

Report on VCAT proceedings re proposed Community Bank, 79 High Street, Maldon.

Our VCAT appeal was heard 31 January and 1 February, and 4 February 2011. We were represented by Barrister Julie Davis. We also worked closely with the other appellant, Save Maldon Streetscapes, represented by Planner Peter Avery. The Tribunal Member was Vicki Davies.

The first two days of hearings went well from our point of view but the status of the *Maldon Design Guidelines* came under intense scrutiny from the Barrister representing the permit applicant and thus became the subject of the unscheduled extra day of submissions on Friday 4 February.

We subpoenaed the Shire's Heritage Adviser Mr Nigel Lewis to appear at the hearing and to produce a copy of any heritage advice that he had provided to the Shire on the matter of 79 High Street, Maldon. In the event the Tribunal determined that Nigel Lewis was not required to appear in person because during the preliminary matters the Shire's representative tabled a copy of a memo written by Mr Lewis with his comments on the proposal and recommendations for changes to the scheme. The memo had been written following a meeting by the Shire with the applicant and other parties that addressed his opinions on the development. The officer's report to Council had not referred to the Nigel Lewis memo.

Professor Miles Lewis appeared as an expert witness for Save Maldon Streetscapes. Mr Bryce Raworth appeared for the permit applicant. The Shire, represented by a lawyer from Harwood Andrews in Geelong, did not call any witnesses.

We noted that the National Trust booklet *Proposals for the Conservation of Maldon* (1969) specifies at p17 building materials for new work in approximate order of preference. These materials, specified some 40 years ago are reflected in the current *Guidelines*. The documents also notes that buildings on vacant sites in Main and High Streets of an appropriate form may fill gaps and help to considerably restore the original character, and new work should be designed to harmonise with the town.

The evidence of Professor Miles Lewis was that:

- The building form is dominant and obtrusive
- No paint colours are specified. Paint colours should be identified before a permit is issued.
- The height of the front panel is excessive
- The skillion roof is unacceptable
- Glazing to the front of the building is intrusive and inconsistent with the area

- Materials are not as specified in the mandatory Maldon Design Guidelines
- Rusty corrugated iron is in any event not a typical walling material in Maldon
- Shiplapped boards are inappropriate.

The evidence of Mr. Bryce Raworth was that:

- A front parapet concealing the roof form is found elsewhere in the town
- Timber cladding is found in Maldon
- Oxidised textured concrete is a contemporary interpretation of the use of corrugated iron cladding
- The materials do not confirm to the *Maldon Design Guidelines*
- There is a lower level of intactness in this part of the Town
- The CFA complex is a modernist building
- The development introduces restrained contemporary finishes
- A polite insertion; interprets Victorian elements and materials; appropriate scale

It was our submission that the evidence of Miles Lewis should be preferred. Mr Raworth's evidence:

- paid no attention to the mandatory nature of the *Guidelines*;
- attempts to rely on forms and materials used in Maldon to promote the use of a distortion of these elements;
- suggests that the CFA building will support a variation to the *Guidelines* (notwithstanding that no variation is permissible);
- does not address the compatibility of the proposal with the heritage place of the proposal; and
- does not consider whether the proposal is in harmony with surrounding buildings.

The last day of hearings raised the issue of mandatory controls, and the DPCD Practice Note 59 'The role of mandatory provisions in planning schemes' was tabled by the applicant. There were detailed submissions on interpretation of administrative law.

The matter has been extensively reported by the *Tarrangower Times*, generally accurately, although with some misunderstandings.

Paul Roser
15 February 2011