

## 5.2 T230399 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 T230399 for subdivision of land on the following grounds:

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

### Attachments

1. T230399 PA - Delegate Report [5.2.1 - 7 pages]

### Application Details

<b>APPLICATION NO.:</b>	T230399
<b>APPLICANT:</b>	Human Habitats for Anwar Zakarya Nan
<b>LAND:</b>	Lot 1 PS819663J, 100 Pratincole Boulevard, Officer
<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 PSP. 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

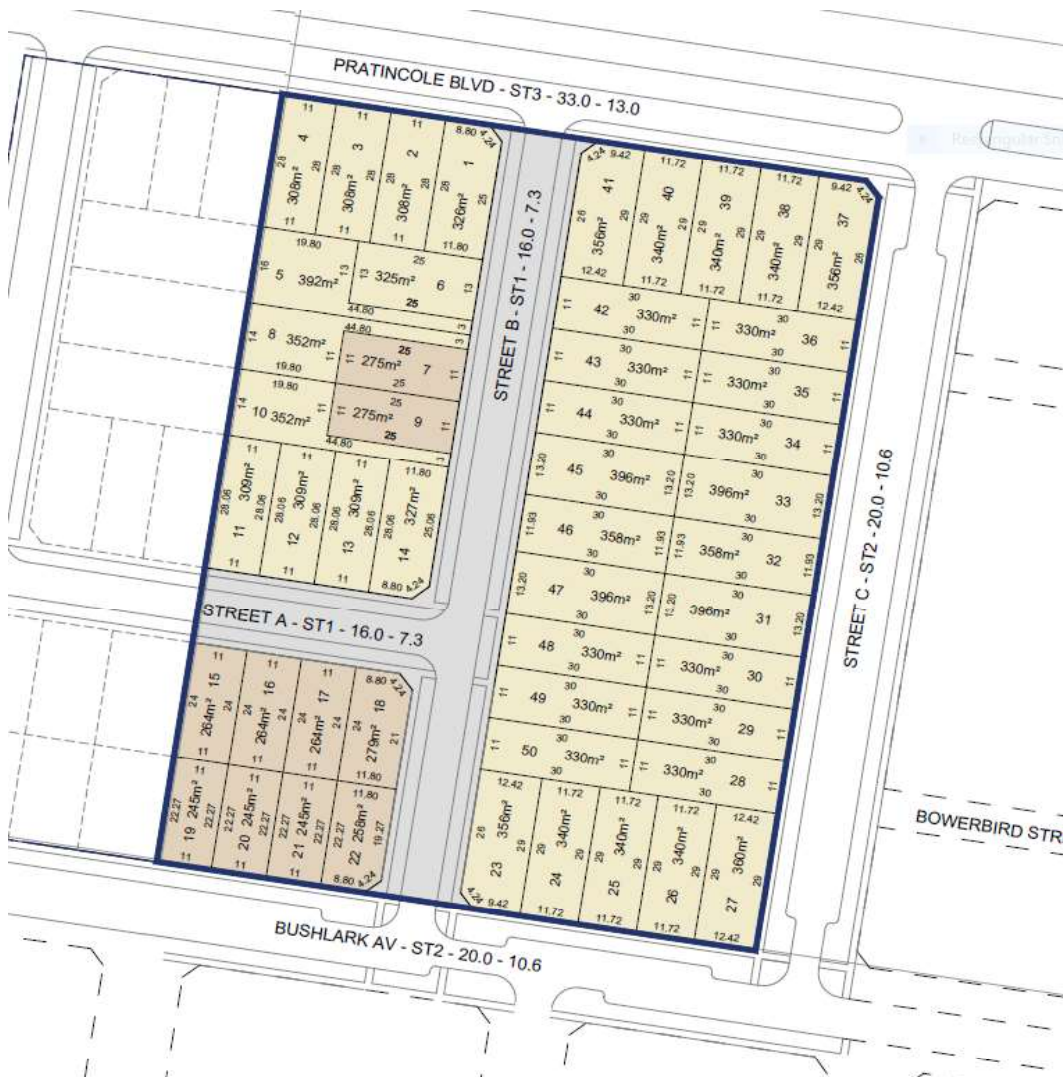


<b>Application</b>	Type	Subdivision of land	
	Number	T230399	
	Preamble	Subdivision of land	
	Correct in Open Office	<input checked="" type="checkbox"/> Application Number <input checked="" type="checkbox"/> Preamble <input checked="" type="checkbox"/> Application Category <input checked="" type="checkbox"/> Fee Schedule Classes	
<b>Applicant</b>	Developer	Anwar Zakarya Nan (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 1 PS819663J, 100 Pratincole Boulevard, Officer	
	Property No.	5000028346	
	Applied PSP	Officer	
	PSP Property No.	99	
<b>Zoning</b>	Head Zone	Urban Growth Zone Schedule 3 (UGZ3)	
	Applied Zone	General Residential Zone (GRZ)	
	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 type="checkbox"/> None	<input checked="" type="checkbox"/> Yes, S173 Agreement AS209847W. Relates to works in kind under Planning Permit T170373 (land for Pratincole Boulevard and land for the future roundabout at Pratincole Boulevard/McMullen Road).	
<b>Current Use/Development</b>	Existing shedding.		
<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 50 lots ranging from 245sqm to 396sqm in size and associated internal road network.

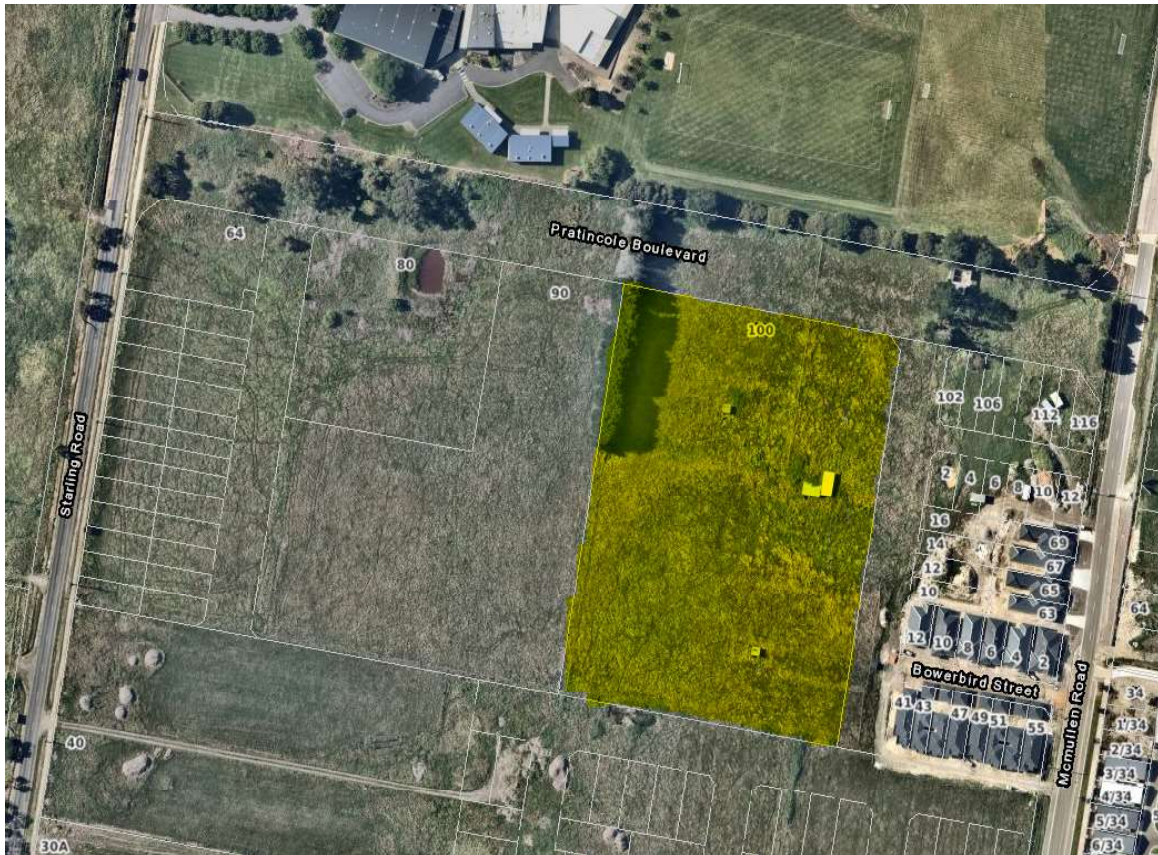


### Subject Site & Locality

An inspection of the site and the surrounding area has been undertaken. The site is located to the south of Pratincole Boulevard (unconstructed) between Starling Road and McMullen Road and is rectangular in shape and 1.960 hectares in size. No vehicular crossovers to the site are existing. The



site contains some existing shedding and some scattered vegetation and grassland and is predominately flat.



The main characteristics of the surrounding area are:

<b>North</b>	Unconstructed Pratincole Boulevard runs east-west along the northern boundary 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>	Land to the east is being developed for residential subdivision/dwellings and the associated road network, including a north-south road which will run along the eastern boundary (Permit No. T200662).
<b>West</b>	A vacant irregular shaped 2.758 hectare parcel is located to the west of the land. This land has approval for subdivision into two superlots Lot A (90 Pratincole) and Lot B (64 Pratincole) (Permit No. T210481). Lot B (64 Pratincole) has a current application under consideration for further subdivision (Application No. T220678).

### Permit/Site History

The history of the site includes:

- Planning permit T170373 issued 10 November 2017 for 'Subdivision of the land into two (2) lots and creation of a road reserve in accordance with the submitted plan' which created the subject lot.

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 decide 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.

### 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	Pursuant to Clause 37.07-10 of the Urban Growth Zone a planning permit is required to subdivide land.  Pursuant to Clause 32.08-3 of the General Residential Zone a planning permit is required to subdivide land.	\$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.*

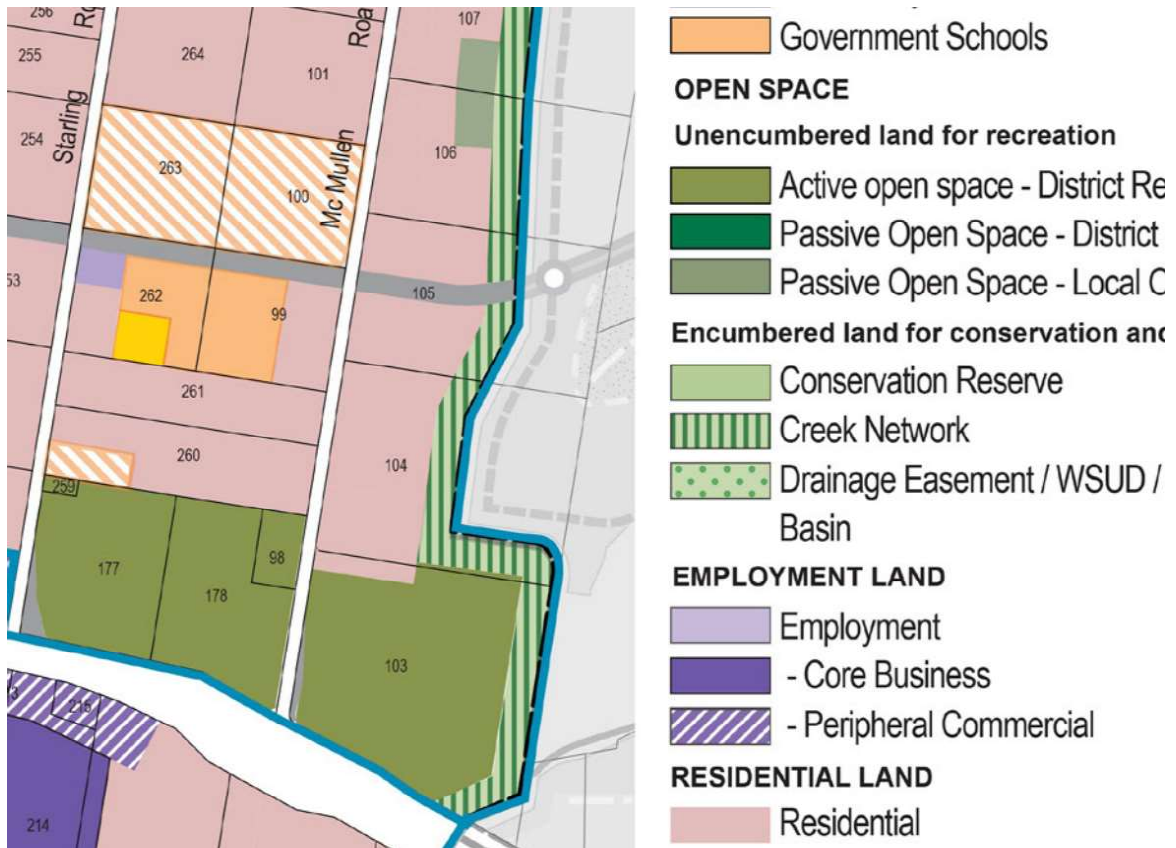
*A permit granted must:*

- *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.*

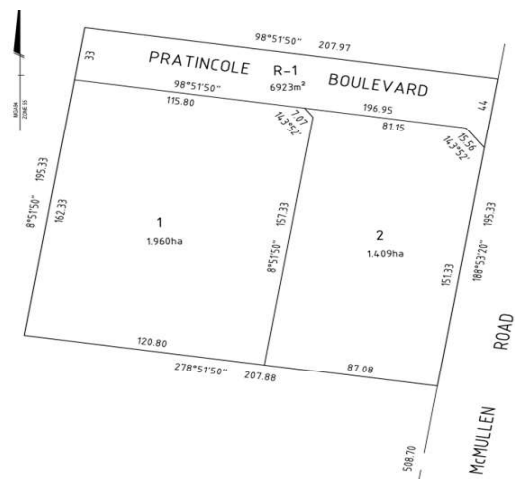
Previous VCAT decisions relating to ‘generally in accordance’ have established and accepted that:

- 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 99 in the Officer Precinct Structure Plan and contains a future government school, residential land and local road:



Planning permit T170373 created the subject lot (Lot 1), a lot to the east (Lot 2) and future local road at Property 99. This permit is generally in accordance with the precinct structure plan by creating a lot for the future school (Lot 1), a lot for future residential subdivision/development (Lot 2) and the road reservation. Planning permit T220662 approved for dwellings and subdivision on the lot to the east (Lot 2) is also generally in accordance with the PSP by creating residential subdivision/development (36 dwellings/lots) on land identified as residential.



The current application for residential subdivision of land identified for future government school (Lot 1) is not generally in accordance with the structure plan when:

- Assessing the facts and circumstances of the current proposal and previous approvals.



- The precision of land-uses shown for the property (Property no. 99) 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. T230399 decides to Refuse to Grant a Permit in respect of the land known and described as Lot 1 PS819663J, 100 Pratincole Boulevard, 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		