

**VCAT Hearing re ‘257’ Barker Street, Castlemaine
(VCAT Reference P3727/2008)
8 July 2009**

**Submission of behalf of the
National Trust of Australia (Vic.), Mount Alexander Branch**

1 BACKGROUND

- 1.1 At its meeting on 25 November 2008 the Mount Alexander Shire Council resolved to issue a planning permit for a plan to greatly enlarge Maddern’s IGA supermarket in Barker Street Castlemaine. (Notice of Decision issued 1 December 2008, ref. 2008/031). This was the very last meeting of the previous Council. A new Council was elected on 29 November 2009, four days later.
- 1.2 The plan approved by the then Council involves the demolition of three buildings (two shops and a former dairy) to the immediate north of the present small supermarket (the land thus cleared to be incorporated into a much larger supermarket), and the demolition of a Victorian house facing Barker Street at the north end of the land in question (No 255 Barker Street) to make way for an exit driveway.
- 1.3 The Mount Alexander Branch of the National Trust (‘the Trust’) has not objected to the expansion of the supermarket, nor to the demolition of the three buildings to its immediate north. The Trust objects only to the demolition of the Victorian house (255 Barker St) which it believes is unnecessary and will adversely affect the significance of this heritage place.
- 1.4 The Trust therefore lodged an Application for Review with VCAT on 9 December 2008. This application requested that the application be considered ‘by way of mediation’. The Trust has drawn up an alternative plan which it believes should be seriously considered by the proposed developers. Unless the Hearing scheduled for 8 July 2009 is intended as a mediation hearing, the Trust’s request for mediation does not appear to have been granted.

2 THE SITE A HERITAGE PLACE

- 2.1 The proposed development is a to-be-consolidated block on the corner of Barker Street and Templeton Streets, Castlemaine. It is entirely within Castlemaine’s Central Conservation Area, falling within that Heritage Overlay (HO667). Campbell Street, parallel to Templeton Street, crosses Barker Street to the north at the end of the town block.
- 2.2 The site of the proposed development is a very prominent one, highly visible and on the main road (the Midland Highway) leading from Castlemaine to Bendigo.
- 2.3 Though not itself *additionally* noted for its special significance, the site of the proposed development is surrounded by places which are. The Local Planning Policies within the Mount Alexander Planning Scheme nominate ‘Barker Street Streetscape’ (the east side of Barker Street between Templeton and Lyttleton Streets), ‘Barker Street’ (Barker Street between Mostyn and Templeton Streets), ‘Campbell Street’ (Campbell Street between Kennedy and Urquhart Streets), and ‘Railway Station Environs’ (only one block away at the western end of Templeton Street) for special protection in addition to that provided by their being covered by the Central Conservation Area Heritage Overlay. See Mount Alexander Planning Scheme Local Planning Policies 22.01, paras 6, 6.1, 6.3, 6.4 and 9.)

- 2.4 All these special places are within a few metres of the proposed development and the Victorian house which it is planned to demolish. Except for the station which is round the corner from No 255 Barker Street, they are all within easy sight of it.
- 2.5 Note that the 'Barker Street' area is zoned 'Commercial' and occupied by shops. It is nevertheless subject to strict heritage planning regulations. A Commercial zoning does not relax the application of heritage planning restrictions.
- 2.6 Within the Central Conservation Area (HO667) it is Council policy that 'the remaining evidence of buildings and works of the Victorian and Edwardian era be preserved'. (MAS Planning Scheme 22.01, para 6.)
- 2.7 The house at 255 Barker St., now under threat of demolition, is unquestionably a Victorian building. The Trust argues that it should be preserved in accordance with Council policy. Professor Miles Lewis comments, *'In this area it is Council policy that 'the remaining evidence of buildings and works of the Victorian and Edwardian era be preserved.'* *There can be no doubt that the demolition of the house at 255 Barker Street would be contrary [to] this policy. Therefore it should be contemplated only under the most extreme circumstances. There are no such circumstances here.'* (Attached – as Appendix 1 – is a copy of an email communication from Professor Miles Lewis AM, FAHA of Melbourne University, Australia's leading architectural historian, who has examined the plans for the proposed development and is familiar with the site. There is also a note about Professor Lewis and his qualifications We shall quote from Professor Lewis's email at relevant points throughout this submission. The quote above is from the third paragraph of Professor Lewis's email.)

3 IMPORTANCE OF HERITAGE TO CASTLEMAINE

- 3.1 The Mount Alexander Shire Planning Scheme recognises the special importance of heritage buildings to Castlemaine, noting that,
- Castlemaine contains a unique collection of heritage buildings and significant streetscapes which contribute to the unique value of the town.*
(Planning Scheme 22.01, para 1.)
- 3.2 The special importance of heritage buildings and areas to Castlemaine has been noted in previous VCAT Decisions. The Tribunal may refer to VCAT Decision of 28 May 2002 re a proposal to build a house on a vacant block at 85-87 Templeton Street (VCAT reference P50858/2001, copy attached as Appendix 2). This Decision refers repeatedly to the special importance of heritage areas to Castlemaine.
- 3.3 The Tribunal's Decision in the 85-87 Templeton Street case reads in part:
- 5.8 I consider that reviewed overall the planning scheme requires that great weight be put on the heritage significance of Castlemaine and in particular the subject land and its surroundings in the context of HO667.*
- 5.9 It is common ground that Castlemaine in general and this conservation area has high local and State level heritage significance and that this heritage significance contributes to the community life and commercial viability of Castlemaine and the Shire. From my inspection I would rate the heritage significance of Castlemaine and its value to the township and the municipality very highly when compared to the usual standard of Victorian country towns. All parties recognise that Castlemaine and the surrounding area, including Maldon, has something unique in Victoria in relation to heritage assets and significance. The planning scheme recognises this significance in the Municipal Strategic Statement, the local planning policy and the Heritage Overlay.*

Please note especially that the Tribunal 'would rate the heritage significance of Castlemaine and its value to the township and the municipality very highly when compared to the usual standard of Victorian country towns'. This means that the ordinary guidelines on what is or is not of heritage significance do not apply in

Castlemaine; the importance of heritage to Castlemaine is such that more than usually rigorous standards are applicable.

- 3.4 In the 85-87 Templeton Street case
- the site (difficult to see over the brow of a hill in a quiet cul-de-sac at the east end of Templeton Street) was far less prominent than in the present case, which is on Barker Street, a busy highway;
 - no demolition was involved – the site was already vacant;
 - Council had granted planning permission, and
 - the development was approved by the then Shire Heritage Adviser, and her immediate predecessor (who appeared as an expert witness at the Hearing), and yet VCAT’s Decision was to overrule the Council’s intention to grant planning permission and to disallow the proposed new house on heritage grounds.
- 3.5 The Tribunal noted, ‘ . . . the criteria for assessment is whether it is going to enhance the heritage significance of HO667 or at the minimum conserve that heritage significance.’ (Decision, para 7.5.)
- 3.6 We suggest that similar criteria must apply to the proposed demolition of the Victorian house at 255 Barker Street.
- 3.7 And we repeat: Castlemaine is special. More rigorous standards apply to the preservation of its heritage assets than would be the case in other Victorian country towns.

4 THE DECISION GUIDELINES

- 4.1 The Heritage Overlay contains the following decision guidelines against which developments should be assessed (para 43.01-4):
- The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.
 - Any applicable statement of significance, 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 demolition, removal or external alteration will adversely affect the significance or the heritage place.
 - Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.
- 4.2 We have established that the proposed development, including the proposed demolition of the Victorian house at 255 Barker Street, is in a heritage place of more than usual significance. (See above 2.1-2.3, 3.1-3.3)
- 4.3 It remains to establish whether the proposed demolition will adversely affect the significance of the heritage place.
- 4.4 We have already noted that the Planning Scheme states, ‘Within the Central Conservation Area (HO667) it is Council policy that ‘the remaining evidence of buildings and works of the Victorian and Edwardian era be preserved’. (MA Planning Scheme 22.01, para 6.) Prima facie, therefore, it would seem that there is no way that the demolition of the Victorian house at 255 Barker Street can be permitted. As noted above, Professor Lewis is firmly of the opinion that no special circumstances exist in this case which would justify demolition. And yet the Shire’s Heritage Adviser has raised no objection. Why?

5 THE HERITAGE ADVISER'S OPINION

5.1 The relevant parts of the Heritage Adviser's report were summarised in the Planning Department's recommendation laid before Council when the matter was considered at the Council meeting of 25 November 2008. (See extract from the Agenda for that meeting attached hereto as Appendix 3, ref. DEI74, para 5, dot points 1 and 2, para 7 and para 8.)

5.2 The Heritage Adviser's report is summarised thus (para 7):

The heritage adviser concluded that the Victorian house was not regarded as being of particular significance or contributing strongly to the heritage precinct. It is illustrative of the transitional nature of this part of Castlemaine, where commercial and residential development is intermixed. The demolition can be regarded as part of the normal growth of the town, however demolition should only be entertained if its replacement is of a quality design that respects the streetscape. The proposal meets the Heritage Adviser's requirements.

5.3 The nub of the Heritage Adviser's opinion and the consequent recommendation to Council was that the house at 255 Barker Street could be demolished without 'compromising' the heritage precinct. The Conclusion paragraph in the Planning Department's recommendation to Council reads (DEI74, para 8):

Overall, it is considered that the proposal will greatly improve the site, both operationally and visually, without compromising the heritage precinct.

5.4 We believe the Heritage Adviser was mistaken in the advice he gave to Council. As noted from the 85-87 Templeton Street case, a Heritage Adviser's report (or in that case the advice both of the then current Adviser and her immediate predecessor) can be overridden by a VCAT decision, particularly one involving the Castlemaine Central Conservation Area.

6 THE VALUE OF THE VICTORIAN HOUSE

6.1 We do not dispute that the house at 255 Barker Street is of no particular significance in itself. It is a solid brick building constructed perhaps in the 1870s or early '80s. We have not been able to establish its precise date. (Mr Beeston, in his report commissioned by Madderns IGA, the proposed developers, says it 'may be as early as 1859'.) It appears to be sound. The windows, probably original, are in keeping with the period of the house. The front verandah is not the original one and is not in keeping with the age of the house, but this is an exterior detail and could be rectified without great difficulty by substituting a new verandah of more appropriate design. The house has a new-looking roof, and is currently lived in. Castlemaine has numerous examples of similar Victorian houses.

6.2 But the individual value of this particular house is not the material point. The point is: will the loss of the house adversely affect the value of the Heritage place?

6.3 As noted, the house is in the Castlemaine Central Conservation Area, all of which has, as VCAT noted in paragraph 5.9 of its Templeton Street Decision, a value above that applying to 'the usual standard of Victorian country towns'. We have also noted that it is closely surrounded by areas noted as being of exceptional value even compared with the rest of the Central Conservation Area (see 2.3-2.4, 3.1-3.3 above).

6.4 And we have noted that it is Council policy that in the Central Conservation Area 'the remaining evidence of buildings and works of the Victorian and Edwardian era be preserved' (2.6).

6.5 But we have not yet noted, and the Heritage Adviser seems to have ignored, the fact that the house at no 255 Barker Street does not stand alone. It is part of an intact group of Victorian houses of heritage value stretching up to the corner of Campbell Street and round the corner into that (especially valuable) street. Nos 255, 257 and 259 Barker Street are all Victorian buildings, and the house on the corner of

Campbell Street, if not Victorian is very early Edwardian, built c.1900. When deciding whether the loss of 255 Barker Street would adversely affect the value of the heritage place it must be considered as one of an intact group of heritage buildings and not in isolation.

- 6.6 It cannot credibly be argued that the demolition of a genuine Victorian building from an intact group of such buildings in an exceptionally important conservation area does not 'adversely affect the value of the heritage place'. The building at 255 Barker Street is a contributory element to an especially valuable heritage place.

7 THE IMPORTANCE OF 'CONTRIBUTORY ELEMENTS'

- 7.1 The Heritage Victoria *Heritage Overlay Guidelines* have relevant things to say about the need to preserve 'contributory elements'. (See the *Guidelines*, Section 3 on 'Demolition', attached as Appendix 4.)

- 7.2 One of the two listed Objectives of the *Guidelines* on Demolition is:

*To ensure that Contributory Elements of Heritage Places are retained.
(para 3.1).*

- 7.3 The Rationale sub-section of the *Guidelines* (para 3.2) quotes the Burra Charter:

Conservation . . . requires a cautious approach of changing as much as necessary but as little as possible.

and goes on to say:

For Cultural Heritage Significance to be conserved in a Heritage Place covered by an Area HO, the significant parts of the Contributory Elements to the Heritage Place and their relationship to the setting within the area should be retained. In this context the following factors should be considered.

- *Demolition of the whole of a building which is a Contributory Element generally has an adverse effect on the significance of a Heritage Place.*
- *While some parts that contribute to significance may appear to be unexceptional, they can have greater value when considered as part of the whole Contributory Element.*
- *The cumulative effect of demolition to a series of typical Contributory Elements has the potential to adversely affect the significance of the Heritage Place.*
- *Recording is not a justification for the demolition or removal of significant fabric.*

Where the scale, setting, repetition, or prominent location of a Contributory Element may strengthen its contribution to the Heritage Place, demolition of parts visible from the public domain has the potential to adversely affect the significance of the Heritage Place.

- 7.4 Note especially the first three dot points above.

The development proposal under consideration involves the demolition of the whole of a heritage building (certainly a 'contributory element' to the value of the heritage place).

While, in isolation, of no special significance, the threatened Victorian house has a greater value as part of a larger 'contributory element'.

And, if demolition is allowed, it would threaten to become part of a pattern of demolitions of individually insignificant buildings, the cumulative effect of which would undoubtedly adversely affect the value of the whole (uniquely valuable) Central Conservation Area of Castlemaine.

- 7.5 Castlemaine is losing individually insignificant Victorian buildings at an alarming rate. A recent example is the loss of the old (1860s) miner's cottage at 2 Greenhill Avenue, the demolition of which was unforgivably not objected to by Council's Planning Department.

- 7.6 The importance of individually insignificant buildings to heritage places has long been recognised. The historic section of a city or other heritage place cannot not be robbed of its ‘undergrowth’ without serious damage to the value of the whole heritage place. Adam Fergusson’s classic polemic, *The Sack of Bath*, first published in 1973, draws attention to the disastrous result of the heedless demolition in the 1960s of much of the ‘minor architecture’ in that heritage city. As always, the damage was done in the name of modernisation and redevelopment. Let us learn by the mistakes made in other heritage towns and not repeat them in Castlemaine. Buildings sometimes ‘not regarded as being of particular significance’ in themselves in fact compose the vital ‘minor architecture’ of heritage places.

8 THE OVERALL IMPROVEMENT OF THE SITE?

- 8.1 The decisive consideration in Council’s decision to permit the demolition of the Victorian house at 255 Barker Street appears to have been that ‘Overall . . . the proposal will improve the site, both operationally and visually, without compromising the heritage precinct.’ (Agenda notes 25 November 2008 DE174, para 8.)
- 8.2 We have shown that the demolition of the Victorian house will undoubtedly damage the heritage precinct in terms of the Council’s own policies and earlier VCAT Decisions. A question therefore remains about the overall improvement of the site in other respects, a question of balance.
- 8.3 The Trust does not deny that the designs for the enlarged supermarket have some merit. We have congratulated the developers on them, both in our comments on the original design and on its revised version. We have a minor suggestion to make about the proposed verandah (see Postscript below) but in general we happily acknowledge that the development if built would improve the appearance of the site. The developers have tried to design a building sympathetic to the heritage character of the area. That is not in dispute. Our objection is only to the proposed demolition of the Victorian house at 255 Barker Street.
- 8.4 It should be noted, however, that Professor Lewis does have another very serious objection to the proposal, quite apart from the proposed demolition of the Victorian house at No 255 Barker Street. He says, ‘*What I am absolutely firm about is that the creation of a large driveway at the north end of the site is quite unacceptable. There are narrow lanes in existence at present, and they contribute to the heterogeneous historic character of the town and the streetscape. The proposed driveway is very different, would be a major intrusion and disruptive element, and is incompatible with conservation objectives.*’
- 8.5 At the time the Trust lodged its objection to the demolition of the Victorian house on Barker Street we had not had this material objection to the proposed plan brought to our attention, and for this reason only we have not taken up Professor Lewis’s point at length. However, what Professor Lewis says does make it clear that in his opinion the proposal, taken as a whole, far from improving the site, would introduce a major disruptive element ‘incompatible with conservation objectives’.
- 8.6 But to return to the objection we have in fact made: in our view the demolition of the Victorian house can only be justified (if at all) if there is no other way the site can be improved. We shall assume, only for the purposes of this argument, that nothing can be done to improve the site unless a considerable enlargement of the supermarket is permitted. Are there other options than the plan proposed by the developer?

9 ALTERNATIVE PLANS

- 9.1 We believe that the supermarket can be enlarged very considerably without demolishing the Victorian house. For the purpose of the mediation hearing which we requested we have prepared an outline design for the site (submitted herewith, Appendix 5).

- 9.2 Our alternative plan allows the business's shopfloor area to be enlarged to virtually the same size as at present proposed. It has an exit passage (an existing laneway) for customers' cars to the north of the threatened house. It may be argued that this is less 'elegant' than the proposed plan, and that the separation of the floor area in the house from that in the main supermarket would disadvantage the proprietors of the supermarket. To that argument our response is that the supermarket can absorb the floor space of the present bottle shop in Templeton Street and use the Victorian house as the proposed separate 'speciality store'.
- 9.3 Professor Lewis suggests: *'If the supermarket is to expand at all it must not be at the expense of conservation considerations. Whether, within this constraint, it can expand to the scale proposed I do not know. But it does appear to be possible [to] bring the bulk of the traffic in and out of the carpark area from Templeton Street, and this approach should clearly be explored. This may involve the suppliers having to back, rather than drive straight through, but this is commonly the case for deliveries of this sort. And it would not preclude a single lane entry from or exit to Barker Street if this is consistent with [the] rights of the adjoining property.'* (Lewis email, penultimate paragraph.)
- 9.4 We have not explored Professor Lewis's suggestion that suppliers' delivery vans should both enter and leave from Templeton Street in detail, but at first examination it is difficult to see how it might work without demolishing the Victorian shop on Templeton Street, which the current plans preserve. In our opinion would be no point in saving No 255 Barker Street if it were at the expense of the old shop in Templeton Street.
- 9.5 However, Professor Lewis's main point – that the supermarket must not be allowed to expand at the expense of heritage considerations – remains valid. Heritage considerations will almost certainly compromise any plans the developer may consider ideal, but this is not a valid argument for approving the developer's plans.

10 COMPROMISING THE APPLICANT'S PLANS

- 10.1 The Council Agenda paper (DE174, para 5) reads:
- The applicant considered incorporating the Victorian dwelling in the redevelopment, but decided that its retention would compromise the objectives of the proposal, as it could not be properly linked to the existing supermarket building and would limit the operation of the one-way car park.*
- 10.2 Our suggested alternative plan (use the Victorian house as the separate 'speciality store' and incorporate the proposed speciality store area in Templeton Street into the floorspace of the main shop) overcomes the first point of this objection. And it does allow the operation of the one-way car park.
- 10.3 We must consider the relative importance of requiring people trading in the Castlemaine's Central Conservation Area to 'compromise' their expansion plans compared with the importance of not adversely affecting the extraordinary importance of that Heritage Place.
- 10.4 It is the opinion of the Trust that there can be no doubt about the answer to that question. It is more important that the value of the Conservation Area should not be adversely affected by a proposed development than that the developers should not have to compromise their plans. As Professor Lewis says, *'In a conservation area all owners suffer restrictions or potential restrictions, and all or most gain benefits either at first hand or at second, from the prosperity of the place. Conservation considerations must take priority. In this instance one should not start from the basis that the supermarket owners wish or expect to expand, or even from the basis that the town needs a comprehensive supermarket. On the contrary, it is up to the*

supermarket owners to fit within the conservations constraints, or else to find a site elsewhere. (Lewis email, paragraph 4.)

- 10.5 If you live or trade in a Heritage Overlay Area, particularly one of exceptional value a town like Castlemaine, you must accept both the benefits and the restrictions that come with it. It is up to the traders in the conservation area to make sure that their plans for alteration or expansion fit within the conservation constraints. The demolition of the Victorian house at 255 Barker Street would be directly opposed to the Council policy that within the conservation area ‘the remaining evidence of buildings and works of the Victorian and Edwardian era be [should] be preserved’. The planning permission for the proposed development should therefore be withdrawn.

11 SUMMARY

- 11.1 The site of the proposed development is a Heritage Place of exceptional prominence and importance in the Central Conservation Area. (See above 2.1-2.4)
- 11.2 It is Council policy that Victorian buildings in the Central Conservation Area should not be demolished. (2.5)
- 11.3 No 255 Barker Street is a Victorian building in the Conservation Area (6.1)
- 11.4 VCAT has already determined that the Conservation Areas of Castlemaine are of quite exceptional importance and that different and more rigorous standards apply there than to most Victorian country towns. *‘I would rate the heritage significance of Castlemaine and its value to the township and the municipality very highly when compared to the usual standard of Victorian country towns’.* (3.2-3.5)
- 11.5 A Commercial zoning does not imply that Heritage conservation requirements should be relaxed. (2.5)
- 11.6 Heritage Advisers’ recommendations are not decisive. They may be overridden by a VCAT Decision. (3.4)
- 11.7 ‘Minor’ architecture, i.e. individual buildings of no particular value in themselves, are nevertheless important to the value of Heritage places and their loss adversely affects the value of a Heritage Place. (7.1-7.6)
- 11.8 Alternative plans could ensure that the site is developed in a way which would improve the site both operationally and visually without compromising the value of the Heritage Place. (10.2)
- 11.9 It is more important to Castlemaine that the value of its Heritage Places should not be adversely affected by development than that the expansion plans of traders operating within the Heritage Areas should not be ‘compromised’. (3.2-3.5, 10.1, 10.3-10.5)
- 11.10 The Victorian house at 255 Barker Street should be preserved. (2.6, etc.)
- 11.11 Council’s Decision to grant a Planning Permit (2008/031 of 1 December 2008) should therefore be withdrawn, and the developer asked to prepare revised plans which do not require the demolition of the Victorian house at No 255 Barker Street. (10.5)

David Cunningham

President, National Trust of Australia (Vic.), Mount Alexander Branch

July 2009.

POSTSCRIPT ON VERANDAHS

One feature of the original plans for the site which we in the Trust particularly liked was the continuous pillared verandah. We are sorry to see that that no longer appears in the revised plan. And the verandah in the current plan, besides being discontinuous for no good reason, is too narrow. It should be as wide as that in the section of Barker Street in the next block south, between Templeton Street and Lyttleton Street. Good wide pillared verandahs are intensely practical, besides having heritage associations. They protect pedestrians from the (too rare!) rain and from the heat of the summer sun. They help keep shopfronts cool. If they do not appear to be 'contemporary' in style, that is to the discredit of modern design. We should not abandon the beautiful and practical for the sake of a modishly 'contemporary' appearance.

ATTACHMENTS

Appendix 1: Professor Miles Lewis's email of 25 June 2009, with his CV.

Appendix 2: VCAT Decision of 28 May 2002 re 85-87 Templeton Street.

Appendix 3: Relevant extract from MAS Council Agenda for 25 November 2008.

Appendix 4: Heritage Victoria: *Heritage Overlay Guidelines: Demolition*.

Appendix 5: An alternative plan for the enlargement of the supermarket.