



Banyule

CITY COUNCIL

Ordinary Meeting of Council

Monday, 7 June 2021

SUPPLEMENTARY ITEM

5. *Place – Sustainable Amenity and Built Environment*

5.3 Mother of God Church, Ivanhoe East - Interim Heritage Protection

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5.3 MOTHER OF GOD CHURCH, IVANHOE EAST - INTERIM HERITAGE PROTECTION

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SUMMARY

1. The purpose of this report is to urgently consider interim heritage controls for the Mother of God Church (Ivanhoe East) to prevent its potential demolition.
2. On 21 May 2021, Council received an application under Section 29A of the *Building Act 1993* (the Building Act) to demolish the Mother of God Church (Church) at 56 Wilfred Road, Ivanhoe East. The application was received by Council without any prior consultation or pre-application discussion. The Building Act requires Council to determine the application within fifteen (15) business days – which is by the 11 June 2021.
3. The Church is included in Council's soon to be completed municipal-wide Heritage Study and is identified as having local heritage significance.
4. The demolition application has been received before the current heritage study has been finalised and before permanent heritage controls (in the Banyule Planning Scheme) can be pursued.
5. The requirement for Council to consider the demolition permit in the context of Council's heritage study means that the building's heritage value is considered to be under immediate threat.
6. If Council wishes to see the building protected from demolition – there are two options:
 - A. The voluntary withdrawal (by 10 June 2021) of the application to demolish by the applicant to enable discussions to occur with Council about the site's future; or
 - B. Utilising section 20(4) of the *Planning and Environment Act 1987*, Council can request the Minister for Planning to apply an interim heritage overlay to the property. This would provide a basis for suspending the demolition application under section 29B of the *Building Act 1993*.
7. The permit applicant has indicated an unwillingness to withdraw the application (Option A). Council is left with the option of pursuing Option B.
8. Option B, if approved by the Minister for Planning, would provide interim protection for the church building while Council finalises its Heritage Study and pursues permanent heritage protections.

MOTHER OF GOD CHURCH, IVANHOE EAST - INTERIM HERITAGE PROTECTION cont'd

RECOMMENDATION

That Council:

1. Continue to engage with the owner of the Mother of God Church at 56 Wilfred Road, Ivanhoe East as a matter of urgency to request the voluntary withdrawal of the Section 29A demolition application.
2. If, subject to 1 above, the application is not withdrawn by the applicant by Thursday 10 June 2021, that Council request the Minister for Planning to prepare an Amendment to the Banyule Planning Scheme utilising section 20(4) of the *Planning and Environment Act 1987*, to apply an interim heritage overlay to 56 Wilfred Road, Ivanhoe East.
3. Note that if Council pursues interim heritage controls under 2 above, that this will suspend the demolition application for 56 Wilfred Road, Ivanhoe East under Section 29B of the *Building Act 1993*.
4. To also note that if Council is successful in obtaining interim heritage protection for 56 Wilfred Road, Ivanhoe East in the Banyule Planning Scheme, that any controls will be time limited via a sunset clause. The reason for this is that Council will be expected to further investigate and confirm the heritage value of the site and either pursue permanent controls or agree to the lapsing of the interim controls.

COUNCIL PLAN

- This report is in line with Banyule's Council Plan key direction to "Preserve and improve Banyule as a great place to live, work and play".

BACKGROUND

- The Mother of God Church at 56 Wilfred Road, Ivanhoe was nominated by the Heidelberg Historical Society for inclusion in the current Heritage Study in March 2020. The Heritage Study aims to identify and assess the heritage value of places that are not yet covered by the heritage overlay. The study is nearing completion and is expected to be presented to Council in September 2021. The church is one of a number of properties that aims to be recommended for inclusion on the heritage overlay as an outcome of the study.
- The Mother of God Church, built in 1957, is an early modernist church designed by Mockridge, Stahle & Mitchell. The church has been subject to a detailed heritage assessment by expert heritage consultants who have concluded the church is of historical and aesthetic significance to Banyule City Council.

MOTHER OF GOD CHURCH, IVANHOE EAST - INTERIM HERITAGE PROTECTION cont'd



Figure 1: Mother of God Church, 56 Wilfred Road, Ivanhoe East

- On 21 May 2021 Banyule Council received an application under Section 29A of the *Building Act 1993* for demolition of the church at 56 Wilfred Road, Ivanhoe East. No prior notice or discussion with Council has taken place about the intent or future for the site. No planning permit application has been received for the property. It is understood from discussions with the church's planning consultant the intention is to sell the property with a demolition permit in place.

KEY ISSUES

- As a result of the building demolition application, the building is considered to be under imminent threat. On this basis it is recommended an application be made to the Minister for Planning requesting that an 'interim heritage overlay' be applied to 56 Wilfred Road, Ivanhoe East. This will provide heritage protection for the building while Council finalises its current heritage study and pursues permanent heritage protection for the church and others identified in the study.
- Interim controls are sought under section 20(4) of the *Planning and Environment Act 1987*. Section 20(4) enables the Minister for Planning to amend a planning scheme, with exemption from notice requirements, or to expedite an amendment to a planning scheme to apply interim heritage controls to a property. The amendment request is consistent with the following criteria in the Practice Note Ministerial Powers of Intervention in Planning and Heritage Matters:
 - *The matter will be the introduction of an interim provision or requirement and substantially the same provision or requirement is also subject to a separate process of review (such as the introduction of permanent controls in a planning scheme).*
 - *There is a need for urgency and the public interest would be served by immediate action.*

MOTHER OF GOD CHURCH, IVANHOE EAST - INTERIM HERITAGE PROTECTION cont'd

- A publicly exhibited planning scheme amendment for permanent controls will be sought when the current study is finalised in September 2021. Exhibition enables full consideration of the heritage significance of the property through a public consultation process and an independent Panel, if required.
- Section 29A demolition applications must be decided within a prescribed time frame of 15 business days. An application for an interim overlay provides the basis for the Section 29A demolition application to be suspended. Pursuing an interim overlay is not an ideal outcome for any party. It is hoped that Council can urgently engage further with the owner with the aim of the demolition application being withdrawn. If this cannot be achieved, then Council has little option but to request an interim overlay, or otherwise, permit the building to be demolished.

SUPPORTING REPORT DETAILS

Legal Consideration

- The *Planning and Environment Act 1987* governs the Planning Scheme Amendment process. Section 20(4) enables the Minister for Planning to amend a planning scheme, with exemption from notice requirements.
- Section 29A and 29B of the *Building Act 1993* sets out requirements for an *application for building permit for demolition* and the *suspension of demolition permit pending amendment of planning scheme*.
- The recommendations in this report are in line with the above legislation.

Human Rights Charter

- In developing this report to Council, the subject matter has been considered in accordance with the requirements of the *Charter of Human Rights and Responsibilities Act 2006*.
- It is considered that the subject matter does not raise any human rights issues.

Sustainable Procurement Outcomes

- There are no sustainable procurement activities arising from the recommendation contained in this report.

Financial Implications

- The application fee to request the Minister for Planning to prepare an amendment utilising section 20(4) of the *Planning and Environment Act 1987* is \$3,998. This fee will be covered by existing operating budget.

Community Engagement

- Consultation will be undertaken when public exhibition of a future planning scheme amendment to consider permanent heritage controls occurs.

Officer Declaration of Conflict of Interest

- The *Local Government Act 2020* requires members of Council staff, and persons engaged under contract to provide advice to Council, to disclose any direct or indirect interest in a matter to which the advice relates.

MOTHER OF GOD CHURCH, IVANHOE EAST - INTERIM HERITAGE PROTECTION cont'd

- Council officers involved in the preparation of this report have no conflict of interest in this matter.

ATTACHMENTS

Nil