b>Dwelling</b>	39	1/dwelling + 1 visitor /5 dwellings	46	12
<b>TOTAL</b>			61	17
<b>Shortfall</b>				44

\* Nightclub:

The provision of two staff spaces for the nightclub is considered adequate, particularly given that venues typically attract persons relying on public transport and taxis due to alcohol consumption and persons already in the vicinity.

\*\*Shop/café (convenience restaurant):

Provision for staff parking only in relation to the retail shop and convenience restaurant/café is standard practice for Council in encouraging retail uses in Activity Centres using the 'centre based' approach, that is, shoppers are typically already in the area and each tenancy would not be an attractor in and of itself. In any case, these uses would replace those which currently exist on the site with some additional floor space (62m<sup>2</sup>) for the shop and café combined, which would only generate the empirical need for two car spaces.

\*\*\*Restaurant:

In relation to the restaurant, it is also considered that staff only provision is acceptable in this case. Using the empirical rate, the proposed restaurant would generate the need for 13 car spaces. This is considered relatively modest in the light of a centre based approach suggesting that very few restaurant patrons would specifically drive to the proposed premises. In the past, the Tribunal has consistently overturned Council refusals to grant a dispensation of carparking for restaurants in Fitzroy Street on the basis that a more strategic whole of centre approach is required whereby Council provides common parking for the entire centre rather than place an onerous requirement on the next single use to establish in the centre which comprises many existing restaurants with no parking.

\*\*\*\*Dwellings:

It is proposed to allocate 12 car spaces for the dwellings, meaning that 27 dwellings would not have an on site car space. The proposal would include four dwellings at approximately 50m<sup>2</sup> in area and two dwellings of two bedroom. Therefore, 37 dwellings would be in the range of 38m<sup>2</sup> to 50m<sup>2</sup> in area, with only two being the larger. It is considered that these 37 dwellings would meet the requirement of being 'small' and essentially more affordable.

The proposal represents a departure from conventional past practice relating to parking and follows on from the recent Council decision regarding 17 Irwell Street, St.Kilda.

The Irwell Street development allowed 31 small apartments in a mixed use development with only five spaces provided for residential purposes.

The Planning Institute of Australia was reported in The Financial Review as applauding Council's approach in "*leading the way in encouraging affordable high density housing in activity centres with established public transport networks*". They commended the approach as fitting well with the Melbourne 2030 Strategy to encourage housing in activity centres and as "*progressing some of those broader metropolitan and regional strategies*".

Prior to that decision, a development (Planning Permit 1221/2000) involving 16 car free apartments contained in a three storey building was approved by Council at 186 Barkly Street and more recently (February 2006), Council permitted a development at 182 Carlisle Street which incorporated 14 one-bedroom apartments without car spaces.

The closest example of a car free development is 159-163 Carlisle Street, Balaclava. A planning permit was issued in December 2003 for a redevelopment of that land with eight dwellings and a waiver of car parking at the direction of the Tribunal after Council had refused the application.

The Tribunal in that case accepted that the proposal met important policy consideration such as:

- State Policies for urban consolidation and strengthening and support for activity centres, maximising sharing of facilities and incorporation and integration of a variety of land uses including residential.
- Local Policies for retail centres including "*encourage new residential development above and behind retail frontages to take advantage of the area's proximity to public transport and other services*".
- Municipal Strategic Statements supporting and promoting the use of public transport and modes of alternative transport to the motor car.

In particular it noted:

- Clause 21-05-10 states "*to support residential land use and development above and behind shop premises and in proximity to retail centres to support economic activity, environmentally sustainable living and maximum use of public transport infrastructure*".
- That no car parking spaces have ever been provided in the past for the existing or former uses on the subject site, as the existing building totally occupies the entire site.
- "*Excellent almost exceptional access to a range of public transport services and nearby commercial and community facilities such that the site is well located (is) likely to minimise the need for residents to own private vehicles.*"

Appropriate car free residential development finds strategic justification in Melbourne 2030 that supports urban consolidation with increased emphasis on use of alternative modes of transport other than private cars, particularly with regards to not requiring the provision of parking in developments close to retail, recreational and social infrastructure and promotion of sustainable transport choices and consolidation of housing in activity centres with close access to infrastructure and transport.

The subject site is located in a Major Activity Centre with excellent proximity to public transport, shopping and community facilities and accordingly not providing parking for some small units is supported by State planning policy.

Although Council has in recent years embraced sustainable transport, there is currently no planning policy in the local section of the planning scheme that provides specific guidance regarding car free developments. This was used by VCAT as the reason for overturning Council's approval of a carfree development (13 dwellings) at 229 Carlisle Street. It is considered that the Tribunal decision is arguable, and that the increased pressure from State Government to achieve the objectives of Melbourne 2030 in Activity Centres makes Council's position with regards to the Carlisle Street property more defensible.

It is considered that a more holistic view of parking provision beyond whether the number of car spaces matches the number of dwellings should be taken. While there remains no specific policy about car free developments, the emphasis on alternative modes of transport has been reflected in changes to the particular provisions of the planning scheme evidenced by the recent inclusion of Clause 52.34 in the Planning Scheme that sets out provision of bicycle parking for new uses and developments.

Clearly not every new dwelling should be car free, but some small units in developments in appropriate locations (in or next to major activity centres) provide more affordable housing, a diversity of housing stock (a form of living units not being commonly provided in other developments) and such dwellings can feasibly exist without on site parking for motor vehicles.

It is considered that the site is suitable for some car free units given Council's approach to dwellings in commercial areas as follows.

- That site is located within an activity centre,
- That site is in close proximity to fixed rail and convenient/accessible high frequency public transport,
- That proposal has generous provision for bicycle parking (30) and storage,
- That site is within walking distance to convenience shopping, such as a supermarket,
- The proposal comprises or includes small dwellings aimed at the lower end of the market (proposed dwellings are between 38m<sup>2</sup> and 42m<sup>2</sup> in area).

Whilst some units may not require parking, the shortfall of car parking for the dwellings is considered relatively high, noting the overall quantum of dispensations quoted for some of the previous Council decisions (eight spaces at 159-163 Carlisle Street, 16 spaces at 186 Barkly Street, 14 spaces at 182 Barkly Street and 26 spaces at 17 Irwell Street).

It is considered that a dispensation of car parking for 27 one bedroom units remains a high dispensation and that the figure should be reduced. The permit applicants have been made aware of this and have offered to reduce overall dwelling numbers from 39 to 27, with 12 dwellings being provided with on site parking and 15 without. Having 15 dwellings without on site car parking should be supported on the following grounds:

- The units would be particularly small being mostly suitable only for singles or couples and thus suited to typical urban professionals who are more likely to embrace a car free living style. Raw 2006 ABS data indicates that approximately 30% of studio and one bedroom households (combined) in St.Kilda apartment buildings have no car.
- It is a reasonable proposition that with provision of bicycle and motorcycle parking, future occupants of this type of accommodation and their visitors would choose alternative forms of transport and not have cars particularly due to the uncertainty and inconvenience of finding on-street parking for a motor vehicle. In this regard, the units would be likely to attract persons who are not reliant on cars.
- The site is on a tram route (Fitzroy Street) and extremely well served by public transport and it is a reasonable proposition that occupants of the site and their visitors would avail themselves of the public transport opportunities.
- The site is adjacent to a wide range of services and facilities. It is therefore a reasonable proposition that an occupant of the site could satisfy their immediate shopping needs within this centre with no need for vehicle-based trips.

“Flo” have a carshare space located in proximity to the site (Park Street).

- The greater affordability of the units and the fact that no car spaces would be provided would attract prospective purchasers who are seeking the financial savings inherent in not owning a car, particularly in the climate of rising home and fuel prices.
- The property will not be eligible for resident parking permits. A condition of permit relating to a green travel plan could require that all prospective owners and tenants to be made aware of this prior to occupation and to provide advice regarding the car share scheme.

Other benefits include:

- Provides a housing need identified in the Port Phillip Housing Strategy 1997.
- Additional population to support the commercial uses in the activity centre.

Notwithstanding the decision of the Tribunal with regards to 229 Carlisle Street, it is now considered that the above arguments are valid and the need to support this type of development is even greater since that decision given State Government imperatives with regards to development of Activity Centres. As indicated above, there is appropriate justification for the dispensation of some resident parking given the type and composition of dwellings, the level of bicycle and motorcycle storage on site and the location in proximity to relevant facilities and infrastructure.

It is recommended that the number of dwellings be reduced from 39 to 27, that the larger dwellings (the 50m<sup>2</sup> single bedroom dwellings and the two bedroom dwellings) be required to each have a dedicated car space on site and that not more than 15 dwellings be without on site car parking (refer condition 1 (c)). The permit applicants have also indicated a willingness to develop a Green Travel Plan. Such a plan should be required by any permit issued (refer condition 6).

#### **6.6. Urban Design**

The proposal in its original form was referred to Council's Urban Design Advisor. The following comments were received. The first set of comments relate to the original design.

*The character of Fitzroy St is diverse in character and use, ranging from retail at street level to residential/hotel above. The Marque Hotel is the highest development in proximity to the subject site with ground floor plus three additional levels above. The scale and form is similar to the Prince of Wales, also ground floor plus three additional levels above. The streetscape elevations submitted are photomontages as opposed to measured drawings so the ability to make comparisons in height are limited.*

*The existing building on site is of limited architectural merit. The site is occupied by a take away outlet, nightclub (central entry at ground floor) and a vacant tenancy to the northern end. The nightclub takes up the remainder of the first floor. The roof form presents as an eyesore with exposed air conditioning units and mechanical exhaust flues.*

*The streetscape appearance of the proposal presents as an intrusive element that needs to sit in alignment with the rest of the streetscape context. The height of the development fails to meet the DDO requirement of 10.5m (scales off at approx. 11.5 – due to the balustrade) however I am comfortable that as an element it will present as integrated;*

*The overall aesthetic picks up on the strong horizontality of the Summerland Mansions and the Prince of Wales;*

*The backpackers and nightclub entry off the laneway raises potential concerns in terms of noise levels, public safety and lighting. The other issue is the limited sense of address to the backpackers – an important consideration given the nature of its operation and turn over of tourists. On the positive side the proposal will activate the laneway.*

*The canopy over the footpath is supported and reflects the intent of the DDO design objectives – setback from the kerb a minimum of 700mm;*

*The car parking provision off Fitzroy St is not supported under the DDO. Parking provision should be as basement – if they can create a basement they should also be able to provide basement parking. Refer DDO objectives:- ensure that any new car parking areas are not visible from public spaces, are not provided by way of open parking lots, and are provided in basement structures where feasible;*

*The frameless glazing for the tenancies is supported;*

*The scale of the proposal is an important consideration given the need to ensure that new development on sites containing or adjacent to a heritage place is of a form and scale that is respectful of the heritage place. Apart from the title boundary overhangs, the building envelope is generally satisfactory however we still need AHDs for a complete appraisal;*

*The finish of the metal screen to the façade will potentially detract from the architectural quality of Fitzroy St where typically a strong masonry aesthetic has predominated recent development through the likes of the Marque Hotel or even the heritage fabric of Summerlands and the Prince of Wales. This aesthetic is one of punctured facades and massed frame and lightweight infill;*

*The roof deck areas present as extensive. The potential for umbrellas is worth noting;*

#### *Recommendations*

*The building footprint needs to fall within the title boundary. The proposal currently extends past the title line with no justification or benefit to council. This would more than likely be refused at the Landlord committee;*

*A similar item is the overhang of the apartments to the laneway (minimum clearance of 3.3m), which is not supported – also likely to be refused at the Landlord committee. Habitable space, in the form of balconies, bay windows and the like may project over a public space provided the projection from the face of the building does not exceed 500mm and the length does not exceed 2.5metres. Also where more than one such projection is proposed on a single elevation, the total of the face of the building occupied by such projections may not exceed 10 percent. Revise design accordingly;*

*Include AHD's to streetscape elevation for a more accurate comparison – the photomontage is inadequate;*

*The side elevations should show the profile of adjoining buildings. In this case the three storey motel to the north east;*

*Clarify paving finish to side pathway adjacent laneway;*

*Request further information and samples of all colours and finishes. The appropriate response here is a level of detail similar to the Marque and the Prince of Wales. Eg. corten steel screening; Clarify proposed signage to the north west elevation;*

*Plant equipment to the rear of the site would need to provide sound attenuation and adequate screening;*

*Request 1:20 detail of street canopy;*

*Ensure that the heritage laneway is protected as part of the works."*

The following is the second set of comments relating to the revised plans.

- *"The proposal has responded to previous advice and falls within the title line. Note that the roof terrace area has increased to the south;*
- *The bin store has been integrated within the building;*
- *Revised first floor, from backpackers to 1 bed apartments, reflects improved internal amenity in floor areas;*
- *The aesthetic to the south west laneway has significantly improved;*
- *There is an increased sense of address off the laneway;*
- *The screen detailing is now satisfactory;*
- *Preference to cantilever the balcony as opposed to cluttering the public realm."*

Planning Officer's Response:

The Urban designer's comments are noted. Specific concerns raised have been addressed by the revised plans. The key concerns were related to the overhanging habitable balconies, car parking location and overall finishes (metal versus masonry). Other matters were raised regarding overall height (appearing to exceed the DDO limit) and overall detail of external materials and the overall design 'aesthetic'.

The revised plans no longer show any habitable balconies or floor space overhanging any title boundary. This is considered to be a substantial improvement in the design. The car park in the original plans was to be accessed from the side lane and was not to be directly accessed from Fitzroy Street. The amended proposal would be DDO compliant in that regard.

In terms of the metal finish and the absence of submitted detail, it is considered that an adequate level of detail has now been submitted. The perforated metal now depicted would appear as high quality material with an appropriate degree of solidity. The variety of external materials prevalent in Fitzroy Street would support the use of metal screening, where used as a combination of an accenting feature and front balcony balustrading, as would be the case here. The front glass (openable) windows behind the metal screens would be readable elements.

In terms of overall height and DDO compliance, the revised plans show 16.5m in height to the front portion of the upper level, with a 16.9m height including the rooftop balustrading. Balustrading is not considered an 'architectural feature' as it would be an integrated and functioning part of the building. For want of a better term, architectural features are considered 'decoration' which balustrading to a roof deck would not be. The wording of the DDO does not allow any discretion for parts of a building to exceed 16.5m in height (except for architectural features) and therefore, this section of the building will need to be reduced in height (refer condition 1 (d)). Similarly, portions at the front of the building depicted at over 10.5m in height (DDO requirement) would need to be reduced in height.

The north-east (side) elevation depicts the top of the central stairwell at 17.7m above ground and a lift overrun at 18.9m above ground. In addition to architectural features, the DDO allows for 'building services' to exceed the 16.5m height limit. Building services includes 'enclosed stairwells'. The stairwell in question would give access to the common roof terrace along with the plant room. It would form a dual function, with its primary function being access to the plant area. The lift would be the primary access to the roof terrace.

The lift overrun is therefore considered a building service and given that it would not be more than 4m higher than the 16.5m DDO height limit, is acceptable.

Overall, the final and positive comments from Council's Urban Design Advisor affirm a conclusion that the revised proposal would be suitable by way of external treatments, form and scale. The recommendation for a cantilevered canopy is agreed with and is recommended (refer condition 1 (f)).

The roof terrace shown on the revised plans would be larger than that of the original plans, but this would have no negative urban design impacts.

#### **6.7. Special Building Overlay.**

The proposal was referred to Council's Development Engineer as the front portion of the property is within the Special Building Overlay controlled by Council. The advice received was that ground floor levels for the front section of any building should be at RL 4.1m AHD to protect against flood waters. The plans show the ground level floor to be at RL 3.82m AHD. A change in level is recommended in condition 1 (h))

### 6.8. Design & Development Overlay

In addition to assessment of heights, the DDO requires assessment under various design objectives and outcomes as follows.

- To protect sunlight access to public places and open spaces, in particular the foreshore and significant streets, including .....Fitzroy Street

*Achieved. The proposed canopy would project over the footpath, but would include a glass strip adjacent to the front wall. It would be consistent with other canopies on abutting sites. The building itself would not affect light access to any public place.*

- To protect and enhance the visual amenity and environment of the St. Kilda foreshore as an important natural, recreational and tourism asset of metropolitan Melbourne by ensuring development complements the foreshore and hinterland.

*Achieved. The site, in any event, is removed from the foreshore.*

- To encourage retention of the streetscape elements and features that enhance the appearance of the identity and image of the St. Kilda foreshore and adjacent areas as an attractive seaside residential, entertainment and leisure area.

*Achieved. The proposal, via graduated scale, would respond to key streetscape character and elements and would complement the form and functioning of the area.*

- To ensure the built form and building siting respects the dominant street patterns.

*Achieved. Orientation would not change.*

- To encourage high quality, well designed new buildings, works, renovations and additions that are compatible with the existing diverse architectural and streetscape character of St. Kilda and reinforce its built form.

*Achieved. The proposal is considered high quality and well designed, in its revised form, and would reinforce the diverse and emerging contemporary architecture of Fitzroy Street. It would also reinforce existing built form, via the strong rectangular presence with set back upper levels.*

- To create articulated, attractive and detailed facades on all visible elevations, including exposed boundary walls.

*Achieved, especially noting the revised laneway treatment.*

- To create active commercial and retail street frontages by increased floor to floor heights at ground floor level.

*Achieved.*

- To ensure that active frontages are achieved where relevant and are designed to provide shop entrances or display windows facing the street and avoid blank walls, non transparent detail and non retail uses.

*Achieved, as above.*

- To ensure that façade design of new development is compatible with and respects the character of neighbouring buildings within the same streetscape.

*Achieved. Whilst not using a masonry finish, metal and glass are not uncommon façade treatments in Fitzroy Street. The treatment would not mimic neighbours, but would be compatible with them as the metal would appear suitably solid but at the same time, appropriately interesting and articulated.*

- To ensure that any new car parking areas are not visible from public spaces, are not provided by way of open parking lots and are provided in basement structures where feasible.

*Achieved. Whilst the laneway could be considered a 'public place' it is considered in any event, that the proposed car park entry would be a relatively minor element of the overall building and properly integrated into its design. The intent of the objective is that car parks should not dominate main frontages, and this would be achieved.*

- To encourage the design of new car parking spaces within buildings so that residential or commercial floor space is provided between the parking areas and public streets, so that the building does not appear as a parking station.

*Achieved.*

- To ensure that building height and form reflect the topography of the foreshore and surrounding area.

*Achieved. With the stepped front setbacks and (subject to DDO height compliance) it is considered that the building would appropriately integrate into this 'middle' section of Fitzroy Street.*

- To ensure that new development on sites containing or adjacent to a heritage place is of a form and scale that is respectful of the heritage place.

*Achieved. The site would be separated from a heritage building by a laneway. The proposal would be taller than that building, but in this context, not detrimentally so. The stepped and graduated upper level setbacks would enhance this outcome.*

- To encourage architectural design elements which enhance the character of the area and form and provide a safe and comfortable environment for outdoor eating and promenading.

*Achieved via the active ground level uses.*

In terms of the specific matters relating to area 2 of DDO 6, the following is assessed.

**PREFERRED CHARACTER.**

- A pedestrian orientated shopping and leisure strip with a mix of uses above active frontages.
- Achieved, as assessed in the previous point.
- A strip of retail properties that face a footpath with direct solar access.

*Achieved.*

- A low street wall height that allows the George Hotel to retain its visual prominence at the top of Fitzroy Street as it slopes towards the sea, terminated by the higher Prince of Wales Hotel. A street wall height that reinforces the shallow valley of the street's middle section.

*Achieved.*

- An outdoor eating and promenading precinct where the footpath area retains access to direct sunlight.

*Achieved.*

**DESIGN OBJECTIVES (as relevant).**

- To retain a street wall height that preserves the prominence of local landmarks including the George Hotel and the Prince of Wales Hotel and to accentuate the street's topography.

*Achieved. These two key buildings would remain the most prominent in the area and the setback upper levels would appropriately respond to the site's mid block location.*

- To ensure upper levels provide visual connection with street level activity.

*Achieved.*

- To encourage the provision of weather protection to the footpath.

*Achieved.*

- To ensure that buildings are designed to provide casual surveillance of the street from upper levels.

*Achieved.*

- To ensure new buildings do not unreasonably overshadow the private open space of neighbouring residential properties.

*Achieved, as assessed in the main text of this report.*

REQUIREMENTS.

- Buildings must not exceed 16.5m in height (except with a permit for the development of the site at 29 Fitzroy Street and 2-6 Acland Street, forming the corner of Fitzroy Street, Acland Street and Jackson Street).

*Not achieved, but a recommended condition relating to the portion of front balustrading above 16.5m in height would reduce this element to the maximum height. Other elements over the 16.5m in height are considered building services (plant room, access stair and lift overrun).*

- Buildings must not exceed 10.5m in height for the first 10m from the Fitzroy Street frontage.

*Achieved.*

- New car parking access must not be provided from Fitzroy Street.

*Achieved.*

- Buildings should have a zero setback to Fitzroy Street.

*Achieved.*

- Buildings should have a verandah or street canopy over the Fitzroy Street frontage that complements existing weather protection structures.

*Achieved.*

- Buildings should be set back so as to not unreasonably overshadow the private open space of residential properties to the south of Fitzroy Street between 9am and 3pm on 22 September for those properties between Acland Street and the dog-leg of Jackson Street.

*Achieved as previously assessed in the main text of this report. When the period from 9am to 3pm is assessed as required by the DDO (as opposed to 3pm in isolation), the proposal would achieve standards very similar to Rescode, whereby an area of the abutting neighbour's open space of 46m<sup>2</sup> would remain clear of shadow for 5 hours between the times noted above. It is considered onerous and unreasonable to require an overshadowing outcome more restrictive than Rescode would require.*

## 6.9. Heritage Overlay

Matters to be assessed under the Heritage Overlay are as follows.

- The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.

*The existing building to be demolished is non graded. There will be no effect on the significance of the site. In terms of wider significance, it is considered that the proposal would be consistent with the emerging contemporary character of some nearby new buildings and additions (Prince of Wales additions, Marque hotel as examples).*

- Any applicable heritage study and any applicable conservation policy.

*The relevant heritage policies have been taken into account.*

- Whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place.

*Whilst larger than both abutting buildings, the proposal would be consistent with the varied nature of this section of Heritage Overlay 5, being the commercial strip of Fitzroy Street. That strip contains buildings of a similar scale. The stepped/graduated upper level front setbacks would allow the front three levels (at zero setback) to read as the key streetscape element. This would be consistent with the area and the overall rectangular form, its bulk and appearance would not adversely affect the heritage significance of this section of Fitzroy Street.*

- Whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place.

*As assessed above.*

- Whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.

*The existing building is non graded. There would be no impact on heritage significance.*

- Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.

*Noting the variety of built form and eras, it is not considered that this strip of Fitzroy Street would be adversely affected in heritage terms.*

## 7. ENVIRONMENTAL ASSESSMENT

- 7.1. The applicants have not submitted a STEPS report. A condition requiring the submission and approval of a STEPS assessment or environmental statement is recommended (refer condition 13).

**8. COVENANT**

- 8.1. There is no restrictive covenant on title.

**9. CONCLUSION**

- 9.1. It is considered that subject to the recommended conditions, the proposal would be an appropriate mix of uses in a business zone in this section of Fitzroy Street. Similarly, the form of the building would represent an appropriate piece of infill and would display an appropriate architectural character. Aside from one small section of balustrading exceeding the DDO height requirement, (which is addressed by condition), the proposal would comply with the required DDO heights and setbacks. This would include a stepped or graduated front setback whereby the upper two levels would be setback 10m from the street. They would consequently appear recessive with the main front section of the building (three levels) reading as the key streetscape element.
- 9.2. The proposed building as assessed would integrate with the existing streetscape and neighbourhood character, despite being taller than the building across the abutting laneway. The degree of surveillance of the public realm and the revisions that would delete projections over title boundaries are considered positive outcomes.
- 9.3. Another positive outcome is considered to be the deletion of the backpackers use and its replacement with dwellings. Whilst they would generate a greater parking demand, it is considered that they would have a lower potential for detrimental impacts on the area. Their small size would lead to a high likelihood that car ownership would be lower than normal, but the overall number of dwellings is recommended to be reduced. Conditions are recommended regarding a green travel plan and allocation of car parking to the larger dwellings, along with the fact that not more than 15 dwellings be 'car free'. No Council resident or visitor parking permits would be issued for this development should it be approved in accordance with current policy.
- 9.4. The other key amenity impacts assessed were overlooking and overshadowing. Some potential for overlooking exists, but can be addressed by condition. Overshadowing was assessed in the light of the DDO requirement that there be no unreasonable overshadowing of residential properties. It is considered that shadowing would not be unreasonable.

9.5. Conditions are recommended regarding DDO compliance with the 16.5m height at the upper front section of the building along with greater detail of balcony screening.

9.6. Subject to these and other conditions as noted, it is recommended that a Notice of Decision be issued.

**10. OPTIONS**

Approve as recommended.

Approve with changed conditions.

Refuse - on key issues.

**11. RECOMMENDATION: NOTICE OF DECISION**

That the Statutory Planning Committee, having caused the application to be advertised and having received 14 objections is of the opinion that the demolition of existing buildings and development of the land for the purposes of the construction of a five level building (plus basement and roof terrace), comprising 39 dwellings, along with use as a nightclub and a dispensation of car parking will not cause material detriment to any person other than the applicant.

That a Notice of Decision to grant a permit be issued for the demolition of existing buildings and the construction and carrying out of buildings & works for the purposes of the construction of a five level building (plus basement and roof terrace), comprising dwellings, a nightclub, a reduction in car parking, waiving of the provision of a loading bay and the sale & consumption of liquor.

That the decision be issued as follows:

1. Before the development starts, amended plans and elevations to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted to Council on 30 March 2007 (Perkins Architects, TP 01 to TP 20 inclusive) and including the details of plans received by Council on 12 February, 2008 (Perkins Architects, TP 01, 02b, 03b, 04a, 05d, 06e, 07c, 08c, 09c, 10c, 11c, 12b, 13c, 14c, 15c, 16c, 17c, 18c, 19b, 20b, 21 & 22a) but modified to show the following:
  - (a) Confirmation/notation that the only nightclub entry will be from Fitzroy Street, that the laneway nightclub doorway is for emergencies only and openable only from the inside, and details showing the nightclub entry as being a separate and fully segregated entry and not part of the restaurant tenancy,
  - (b) Screening of zero transparency to a minimum of 1.7m above finished floor level for the narrow balcony ends facing south –east along with cross section detail of the operable louvred walls to corridors facing south-east both so as to prevent overlooking into windows and open space areas of adjacent dwellings,
  - (c) A reduction in overall dwelling numbers from 39 to 27, along with a notation that no more than 15 dwellings would be without an on site car space,
  - (d) A reduction in building height such that the DDO requirements are complied with (relevantly, 10.5m and 16.5m), and deletion of notation reference to overhang of the laneway or boundaries,
  - (e) A schedule of external materials and colours, including samples (glass and otherwise) and including details and a sample of the front timber, all in a form capable of being endorsed and placed on Council's file.
  - (f) The front canopy as being cantilevered as opposed to having columns,
  - (g) A notation that no air conditioning units are to be located on any external balcony without Council's written approval.
  - (h) The ground level as being at least 300mm above applicable flood level, i.e. 4.1m to AHD.

2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
4. All external materials finishes and paint colours are to be to the satisfaction of the responsible authority and must not be altered without the written consent of the Responsible Authority.
5. Prior to the commencement of the nightclub use, a Management Plan must be submitted to and approved by the Responsible Authority. The plan must not be modified without the written consent of the Responsible Authority. The plan must cover the following points, but may include other points:
  - Details of supervision and security of the site, including external and internal signage, cameras and how any video information will be made accessible to Council and any other relevant authority,
  - Installation and maintenance in good quality and to the satisfaction of the responsible authority, video surveillance recording system able to clearly identify individuals which shows time and date and provides continuous images of all entrances and exits, bars and entertainment/dance floor areas when live or recorded amplified music other than background music is provided.
  - Details of how waste will be collected from the site and how/at what frequency any litter will be removed from nearby streets and lanes,
  - Processes and actions with regard to catering for nightclub patron needs for public transport, including taxis, and how such taxi use will be managed,
  - Details as to internal management practices and the enabling of appropriate action dealing with ongoing and excessive patron noise,
  - Appropriate management and security practices (reference to security personnel to be made in the Management Plan) so as to minimise the congregation of patrons from the permitted use at the front of the site or within 10m along Fitzroy Street from the front door to the premises after 11pm. The Management Plan is to refer to the enabling of appropriate action from security personnel in relation to the above (lack of congregation/loitering) and to encouraging quiet patron departure from the premises.
  - Storing and emptying bottles and barrels/kegs (not between 11pm and 8am).
  - Times and locations for the delivery of bottles and barrels/kegs.
  - The indication of a contact phone number(s) for residents to call to register complaints regarding the operation and occupants patrons from the premises. This contact must be available at all times. A permanent register of all calls to this number(s) must be maintained which register must be available at all times for inspection by the Responsible Authority.

This Management Plan to be prepared to the satisfaction of the Responsible Authority and endorsed to form part of this permit.

6. Prior to the commencement of works, the developer, in co-operation with Council and the relevant transport authorities must prepare a Public Transport Plan and 'Green Transport Plan' specifically with reference to residents without access to on site car parking. The plan must also make specific reference to the fact that residents of the permitted building will not be eligible for Council parking permits.
7. No equipment, services and architectural features other than those shown on the endorsed plans shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.
8. Any plant and equipment proposed on the roof of the building must be screened in a manner to complement the appearance of the building to the satisfaction of the Responsible Authority.
9. The amenity of the area must not be detrimentally affected by the use through the:
  - (a) Transport of materials, goods or commodities to or from the land.
  - (b) Appearance of any building, works or materials.
  - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, steam, waste water, waste products, grit or oil.
  - (d) Presence of vermin.
10. Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.
11. Prior to the commencement of the development hereby permitted the applicant must demonstrate how environmentally-positive features will be incorporated into the development where possible, to the satisfaction of the responsible authority following consultation with Council's ESD officer via completion of either a STEPS assessment or a written Sustainability Statement of the various approaches to sustainability matters included in the development.
12. The car parking areas and accessways as shown on the endorsed plans shall be formed to such levels so that they may be used in accordance with the plan, and shall be properly constructed, surfaced, drained and line-marked. The car park and driveways shall be maintained to the satisfaction of the Responsible Authority.
13. Before completion of the building, the Applicant/Owner must do the following things to the satisfaction of the Responsible Authority:
  - a) Pay the costs of all alterations/reinstatement of Council and Public Authority assets necessary and required by such Authorities for the development including modifying and line marking kerbside car parking spaces and altering parking signage, all being related to the new vehicle crossover.
  - b) Obtain the prior written approval of the Council or other relevant Authority for such alterations/reinstatement.
  - c) Comply with conditions (if any) required by the Council or other relevant Authorities in respect of alterations/reinstatement.
  - d) Remove the redundant crossover to Council's specifications with associated costs to be borne by the applicant/owner/developer.

14. Before commencement of the works, a construction management plan must be prepared, including a works program, with the objective of minimising the impact of construction works on the nearby residential properties to the satisfaction of the responsible authority. The plan must specify the means of reducing the construction impact (at the cost of the applicant) of dust and noise on the nearby properties, and must provide that hours of work be in accordance with any relevant Local Law
15. Prior to the commencement of the development, a Waste Management Plan based on the draft "Best Practice Guidelines for Kerbside Recycling at Multi-Occupancy Residential Developments (Sustainability Victoria June 2006) must be prepared by a Waste Management Engineer or Waste Management Planner to the satisfaction of the Responsible Authority and endorsed as part of this permit. The Plan must include reference to the following:
  - The estimated garbage and recycling generation volumes for the whole development.
  - The garbage and recycling equipment to be used and the collection service requirements, including the frequency of collection.
  - The location of, proximity, screening of and space allocated both to the garbage and recycling storage areas and collection points.
  - The path of access for both users and collection vehicles.
  - How noise, odour and litter will be managed and minimised.
  - Approved facilities for washing bins and storage areas.
  - Who is responsible for each stage of the waste management process.
  - How tenants and residents will be regularly informed of the waste management arrangements.
16. During the construction of the buildings and works allowed by this permit, the roads and streets adjacent to the subject land must be kept free of parked or standing vehicles or any other obstruction, including building materials, equipment etc. so as to maintain free vehicular passage to abutting benefiting properties at all times, unless with the written consent of the Responsible Authority.
17. Car parking allocation must comprise not less than one car space for each of the restaurant, shop and convenience restaurant tenancies, not less than two car spaces for the nightclub and not less than one car space each for all two bedroom dwellings and the largest (approximately 50m<sup>2</sup>) single bedroom dwellings.
18. The building must be adequately and suitably acoustically treated such that noise levels from the on-site nightclub does not create unreasonable noise amenity impacts to any of the dwellings within the permitted development.
19. The permitted nightclub must operate only between 7am and 7am the following day, Monday to Saturday, 10am to 7am the following morning, Sunday and midday to 7am the following morning Good Friday and Anzac Day.
20. The patron capacity of the permitted restaurant must not exceed 45 except with the further consent of the responsible authority and the nightclub capacity must not exceed 300 patrons.

21. The nightclub use must not cause nuisance or be detrimental to the amenity of the neighbourhood by the emission of noise. In this regard the emission of noise must comply with the provisions of the Environmental Protection Authority and the Australian Standard AS 2107 1987 and the noise limiter, cooling and ventilation settings and the practice of keeping entrance doors shut must be used to ensure that this condition is complied with.
22. Nightclub noise levels must not exceed the permissible noise levels stipulated in State and Environment Protection Policy N-1 (Control of Noise from Industrial Commercial and Trade Premises within the Melbourne Metropolitan Area) and State Environment Protection Policy N-2 (Control of Music Noise from Public Premises).
23. Bottles from the nightclub must be bagged during operation times and must not be emptied into the external refuse bins after 10pm or before 8am Monday to Saturday or after 10 pm or before 10am on Sunday, except with further written consent of the Responsible Authority.
24. Prior to commencement of the nightclub use, the permit operator must install and maintain within the nightclub a noise limiter ("the Device"), set at a level by a qualified acoustic engineer, to ensure the escape of amplified music does not exceed the requirements of SEPP N-2.
25. Within 14 days of the installation of the noise limiter within the nightclub a report prepared by a suitably qualified acoustic consultant must be submitted to the responsible authority and must confirm that a noise monitor and limiter ("the Device") is operating and has each and every of the following characteristics which are also operating:
  - i. the Device limits internal noise levels so as to ensure compliance with the music noise limits according to *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2* (SEPP N-2).
  - ii. the Device is a limiter suitable for interfacing with a permanently installed sound system which will include any amplification equipment and loudspeakers;
  - iii. the Device monitors noise levels at frequencies between 50Hz and 100Hz and is wired so as to ensure that the limiter governs all power points potentially accessible for amplification.
  - iv. the Device controls are in a locked metal case that is not accessible by personnel other than a qualified acoustic engineer or technician nominated by the owner of the land and notified to the Responsible Authority;
  - v. the Device is installed to control all amplification equipment and associated loudspeakers;
  - vi. the Device is set in such a way that the power to the amplification equipment is disconnected for 15 seconds if the sound level generated by the amplification equipment exceeds for one second the maximum sound level for which the monitor is set;

- vii. the monitor level component of the Device includes a calibratable frequency discriminating sound analyser with an internal microphone incorporated in its own tamper-proof enclosure (beyond the normal reach of a person). Such a sound analyser will indicate by green, amber and red illuminated halogen lamps the approach and exceeding of the set maximum noise level. The lamps must be in the clear view of the staff and any disc jockey in the room;
  - viii. the Device must prevent a relevant noise level referred to in these conditions being exceeded.
  - ix. which report demonstrates compliance with the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N-2) noise limits.
26. Before the development begins, either a report from a qualified Arborist is to be submitted to Council indicating the methods and requirements to ensure retention and survival of the eucalypt tree on the abutting site at 63-73 Fitzroy Street or alternatively, the tree is to be removed (at the permit applicant/owner's expense) but only with the written consent of the owner/occupier of 63-73 Fitzroy Street.
27. This permit will expire if one of the following circumstances applies:
- (c) The development is not started within 2 years of the date of this permit.
  - (d) The development is not completed within 2 years of the date of commencement.

The Responsible Authority may extend the period referred to if a request is made in writing before the permit expires or within three months afterwards.

#### **Permit Notes**

*This permit does not authorise the commencement of any building construction works. Before any such development may commence, the applicant must apply for and obtain appropriate building approval.*

*The applicant/owner would provide a copy of this planning permit to any appointed Building Surveyor. It is the responsibility of the applicant/owner and Building Surveyor to ensure that all building development works approved by any building permit is consistent with this planning permit.*

*The developer shall show due care in the development of the proposed works so as to ensure that no damage is incurred to any adjoining properties.*

*Except in the case of an emergency, a builder must not carry out building works outside the following times, without first obtaining a permit from Council's Local Laws Section:*

- *Monday to Friday: 7.00am to 6.00pm; or*
- *Saturdays: 9.00am to 3.00pm.*

*An after hours building works permit cannot be granted for an appointed public holiday under the Public Holidays Act, 1993.*