

Appendix T – Commercial 3 zone Practice Note (Victorian Government)

Applying the Commercial 3 Zone

Planning Practice Note 85

SEPTEMBER 2018

Purpose of the Practice Note

This practice note provides guidance about the application and operation of the Commercial 3 Zone. It explains:

- The purpose and strategic intent of the zone
- How to apply to the zone
- Elements of the zone
- Table of uses
- Using the schedule to the Commercial 3 Zone
- Other considerations

Strategic Intent and Purpose of the Zone

Plan Melbourne identifies that to remain competitive in a changing economy there is a need to boost productivity, and support growth and innovation across all industries and regions. This will be critical to Victoria enhancing its global competitiveness and creating the 1.5 million new jobs forecast to 2050.

The challenge of creating the jobs of tomorrow comes at a time when industries across the economic spectrum are going through major changes driven by globalisation, advances in technology, disruption of existing business models, and shifting social attitudes and ways of working.

The Victorian planning framework supports business growth and innovation by establishing a diversity of locations from which businesses can thrive. The provision of a sufficient supply of commercial and industrial land across the city is a critical part of this framework.

Plan Melbourne seeks to protect a number of Melbourne's older industrial areas and promotes the renewal of some older industrial areas for alternative employment activities such as offices, creative industrial and other employment generating activities. In planning for future employment growth *Plan Melbourne* supports the following actions:

- Addressing how metropolitan regional employment demand forecasts can be translated into floorspace requirement, land-use and zoning frameworks;
- Assessing the ongoing suitability of established industrial and commercial areas for different types of employment purposes; and
- Determining when such areas should be retained for employment purposes and when they should be considered for rezoning to mixed-use or residential purposes.

The Commercial 3 Zone is a new planning tool which can be applied to help facilitate business growth and innovation in select parts of Victoria. It is a mixed-use employment zone which is intended to facilitate the establishment and growth of creative industries, small manufacturers and start-up businesses. The zone promotes the creation of dense, economically diverse, affordable, accessible and amenity-rich precincts which are attractive to new and emerging businesses.

Reflecting these strategic intents, the purpose of the Commercial 3 Zone is to implement state and local planning policy by:



- Providing for a range of industrial, commercial, office and other employment generating uses which support the mixed-use employment function of the area.
- Promoting collaborative and high-quality working environments which support the area through good urban design and high amenity, accessible and well-connected places.
- Providing opportunities for limited retail uses which are complementary to the role and scale of the area.
- Providing the option for limited residential uses that do not undermine the primary employment and economic development focus of the zone.
- Facilitating the use, development and redevelopment of land in accordance with the objectives specified in a schedule to the zone.

How to Apply the Zone

The Commercial 3 Zone should be applied following an assessment of the role and function of employment land in the municipality and wider region. Assessments should evaluate the ongoing suitability of established industrial and commercial areas for different types of employment purposes, and determine whether such areas should be retained in an existing industrial or commercial zone, or whether the Commercial 3 Zone should be applied as a means of enabling broader mixed-use employment outcomes.

The Strategic Assessment Guidelines and Ministerial Direction No. 11 require a range of matters to be properly considered through a planning scheme amendment process.

Given that sensitive uses are a permit required use in the zone, a consideration in the application of the zone must involve Ministerial Direction No. 1 – Potentially Contaminated Land and the application of an Environmental Audit Overlay.

Other overlays relating to built form, car parking, developer contributions, environment and so on should also be considered by a planning authority at the time of applying the zone.

Elements of the zone

The Commercial 3 Zone has been created to complement the existing Commercial and Industrial Zones within the Victoria Planning Provisions.

The intent of the Commercial 3 Zone is to foster a diversity and critical mass of employment generating uses, provide affordable floorspace for such uses, and limit the displacement of employment

generating uses from productive areas.

The zone prioritises particular uses that form part of the emerging economy, particularly industrial, commercial/office and supporting services.

The nature of businesses operating within the emerging economy is much more diverse than in the past, encompassing various types of creative industries, small-scale manufacturers and technology oriented start-up businesses. Whilst many of these businesses fall within the traditional definitions of 'office' or 'industry', there are others that more readily fall within other definitions under the VPPs, and some uses sit across multiple land use definitions.

For this reason, the Commercial 3 Zone provides for a wide diversity of employment uses 'as of right'. This includes Arts and craft centre, Education centre, Home based business, Industry (with the exception of most Clause 53.10 uses which are Section 2), Manufacturing sales, Market, Office, and Research centre.

The designation of these uses 'as of right' will enable the widest possible range of businesses operating within the emerging economy to establish without the need for a permit within the zone.

In many instances the zone will be applied to land presently zoned industrial or commercial, with the Commercial 3 Zone allowing new opportunities for businesses to establish that were previously prohibited or required planning consent. In this regard the Commercial 3 Zone is an enabling economic zone, reducing the planning burden for businesses aligned with the zone's purpose and intent.

The zone also allows a limited range of other uses (including accommodation, small-scale retailing, places of assembly, and warehouses) that have the potential to contribute to the amenity and economic vibrancy of the locality. Floor area thresholds have been applied to these uses to reflect their role as small-scale local facilities within a mixed-use employment context.

The intent of permitting such uses on a conditional basis is to allow a genuine mix of uses to establish over time, but to ensure that such uses do not end up displacing industrial and commercial/office uses from such areas. Such uses are expected to only form a minor part of the overall mix of land uses within the Commercial 3 Zone, and they need to be managed so as to not undermine the achievement of broader housing, retail and activity centre policies.



Table of Uses

The following guidance is provided in relation to particular land uses under the Commercial 3 Zone.

Industry

The Commercial 3 Zone provides for a wide range of low-impact industrial uses. A permit is not required for many low-impact industrial uses in this zone subject to such uses satisfying certain conditions and meeting nominated threshold distances. Industry uses listed in Clause 53.10 (Uses with Adverse Amenity Potential), can be considered through a permit assessment process, where the usual considerations for land use can be assessed by the responsible authority, including the consideration of off-site amenity impacts.

The Clause 53.10 listed uses of boiler maker, bakery, smallgoods production and joinery are permit not required uses so long as they meet the minimum threshold distances to dwellings and residential buildings within the zone as listed in Clause 53.10. These select uses align with the intent of the zone and have been deemed to have a lower detrimental impact on the amenity of an area.

Industrial related activities that allow enterprises to value add and remain competitive, such as Manufacturing sales are 'as of right' in the zone.

Retail uses

Employment areas that are attractive to businesses in the emerging economy require a higher-amenity retail and hospitality offer than traditionally provided in industrial areas. To address this issue, Food and drink premises up to 150 square metres, Market, and Art and craft centre are 'as of right' uses under the Commercial 3 Zone.

Permits can be granted for a Shop of up to 200 square metres. Setting the floorspace limit at this size will allow for a greater diversity of small scale retail activities within mixed-use employment precincts while still ensuring employment areas do not undermine established retail hierarchies in activity centres and/or unreasonably impact on the ability of industrial and commercial/office uses to establish in such areas.

Dwelling and Residential building uses

The primary purpose of the zone is to provide for a range of industrial, commercial, office and other employment generating uses.

In some instances the inclusion of limited residential uses within mixed-use developments may serve to complement the desired economic outcome of

the locality by providing activation, amenity and supporting new types of live-work development models. However, residential use is only intended to be permitted where it can be demonstrated that such uses will complement the employment and economic development focus of the zone.

The Commercial 3 Zone therefore places limits on residential uses (Dwelling and Residential building) to ensure that employment uses remain the primary function of the zone.

The use of land for Dwelling and Residential building requires a planning permit in the Commercial 3 Zone. A default condition attached to these uses specifies that the combined gross floor area of all dwellings and residential buildings must not exceed a maximum of 35 per cent of the gross floor area for any buildings on the lot.

The maximum gross floor area able to be used for residential purposes can be varied via the schedule to this zone.

A further condition restricts Dwelling and Residential building uses with a 4 metre frontage requirement to ensure that residential uses do not unreasonably occupy ground floor frontage areas that would otherwise be used by employment uses to activate street frontages. This condition cannot be varied.

Interpreting the residential use conditions

All dwellings and residential buildings in the zone must not exceed the maximum allowable gross floor area percentage requirement specified as a condition of the use in the zone (or as varied by a schedule to the zone). If an application for a planning permit for a residential use exceeds the maximum allowable gross floor area percentage requirement, then the use is prohibited in the zone.

The calculation of gross non-residential versus residential floor area should be based on all the total floor area associated with the respective non-residential or residential uses. For example, floor area associated with carparking spaces, access ways, foyers, corridors, etc. should be allocated to the use that they are intended to serve, and where such spaces are shared then they should be apportioned across the residential and non-residential use.

Using the schedule to the Commercial 3 Zone

The Schedule to the zone may specify objectives to be achieved for the area and that an alternate maximum allowable percentage of the combined gross floor area of all buildings on a lot for Dwelling



and Residential building uses can be nominated. The following guidance is provided in relation to these mechanisms.

Setting specific objectives in the zone schedule

A maximum of five specific objectives can be nominated in the zone schedule. These objectives are in addition to the overall purpose of the Commercial 3 Zone, and the inclusion of objectives is to provide supplementary direction in relation to the intended land use and development outcomes to be achieved in the area covered by the zone schedule. The schedule objectives should not repeat or contradict the purpose set out in the Commercial 3 Zone.

The following are some examples of the types of objectives that a planning authority might consider including in the zone schedule:

- To provide for a range of creative and knowledge based industries including advanced manufacturing, servicing, testing and analysis related industries which enhance the local and regional economy.
- To encourage office use and development for a range of small to medium scale enterprises including floor space for start-up businesses.
- To promote accommodation uses that support nearby research and development activities.
- To allow residential use and development in the upper levels of new buildings as specified in this schedule.
- To improve the urban environment, including connectivity and accessibility of the area and the

interface between the private and public realms.

Defining the gross floor area in a schedule and strategic justification for setting an alternative percentage

The Commercial 3 Zone applies a default maximum allowable gross floor area percentage requirement for residential uses of 35 per cent of the total gross floor area. This is broadly equivalent to an 'employment to residential' floor area ratio of 2:1 (i.e. the gross employment floor area must be at least twice the gross residential floor area).

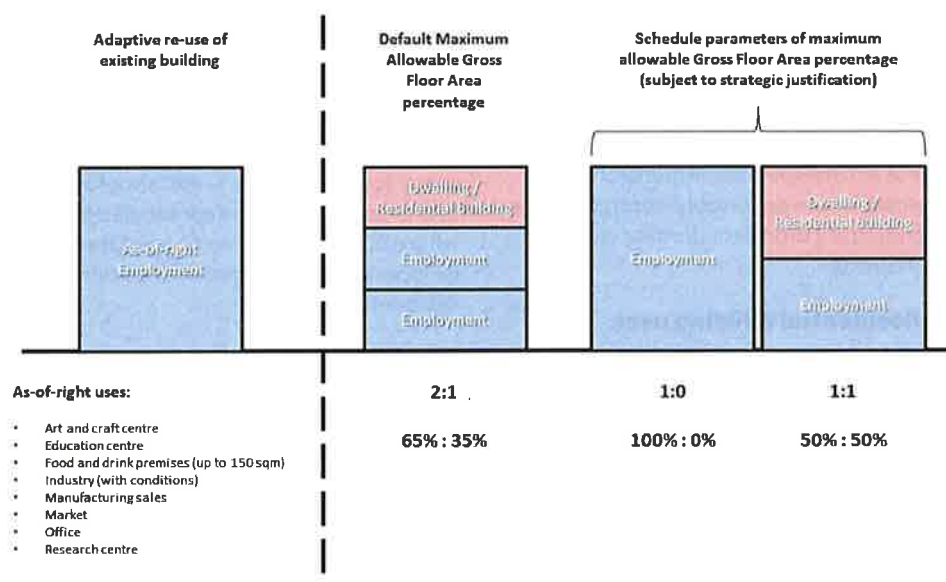
A schedule can specify a different percentage requirement and the schedule template in the Ministerial Direction on the Form and Content of Planning Schemes specifies the parameters for that content.

The schedule template does not allow the gross floor area of residential uses to exceed the gross floor area for employment uses on the land where the zone is applied (i.e. the maximum allowable gross floor area for residential uses cannot exceed 50 per cent of the total gross floor area). A strategic basis for amending the floor area ratio must be established through the planning scheme amendment process.

It is possible to specify a zero percentage requirement for residential uses in the schedule to the zone provided there is a strategic basis established through the planning scheme amendment process.

These parameters are shown below diagrammatically:

Land use and gross floor area percentage requirement





To apply a different maximum allowable gross floor area percentage requirement for residential uses, a strategic land use assessment should be completed which establishes why a different land use, economic and employment outcome is required to that permitted under the default zone.

The assessment should articulate the role and function of employment land in the municipality and wider region, and the specific economic role that the subject land is intended to play in this wider context.

Determining what the right mix of uses is for a given locality will necessarily need to be informed by consideration of what is required to support economic vibrancy and diversity in the area. Consideration should be given to current and emerging land use and economic trends in the locality, and the foreseeable market feasibility of relevant development models within that context.

If the overriding objective in employment areas is to retain affordable commercial and industrial floorspace and to increase the diversity and quantum of such floorspace, then it will be critical to tightly control the quantum of residential development in such areas. In some instances, it may be necessary to prohibit residential use if allowing it is likely to have the effect of displacing commercial/ industrial floorspace or undermining the economic basis of the area. In other circumstances, the introduction of residential floorspace might enhance the vibrancy of an area, and stimulate investment in mixed-use developments that can deliver affordable commercial or industrial floorspace that might not otherwise occur.

The community, landowners and other stakeholders should be engaged in the course of evaluating the particular circumstances of a place, and in defining the desired objectives and alternative floorspace ratios.

Other Considerations

Car parking requirements in the Commercial 3 Zone

Aligned with Planning Scheme Amendment VC148, a planning permit is not required under Clause 52.06-3 to reduce the car parking requirement for a new use in an existing building for up to 10 car parking spaces (subject to meeting specified conditions).

The car parking rates in Column B of Table 1 of 52.06 apply if any part of the land is identified as being within the Principal Public Transport Network Area as shown on the Principal Public Transport Network Area Maps (State Government of Victoria, 2018).

Buildings and works

A permit is required to construct a building or construct or carry out works subject to certain exemptions. The height of a storey at the ground floor level of all new buildings must be at least 4 metres measured from finished floor level to the ceiling so as to maintain building viability for employment uses and adaptability into the future.

Subdivision

A permit is required for the subdivision of land in the zone.

Decision Guidelines

A range of decision guidelines apply to applications including a "reverse amenity" decision guideline that seeks to ensure that:

- existing uses are not compromised by a new use or development; and
- a new use or development is designed to address amenity impacts from, and to, existing uses.

This is to be achieved through appropriate layout and design of a new use or development so as to minimise the potential for off-site impacts from noise, fumes, odour or vibration.

There are specific decision guidelines relating to both non-residential and residential uses. The intent of these decision guidelines is to enable employment uses to flourish where the zone is applied. Residential use in the zone is permissible in the zone but it is not 'as of right'. Rather, residential uses are expected to be permissible where it is demonstrated that such use complements and enables employment use and development to occur alongside it.

A decision guideline relating to noise, odour and vibration attenuation is included to help mitigate the impact of new use/development on existing uses.

Notice and review

An exemption from notice and review requirement applies to all applications for buildings and works and subdivision.

Advertising Signage Controls

Advertising signage controls are included and apply category 1 signage controls.

Planning publications

The following publications provide best practice guidance on planning for new precincts, statutory planning processes and drafting statutory documents (as relevant).



Planning for urban communities

- *Ministerial Direction No. 9 Metropolitan Planning Strategy*

Statutory planning processes

- *Using Victoria's Planning System (Department of Environment, Land, Water and Planning)*
- *Strategic Assessment Guidelines: Planning Practice Note 46 (Department of Environment, Land, Water and Planning, August 2018)*
- *Ministerial Direction No. 1: Potentially Contaminated Land*
- *Ministerial Direction No. 9: Metropolitan Planning Strategy*
- *Ministerial Direction No. 11: Strategic Assessment of Amendments*
- *Ministerial Direction - The Form and Content of Planning Schemes*

Further information

All Planning Practice Notes and Planning Advisory Notes are available on the department's website:

planning.vic.gov.au

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