

**MINISTERIAL POWERS OF INTERVENTION IN PLANNING  
AND HERITAGE MATTERS**

**REASONS FOR DECISION TO EXERCISE POWER OF INTERVENTION**

**OVERLAND PROPERTIES PTY LTD – PLANNING PERMIT APPLICATION  
NO. 2008/0758, FOR LAND AT 324-332 ST KILDA ROAD, MELBOURNE**

The *Planning and Environment Act 1987* provides for the intervention of the Minister for Planning in planning and heritage processes.

In exercising my powers of intervention, in accordance with the *Ministerial Powers of Intervention in Planning and Heritage Matters Practice Note*, I have agreed to:

- Make publicly available written reasons for each decision, including an explanation of how the circumstances of the matter respond to the Practice Note and the legislative criteria for that action.
- Provide a report to Parliament at least every twelve months detailing the nature of each intervention.

**WHAT POWER OF INTERVENTION IS BEING USED?**

1. I have decided to exercise my powers to call in the application for Planning Permit No. 2008/0758 from the responsible authority pursuant to Section 97B(1) of the *Planning and Environment Act 1987* and refer all objections and submissions received in respect of the application for Planning Permit No. 2008/0758 to a Panel pursuant to Section 97E of the *Planning and Environment Act 1987*.

**BACKGROUND**

2. An application for Planning Permit No. 2008/0758 was submitted on 27 June 2008 by Overland Properties Pty Ltd C/- SJB Planning for land at 324-332 St Kilda Road, Southbank, to the responsible authority (the Minister for Planning) pursuant to the Melbourne Planning Scheme. The application proposes a 31 level mixed use tower of 112 metres in height which includes office, retail, an art gallery, multiple dwellings and a basement car park. The responsible authority has directed the Applicant to give notice of the application. To date fifty six (56) objections have been received in response to the application being publicly advertised.
3. The land subject to the application is zoned Mixed Use Zone (MUZ). The Schedule 17 to the Design and Development Overlay (DDO17) - Shrine Vista applies to the land. The purpose of this overlay is to protect vistas along Swanston Street and St Kilda Road to the Shrine of Remembrance. The DDO27 - City Link Exhaust Stack Environs Overlay also applies to the land.
4. The Applicant initiated pre-application enquiries with the Department of Planning and Community Development (DPCD) and the City of Melbourne to develop the site with a tower of potentially up to 180 metres in height. These enquiries brought to the Council's attention that there were no height controls which applied to the entire portion of land bounded by St Kilda Road, Dorcas Street, Coventry Street and Anthony Lane which includes the land at 324-332 St Kilda Road, Southbank.
5. On 11 March 2008, the City of Melbourne was granted Authorisation to prepare and exhibit Amendment C125 which proposes to extend the Schedule 43 to the Design and Development Overlay (DDO43) – Dorcas Street, to cover the land bounded by St

Kilda Road, Dorcas Street, Coventry Street and Anthony Lane. The amendment would have the effect of placing a discretionary 60 metre height limit on the land.

6. In the Explanatory Report which accompanies Amendment C125, the City of Melbourne states:

*“From the 1970s to 1999 the land was subject to a mandatory height control but this was not included when the Planning Scheme was updated into a new format in 1999. A mandatory maximum building height of 36.05 metres above the Australian Height Datum applied. This is approximately 25 metres above the footpath in St Kilda Road.”*

7. The Explanatory Report, in describing why the amendment is required, cites the failure to include a height control on the land as an “anomaly” and indicates that the current controls do not ensure that development is compatible with the immediate precinct, in particular maintaining the prominence of the Shrine of Remembrance and enhancing the appearance of St Kilda Road as a major boulevard.
8. The City of Melbourne exhibited Amendment C125 from the 17 April 2008 to 21 May 2008 receiving 83 submissions in response to the amendment. A consistent theme raised in submissions was the view that the amendment should reinstate the height control applicable to the land under the old format Melbourne Planning Scheme prior to 1999 which was 36.05 metres above Australian Height Datum (AHD) or mean sea level. Many of the submissions also expressed concern about the negative impact the proposal would have on the Shrine of Remembrance and St Kilda Road.
9. On 8 July 2008, the submissions received in respect of the amendment were reported to the Planning Committee of the City of Melbourne which resolved that it would seek Ministerial intervention in the matter and that it wished the amendment to be changed to revert to a height control of 36.05 metres above AHD. Due to an issue of process with Council’s resolution, the City of Melbourne further clarified its position in writing:

*that the City of Melbourne requests the Minister for Planning to exercise his powers under Section 20 of the Planning and Environment Act 1987 to prepare and approve an amendment to the Melbourne Planning Scheme. The planning scheme amendment would seek to apply a mandatory height control of 36.05 metres at AHD to the land at 312-332 St Kilda Road, Southbank and to amend the Municipal Strategic Statement accordingly, so that it reflects the expected built form outcome for the land.”*

## **CONSULTATION**

10. The responsible authority directed the Applicant to give public notice of application for Planning Permit No 2008/0758 by posting notices to affected properties, placing 2 signs on site and placing a notice in The Age and the local newspaper.
11. The responsible authority gave notice and a copy of the application to the City of Melbourne and the City of Port Phillip, Shrine of Remembrance Trustees and the relevant authorities in respect of the DDO 27 -City Link Exhaust Stack Environs Overlay.
12. Public notice of the application resulted in 56 objections, including an objection from the Shrine of Remembrance Trustees.

## REASONS FOR INTERVENTION

13. The *Ministerial Powers of Intervention in Planning and Heritage Matters Practice Note* requires the Minister for Planning to meet certain criteria in the exercise of Ministerial powers of intervention. As an overriding consideration, Ministerial powers will only be exercised having regard to and within the confines of the legislative provision in question.
14. I am satisfied that the circumstances for Ministerial intervention and the nature of the proposed amendment satisfy the relevant criteria in *the Ministerial Powers of Intervention in Planning and Heritage Matters Practice Note* on the following basis:

### **Criteria 1: The matter is one of genuine State significance**

15. Given the State significance of the Shrine of Remembrance and Melbourne's premier boulevard St Kilda Road, I consider that the application for Planning Permit No. 2008/0758 raises a major issue of policy and that the determination of the application may have a substantial effect on the achievement or development of State or regional planning or heritage objectives, and may impact on the relevant objectives of planning in Victoria as set out in the *Planning and Environment Act 1987* which are:
  - *To provide for the fair, orderly, economic and sustainable use and development of land;*
  - *To conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value.*
  - *To facilitate development in accordance with the objectives set out in the points above.*
16. The determination of the application may have a substantial effect on the achievement of the Directions and policies of the Metropolitan Strategy - Melbourne 2030, under Minister's Direction No 9 including:
  - Policy 5.1, the proposed development may impact on the achievement and promotion of good urban design to make the environment more liveable and attractive.
17. The application may have potential to impact on the achievement of the following parts of the State Planning Policy Framework under the Melbourne Planning Scheme:
  - Clause 11 Goals and Principles: Planning is to contribute to a high standard of urban design and amenity.
    - (i) Land directly to the south of the site, fronting St Kilda Road between Dorcas Street and Park Street is located within the adjoining Port Phillip Planning Scheme and is subject to the Design and Development Overlay 3-8 (DDO3-8). The overlay restricts building height to a discretionary 36 metres above the Australian Height Datum. The built form outcomes of DDO3-8 state the need for "an open vista of the Shrine when viewed from Bank Street". The proximity and similarity of the site affected by Planning Permit Application No. 2008/0758 to land covered by DDO 3-8 in the Port Phillip Planning Scheme and the existence of a similar control to DDO3-8 in the Melbourne Planning Scheme prior to 1999, suggests the application may have a significant impact on the achievement and the development of appropriate urban design outcomes for St Kilda Road.
  - Clause 12.04 A More Prosperous City: Strengthen Central Melbourne's Capital City Function by maintaining high standards of Central Melbourne's parks and

gardens, conference and exhibition facilities, museums, concert halls and art galleries and other public buildings and high standards of urban design.

- (i) The Shrine of Remembrance and its surrounding gardens and St Kilda Road as Melbourne's premier gateway boulevard are two key places of cultural, social and historical significance to the State which support and enhance Central Melbourne's Capital City status. Planning controls and policy in the Melbourne Planning Scheme and the Port Phillip Planning Scheme are aimed towards protecting the important characteristics of these places. The determination of Planning Permit Application No. 2008/0758 may have a substantial effect on the achievement or development of planning objectives to protect and enhance St Kilda Road and the Shrine of Remembrance and its surrounding gardens.
- Clause 12.05 A Great Place to be: by promotion of good urban design and by ensuring development responds and contributes to the existing sense of place and cultural identity.
  - (i) St Kilda Road and the Shrine of Remembrance are places that are intrinsic to Melbourne's sense of place and its community identity. Planning Permit Application No. 2008/0758 proposes a tower of significant height which may have a dominant impact on the Shrine of Remembrance and on St Kilda Road which may affect the achievement of these planning objectives.
- Clause 19.03 Design and Built Form: Achievement of high quality urban design and architecture that reflects the particular characteristics, aspirations and cultural identity of the community. Development should achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties. Landmarks views and vistas should be protected and enhanced.
  - (i) Planning Permit Application No. 2008/0758 is proposed in the context of two key places; St Kilda Road and the Shrine of Remembrance that have particular characteristics and importance to the cultural identity of the community. The proposal may have a detrimental impact in relation to urban character and the public realm of St Kilda Road and the Shrine of Remembrance as a State significant landmark with key vistas.

**Criteria 2: The matter will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known.**

18. A series of pre-application meetings were held between the DPCD, the City of Melbourne and the Applicant prior to the application for Planning Permit No. 2008/0758 being lodged. During this consultation process the Applicant provided an Urban Context Report to both DPCD and the City of Melbourne which details the Applicant's analysis and assessment of the site and its surrounds.
19. As a related matter, Melbourne Planning Scheme Amendment C125 has been exhibited and the 83 submissions received in response have been forwarded to me by the planning authority, the City of Melbourne.
20. Public notice of the application for Planning Permit No. 2008/0758 has been given in accordance with the *Planning and Environment Act 1987* including notice to the relevant authorities required under the Melbourne Planning Scheme. To date the responsible authority is in receipt of 56 objections to the application.
21. The issues relating to application for Planning Permit No. 2008/0758 have been reasonably considered and the views of all affected parties are known.

**Criteria 4: The matter will raise issues of fairness or public interest where:**

- **There is a need for urgency and the public interest would be served by immediate action.**

22. The planning authority, the Melbourne City Council, has exhibited Melbourne Planning Scheme Amendment C125 to rectify what it identifies as an “anomaly” in the administration of height controls for St Kilda Road. The Melbourne City Council has written to me to express its concern that a decision may be made on Planning Permit Application No. 2008/0758 before a suitable height control is placed over the land. The Council has therefore requested that “*the Minister for Planning exercise his powers under Section 20 of the Planning and Environment Act 1987 to prepare and approve an amendment to the Melbourne Planning Scheme...to apply a mandatory height control of 36.05 metres at AHD*”. Given the statutory time frame for a decision on Planning Permit Application No. 2008/0758 and the insufficient time to finalise the amendment process to decide on a suitable height control to apply to the land, there is a need for urgency and the public interest would be served by my immediate action.

**The matter is unlikely to be resolved by the processes normally available.**

23. The process of Amendment C125 which commenced before the application for Planning Permit No. 2008/0758 was submitted to the responsible authority, is directly relevant to the determination of the Planning Permit Application No. 2008/0758 because it concerns the question of what is an appropriate height outcome for development on land at 312-332 St Kilda Road. Following exhibition of Amendment C125, the Melbourne City Council as planning authority has changed its position on the specific nature of the height control that should apply to the land from a discretionary 60 metres height control to a mandatory 36.05 metres above AHD. The time frame for the amendment process is limited given that a decision must be made on the application for Planning Permit No. 2008/0758.

*Legislative criteria for exercising power of discretion*

24. Section 97B(1) of the *Planning and Environment Act 1987* enables the Minister for Planning to direct the responsible authority to refer the application to the Minister if it appears to the Minister:

- (a) that the application raises a major issue of policy and that the determination of the application may have a substantial effect on the achievement or development of planning objectives; or
- (b) that the decision on the application has been unreasonably delayed to the disadvantage of the applicant; or
- (c) that the use or development to which the application relates is also required to be considered by the Minister under another Act or regulation and that consideration would be facilitated by the referral.

23. I am satisfied that:

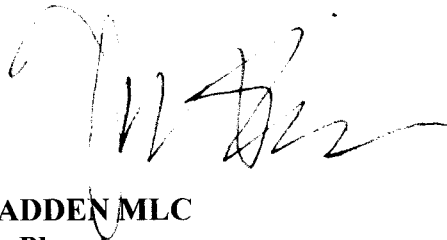
- Planning Permit Application No. 2008/0758 raises a major issue of policy concerning the appropriate height scale of a proposed building on land at 324-332 St Kilda Road, Southbank and that the determination of the application may have a substantial effect on the Shrine of Remembrance, a site of special social and cultural value, and historical and architectural importance to Victorians, and impact on Melbourne’s premier boulevard, St Kilda Road.

24. I am satisfied that my intervention meets the following criteria:

- Criteria 1 - The matter is one of genuine State Significance:
  - Where the determination of the application may have a substantial effect on the achievement and development of State or regional planning objectives and policies,
  - Which raises a major issue of State or regional policy or public interest, and
  - Which will have significant effects beyond its immediate locality.
- Criteria 2 - The matter will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known.
- Criteria 4 - The matter raises issues of public interest where there is a need for urgency and the public interest would be served by immediate action.

## **DECISION**

25. I have therefore decided to exercise my powers to call in application for Planning Permit No. 2008/0758 made in accordance with the Melbourne Planning Scheme, from the responsible authority under Section 97B(1) of the *Planning and Environment Act 1987*.

A handwritten signature in black ink, appearing to read 'Justin Madden', is written over a faint circular stamp or watermark.

**JUSTIN MADDEN MLC**  
**Minister for Planning**

Date: - 6 OCT 2008