

## 5 Ordinary Business

### 5.1 T230400 PA - Subdivision of Land

**Responsible GM:** Lili Rosic  
**Author:** Lisa Hall

#### Recommendation

That Council resolve to issue a Notice of Decision to Refuse to Grant a Permit for Planning Permit Application T230400 for subdivision of land on the following grounds:

1. The application is not generally in accordance with the Officer Precinct Structure Plan

#### Attachments

1. T230400 PA - Delegate Report [5.1.1 - 9 pages]

#### Application Details

<b>APPLICATION NO.:</b>	T230400
<b>APPLICANT:</b>	Human Habitats for Rosa Dell'Aquila
<b>LAND:</b>	Lot A PS836962B, 64 McMullen Road, Officer (future Lot B PS845098R 90 Pratincole Boulevard)
<b>PROPOSAL:</b>	Subdivision of land
<b>PLANNING CONTROLS:</b>	Urban Growth Zone Schedule 3 Officer Precinct Structure Plan
<b>NOTIFICATION &amp; OBJECTIONS:</b>	The application was not advertised on the basis that a permit cannot be granted
<b>KEY PLANNING CONSIDERATIONS:</b>	Application is not in accordance with the Officer Precinct Structure plan The land proposed for subdivision for housing is nominated as land for a future government school in the Officer PSP
<b>REASON FOR MEETING:</b>	Refusal
<b>RECOMMENDATION:</b>	Notice of Decision to Refuse to Grant a Permit

#### Executive Summary

The application proposes residential subdivision of land, which is identified for a future school site in the Officer Precinct Structure Plan. The application is not generally in accordance with the Officer Precinct Structure Plan and as such a permit cannot be granted, as set out by the provisions of the Urban Growth Zone.

## APPLICATION FOR CONSIDERATION DELEGATE REPORT



<b>Application</b>	Type	Subdivision of land	
	Number	T230400	
	Preamble	Subdivision of land	
	Correct in Open Office	<input checked="" type="checkbox"/> Application Number <input checked="" type="checkbox"/> Preamble <input checked="" type="checkbox"/> Application Category <input checked="" type="checkbox"/> Fee Schedule Classes	
<b>Applicant</b>	Developer	Rosa Dell'Aquila (owner)	
	Organisation	Human Habitats	
	Name	Joe Grech	
<b>Date Received</b>	11 August 2023		
<b>Section 50/50A/57A Amendment</b>	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Yes, date:	
<b>Statutory Days</b>	➤ 60 Days		
<b>Planner</b>	Lisa Hall		
<b>Land</b>	Address	Lot A PS836962B, 64 McMullen Road, Officer (future Lot B PS845098R 90 Pratincole Boulevard)	
	Property No.	5000030509	
	Applied PSP	Officer	
	PSP No.	262	
<b>Zoning</b>	Head Zone	Urban Growth Zone Schedule 3 (UGZ3)	
	Applied Zone	General Residential Zone (GRZ) Commercial 1 Zone (C1Z)	
	Overlay/s	Development Contributions Plan Overlay Schedule 4 (DCPO4)	
<b>Aboriginal Cultural Sensitivity</b>	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes, a CHMP is:	
		<input checked="" type="checkbox"/> Not required (not within an area of cultural sensitivity)	<input type="checkbox"/> Required <CHMP no.>
<b>Bushfire Prone Area</b>	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	
<b>Section 55 Referrals</b>	<input type="checkbox"/> None	<input checked="" type="checkbox"/> Yes, list below:	
	<input checked="" type="checkbox"/> APA Group <input type="checkbox"/> APA VTS <input checked="" type="checkbox"/> AusNet Services <input type="checkbox"/> AusNet Transmission <input type="checkbox"/> Beach Energy <input type="checkbox"/> Country Fire Authority <input type="checkbox"/> Department of Energy, Environment and Climate Action	<input type="checkbox"/> Department of Education and Training <input type="checkbox"/> Department of Transport (DoT/VicRoads/PTV) <input type="checkbox"/> Environmental Protection Agency <input checked="" type="checkbox"/> Melbourne Water <input checked="" type="checkbox"/> South East Water <input type="checkbox"/> VCGLRI	
<b>Title Restrictions</b>	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Yes, <details>/discussed below.	
<b>Current Use/Development</b>	Vacant grassland		
<b>Recommendation</b>	<input type="checkbox"/> Permit		

	<input type="checkbox"/> NOD	
	<input checked="" type="checkbox"/> Refusal	
Ward Councillor communications	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Yes, item in Councillor Bulletin.
Naming Convention Applied to SharePoint File	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
Plans for Endorsement	<input type="checkbox"/> No, amended plans required	<input checked="" type="checkbox"/> N/A refusal

### Proposal

The proposal is for subdivision of land into 33 lots ranging from 278sqm to 574sqm in size.



### Subject Site & Locality

An inspection of the site and the surrounding area has been undertaken. The title is an irregular shaped parcel of 2.758ha and is located to the east of Starling Road and south of the Pratincole Boulevard (unconstructed). No vehicular crossovers to the land are existing and the site contains grassland and is predominately flat.



The land has approval for subdivision into two lots (Permit No. T210481) creating a 1.218ha parcel fronting Starling Road (64 Starling Road) and a 1.540ha parcel (90 Pratincole Boulevard) being the application site.



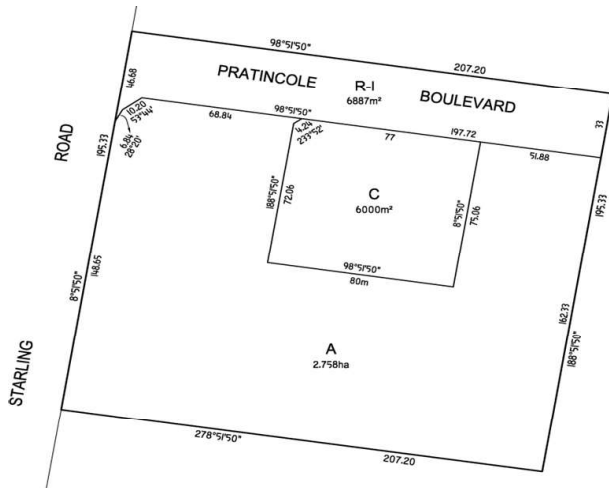
<b>North</b>	Unconstructed Pratincole Boulevard and a vacant 6000sqm parcel (80 Pratincole Boulevard - future community centre site) are located to the north of the land. Land to the north of Pratincole Boulevard contains Heritage College.
<b>South</b>	Land to the south has approval for residential subdivision and the associated road network, including proposed Bushlark Avenue which will run east-west along the southern boundary (Permit No. T170524).
<b>East</b>	A 1.96ha hectare parcel, containing some shedding is located to the east of the land. An application for subdivision is currently under consideration for this site (Application No. T230399).

<b>West</b>	The western portion of the subject land and Starling Road are located to the west.
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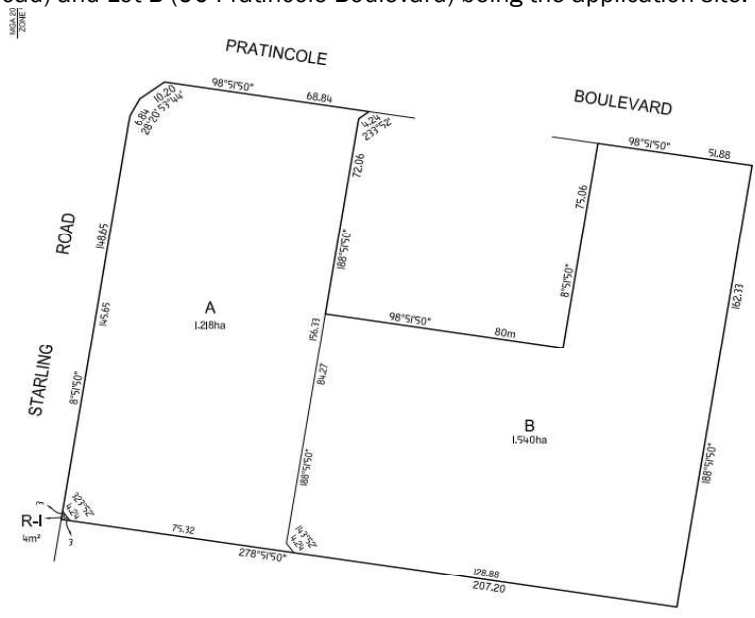
**Permit/Site History**

The history of the site includes:

- The subject title was created via a Section 35 plan registered 19 January 2021 which also created Pratincole Boulevard to the north and a 6000sqm lot (future community centre site).



- Planning permit T210481 was issued 9 December 2021 for ‘Subdivision of land into two (2) lots generally in accordance with the approved plans’. This permit will create Lot A (64 Starling Road) and Lot B (90 Pratincole Boulevard) being the application site.



A permit application is currently being considered on Lot A (above) for residential subdivision/development and creation of a commercial superlot.

The history of the application includes:



- Sending a letter to the applicant advising them to withdraw the application as the proposal is not generally in accordance with the Officer PSP and as such no permit can be granted. The applicant declined this request as they believe there is sufficient ground on which Council can review and make a decision on the application.

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## Planning Scheme Provisions

### Zone

The land is subject to the Urban Growth Zone Schedule 3 with the applied zone being the General Residential Zone and Commercial 1 Zone. The Commercial 1 Zone applies to the north-west portion of the land, outside the proposed residential subdivision application area.

### Overlays

The land is subject to the Development Contribution Plan Overlay Schedule 4.

### Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- 11.01-1R Settlement – Metropolitan Melbourne
- 11.02-1S Supply of Urban Land
- 11.02-2S Structure Planning
- 11.02-3S Sequencing of Development
- 11.03-2S Growth Areas

### Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- 21.03-3 Urban Growth Area
- 21.05-6 Community Services and facilities

### Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Officer Precinct Structure Plan
- Officer Native Vegetation Precinct Plan
- Officer Development Contributions Plan

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## Planning Permit Triggers

The proposal for subdivision requires a planning permit under the following clauses of the Cardinia Planning Scheme:

Class	Trigger	Fee
20	<p>Pursuant to Clause 37.07-10 of the Urban Growth Zone a planning permit is required to subdivide land.</p> <p>Pursuant to Clause 32.08-3 of the General Residential Zone a planning permit is required to subdivide land.</p> <p>Pursuant to Clause 34.01-3 of the Commercial 1 Zone a planning permit is required to subdivide land.</p>	\$1415.10.

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## Public Notification

The application does not satisfy the exemption listed at Clause 37.07-13 of the Urban Growth Zone regarding notice, which states:

*“An application under any provision of this scheme which is generally in accordance with the precinct structure plan applying to the land is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act., unless the schedule to this zone specifies otherwise”.*

The application was not advertised on the basis that a permit cannot be granted.

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## Referrals

The application was not referred externally or internally, on the basis that a permit cannot be granted.

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## Assessment

The application proposes residential subdivision of land, which is identified for a future school site in the Officer Precinct Structure Plan. The application is not generally in accordance with the Officer Precinct Structure Plan and as such a permit cannot be granted, as set out by the provisions of the Urban Growth Zone.

The Urban Growth Zone (UGZ) is located at Clause 37-07 of the Cardinia Planning Scheme and is divided into Part A and Part B. Part B applies to land where there is an existing precinct structure plan and contains Clauses 37.07-9 to 37.07-16.

Clause 37.07-10 of the UGZ states:

*A permit is required to subdivide land. Any requirement in the schedule to this zone or the precinct structure plan must be met.*

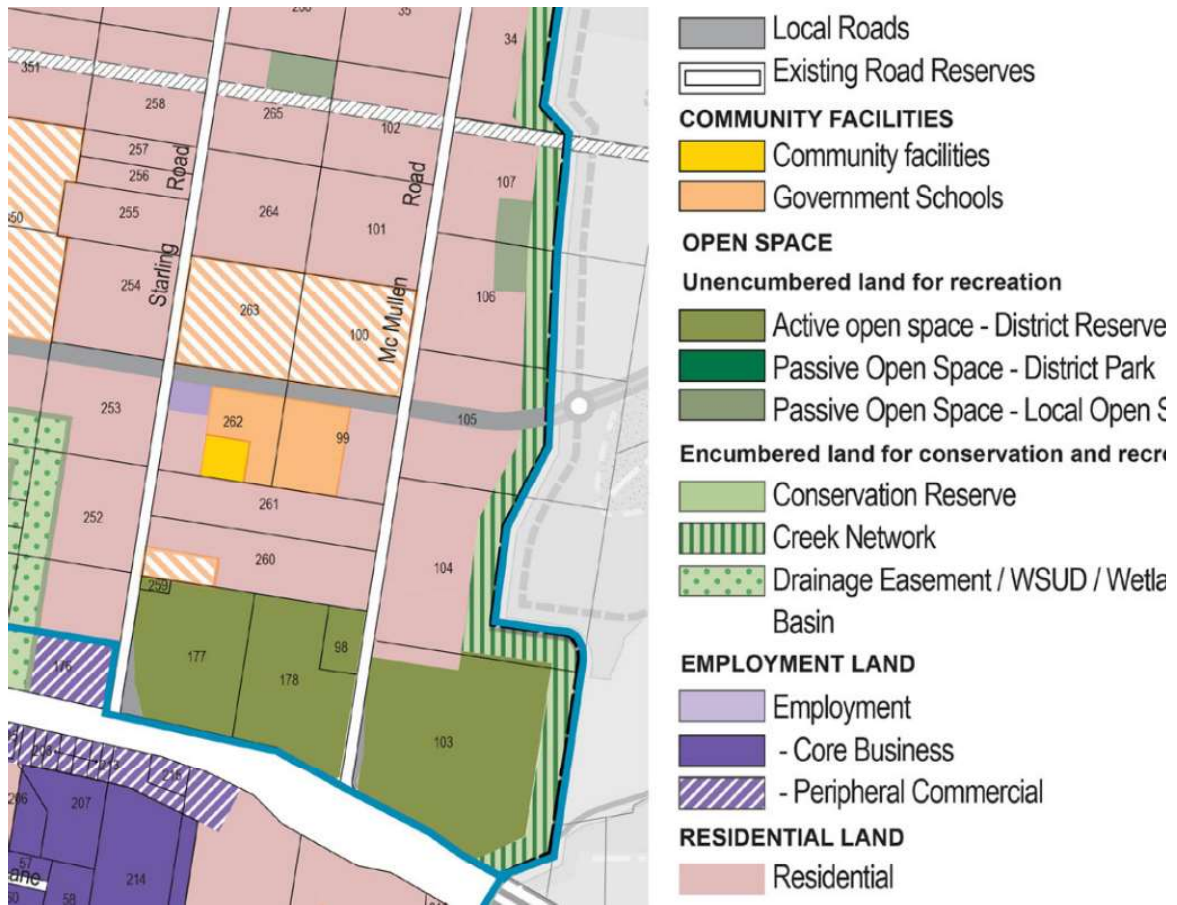
*A permit granted must:*

- *Be generally in accordance with the precinct structure plan applying to the land.*
- *Include any conditions or requirements specified in the schedule to this zone or the precinct structure plan.*

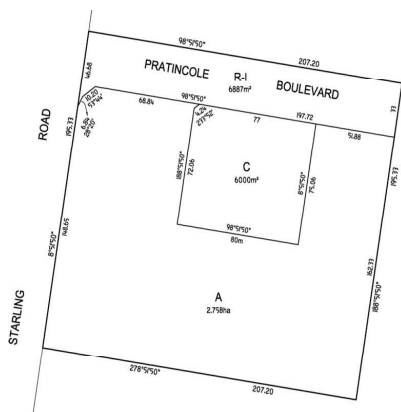
Previous VCAT decisions relating to ‘generally in accordance’ have established and accepted that:

- General accordance is a question of fact, to be assessed on the facts and circumstances of each case.
- The less precision there is in the primary document, the more flexibility is given by the phrase ‘generally in accordance with’.
- ‘Generally in accordance’ does not require the proposed development to be identical to that described in the development plan or incorporated plan.
- It is appropriate to read the development plan or incorporated plan as a whole when making this assessment, and to have regard to the objectives, responses and plans comprising the approved plan.

The subject land forms part of Property 262 in the Officer Precinct Structure Plan and contains a future government school, community facility, residential land, employment land and local road:

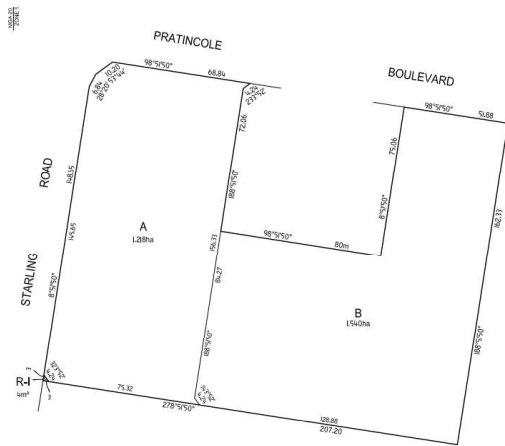


The subject land (Lot A), a 6000sqm lot (Lot C) and the local road (Pratincole Boulevard) were created under a Section 35 plan. This plan is considered to be generally in accordance with the precinct structure plan by creating a lot for a community facility (future community centre) albeit in a different location on the property to that shown in the PSP, the local road reservation and a balance lot for future government school, residential and employment.



Planning permit T210481 approves the subdivision of the land into two lots comprising Lot A (64 Starling Road) and Lot B (90 Starling Road). This plan is considered to be generally in accordance with the structure plan by creating a lot for future residential/employment development (Lot A) and a lot for the future government school (Lot B).





Planning application T220678 for residential subdivision/development and commercial superlot is currently being considered on Lot A (64 Starling Road). This application is considered to be generally in accordance with the precinct structure plan by creating residential subdivision/development and a lot for future employment.



The current application for residential subdivision of land identified for future government school is not considered to be in accordance with the structure plan when:

- Assessing the facts and circumstances of the current proposals and previous approvals.
- The precision of land-uses shown for the property (Property no. 262) in the structure plan which shows a government school on the land.
- Having regard to the structure plan as a whole and the objectives of providing community facilities, including government school sites as shown within the plan. The objectives contained within the structure plan for community facilities refer to the provision of schools, amongst other

services, 'as the population thresholds are reached and funding becomes available'. There is no evidence to suggest this school will not be required in the future as the Officer population continues to increase.

*Skerdero Pty Ltd v Cardinia SC (2014) VCAT 1334* involved a similar application within the Officer Precinct Structure Plan for proposed residential subdivision of a government school site (now known as Kurmile Primary School). The Tribunal directed that no permit be issued. In regard to 'generally in accordance' the Tribunal noted, in their view, it was perfectly obvious that the proposal does not accord with the structure plan, either generally or at all. They went on to advise where the structure plan denotes land as being proposed for a government primary school it is wholly incompatible with the structure plan for that land to be subdivided for residential purposes. The Tribunal decision highlighted that in accordance with Clause 37.07-10 a planning permit cannot be granted because there is no jurisdiction to grant it and the Tribunal is legally prohibited from granting a permit and cannot go on to determine the merits of the application presented. The same approach is considered appropriate in this instance.

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## Conclusion

The application is not generally in accordance with the precinct structure plan applying to the land. As such a permit cannot be granted pursuant to Clause 37.07-10 of the Urban Growth Zone.

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## Recommendation

That Council having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* in relation to Planning Application No. T230400 decides to Refuse to Grant a Permit in respect of the land known and described as Lot A PS836962B, 64 McMullen Road, Officer, for subdivision of the land, under the following ground:

1. The application is not generally in accordance with the Officer Precinct Structure Plan.

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Responsible Planner	Lisa Hall		
Signature			
Date	5/12/23		