

**1.2 1041 CENTRE ROAD, OAKLEIGH SOUTH
BUILDINGS AND WORKS TO CONSTRUCT A NINE STOREY BUILDING, TO BE USED
FOR ACCOMMODATION AND RETAIL PREMISES, DISPLAY OF SIGNAGE,
ALTERATION OF ACCESS TO A ROAD IN A TRANSPORT ZONE 2 AND REDUCTION
OF THE CAR PARKING REQUIREMENT
(TPA/53095)**

Responsible Acting Director: Catherine Sherwin

RECOMMENDATION

That Council note:

1. On 10 June 2022, the Director City Development, having first notified Councillors in writing on the 8 June 2022, determined to issue a Notice of Decision to Refuse to Grant a Permit at 1041 Centre Road, Oakleigh South for buildings and works to construct a nine storey building with two levels of basement, to be used for accommodation and retail premises, display of signage, alteration of access to a Road in a Transport Zone 2 and reduction of the car parking requirement.
2. The decision of the Director City Development was exercised under Council's Instrument of Delegation which states: *Any application where officers consider that a failure to determine an appeal to the Victorian Civil and Administrative Tribunal (VCAT) is likely and/or imminent may be refused by the Director City Development (or their delegates). The Director City Development will advise councillors when this is proposed.*
3. The application was refused based on the following grounds:
 - 1) The height and massing of the proposed development is excessive and will result in a poor urban design outcome.
 - 2) The proposed scale and form of the development is excessive, unjustified and fails to achieve high quality design and architectural excellence.
 - 3) The proposal would have a poor level of internal amenity for future residents.
 - 4) The proposal is considered an overdevelopment of the land.
 - 5) The development does not provide for adequate or appropriate pedestrian links and landscaping outcomes.
 - 6) The proposal is inconsistent with the built form objectives, policy and decision guideline of Clause 22.03.
 - 7) The proposal is inconsistent with the decision guidelines of Clause 34.01-8.
 - 8) The proposal is inconsistent with design objectives and decision guidelines of Design and Development Overlay Schedule 1.

- 9) The proposal is inconsistent with design objectives and decision guidelines of Design and Development Overlay Schedule 1.
- 10) The proposal does not meet the following objectives of Clause 58 of the Monash Planning Scheme:
 - 58.02-1 - Urban Context
 - 58.02-2- Residential policy
 - 58.02-3-Dwelling diversity
 - 58.02-5- Integration with the street
 - 58.03-4- Safety
 - 58.07-1 Functional layout

INTRODUCTION

The purpose of this report is to advise Council that Planning Application TPA/53095, which proposes to construct a nine storey building to be used for accommodation and retail premises, display of signage, alteration of access to a Road in a Transport Zone 2 and reduction of the car parking requirement at 1041 Centre Road, Oakleigh South, was refused under delegation on 10 June 2022.

BACKGROUND

The application would ordinarily be required to go to a Council meeting for a decision as the cost of development exceeds \$3.5 million (cost of development \$49 million). As such, the planning application was scheduled to be brought to the 27 July 2022 Council meeting.

The applicant was advised that Council officers were not supportive of the proposed development and that a report was being prepared for the July Council meeting with a recommendation for a refusal. Officers had provided the applicant many opportunities to address the concerns throughout the application process, however this has not been achieved.

The applicant indicated to the planning officer that the 60 day statutory period would end before the 26 July 2022 Council meeting and that they intended to lodge an application to VCAT for a Failure to Determine the application.

Understanding this, Councillors were notified on 8 June 2022 by the Director City Development that it was intended to refuse the application, to avoid the failure appeal and that we were making this decision under the following section of the instrument of delegation:

- *Any application where officers consider that a failure to determine an appeal to the Victorian Civil and Administrative Tribunal (VCAT) is likely and/or imminent may be refused by the Director City Development (or their delegates). The Director City Development will advise councillors when this is proposed.*

The notification flagged officers intention to utilise the delegation to refuse the application, given a failure appeal was imminent.

Subsequently, the application was refused on 10 June 2022 by the Director of City Development, and the application was determined within the statutory timeframe.

Following the receipt of Council's refusal notice, the applicant advised Council officers that a failure to determine appeal had been lodged to the Victorian Civil and Administrative Tribunal (VCAT), one day before Council issued the refusal notice.

Council officers then wrote to the Tribunal to indicate that the application was determined within the statutory timeframe and the failure to determine appeal application was premature. A Practice Day Hearing occurred on 15 July 2020 to determine the legitimacy of the failure to determine appeal. At the Practice Day Hearing the applicant decided to amend their application to an appeal against Council's refusal.

DISCUSSION

The attached officer report includes a detailed discussion of the proposal, and the assessment against the relevant State, Regional and Local planning policies. The conclusion of the report is to refuse the application.

There were 69 objections received to the application and key issues included:

- The proposed building height is excessive within the Oakleigh South Neighbourhood Activity Centre.
- The design of the proposal fails to achieve an acceptable urban design outcome.
- The proposal fails to comply with the Design Standards in Clause 58 resulting in poor internal amenity outcome and poor integration with the street.

CONCLUSION

Planning application TPA/5395 was refused under delegation as officers had been made aware that a failure to determine appeal to the Victorian Civil and Administrative Tribunal (VCAT) was likely and imminent. Utilising this part of the instrument of delegation allowed officers to make a decision within the 60 statutory time period and avoid a failure appeal

The attached delegate report details the proposed planning application, public notification (69 objections received), assessment against the Monash Planning Scheme and reasons for the refusal notice issued.

It is noted that the refusal has been appealed at VCAT, and this report is for Council to note the decision made under delegation.

LIST OF ATTACHMENTS:

Attachment 1 – Proposed Development Plans

Attachment 2 – Delegate Report

Attachment 3 – Notice of Decision to Refuse to Grant a Permit.