

Applying the Commercial 3 Zone

Planning Practice Note 85

December 2022

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

- **The strategic intent of the zone**
- **How to apply the zone**
- **Land uses in the zone**
- **The schedule to the zone**

Strategic intent of the zone

Plan Melbourne explains 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 is critical to Victoria enhancing its global competitiveness and creating the 1.5 million new jobs forecast to 2050.

Creating new jobs is challenging when industries across the economy 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 facilitating diverse locations from which businesses can thrive including through the provision of a sufficient supply of commercial and industrial land across the city.

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 requirements, land use and zoning frameworks.
- Assessing the ongoing suitability of established industrial and commercial areas for different types of employment purposes.
- 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 can be used 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 that 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 that support the mixed-use employment function of the area.
- Promoting collaborative and high-quality working environments that support the area through good urban design and accessible, well-connected places with high amenity.
- Providing opportunities for limited retail uses that are complementary to an area's role and scale.
- 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.

Other overlays relating to matters such as built form, car parking, developer contributions and environmental impacts should also be considered by a planning authority at the time of applying the zone.

Land uses in the zone

The Commercial 3 Zone has been created to complement the existing commercial and industrial zones set out in the Victoria Planning Provisions (VPP).

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

Businesses in the emerging economy encompass various types of creative industries, small-scale manufacturers and technology-oriented start-up businesses. Traditional definitions of 'office' or 'industry' apply to many of these businesses, while others more readily fall within other definitions in the VPP and some uses sit under multiple land use definitions. For this reason, the Commercial 3 Zone provides for a wide range of employment uses 'as of right' (permit-not-required). This includes Arts and craft centre, Education centre, Home based business, Industry (except most clause 53.10 uses which are section 2 – permit-required uses), Manufacturing sales, Market, Office and Research centre.

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

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. The Commercial 3 Zone is an enabling economic zone that reduces the planning burden for businesses that are aligned with the zone's purpose.

The zone also allows a limited range of other uses (including Accommodation, small-scale retail, Place of assembly and Warehouse uses) 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 in 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, while ensuring that such uses do not displace 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 that they do 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 and Activities with Potential Adverse Impacts) 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

Employment areas that are attractive to businesses in the emerging economy require a higher-amenity retail and hospitality offering 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 in the Commercial 3 Zone.

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

Dwelling and residential building

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 and amenity and by 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 would 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. The table of uses applies two default conditions to these uses: a floor area condition and a frontage width condition.

- **Floor area condition**

This condition specifies that the combined gross floor area of all dwellings and residential buildings must not exceed 35 per cent of the gross floor area for any building on a lot.

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

If an application for a planning permit for a residential use exceeds the maximum allowable gross floor area, then the use is prohibited in the zone.

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

- **Frontage width condition**

A further condition restricts the frontage width of a Dwelling or Residential building to 4 metres to ensure that residential uses do not unreasonably occupy ground floor frontage areas that would otherwise be occupied by employment uses that would activate a street frontage. This condition cannot be varied.

Using the schedule to the Commercial 3 Zone

The schedule to the zone may specify objectives to be achieved for the area and a different maximum gross floor area for Dwelling and Residential building uses. Guidance on these mechanisms is provided below.

Setting specific objectives

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. Schedule objectives provide supplementary direction on the intended land use and development outcomes to be achieved for the area. 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 may be appropriate:

- To provide for a range of creative and knowledge-based industries including advanced manufacturing, servicing, testing and analysis related industries that enhance the local and regional economy.
- To encourage office use and development for a range of small to medium scale enterprises including floorspace 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.

Varying the residential gross floor area

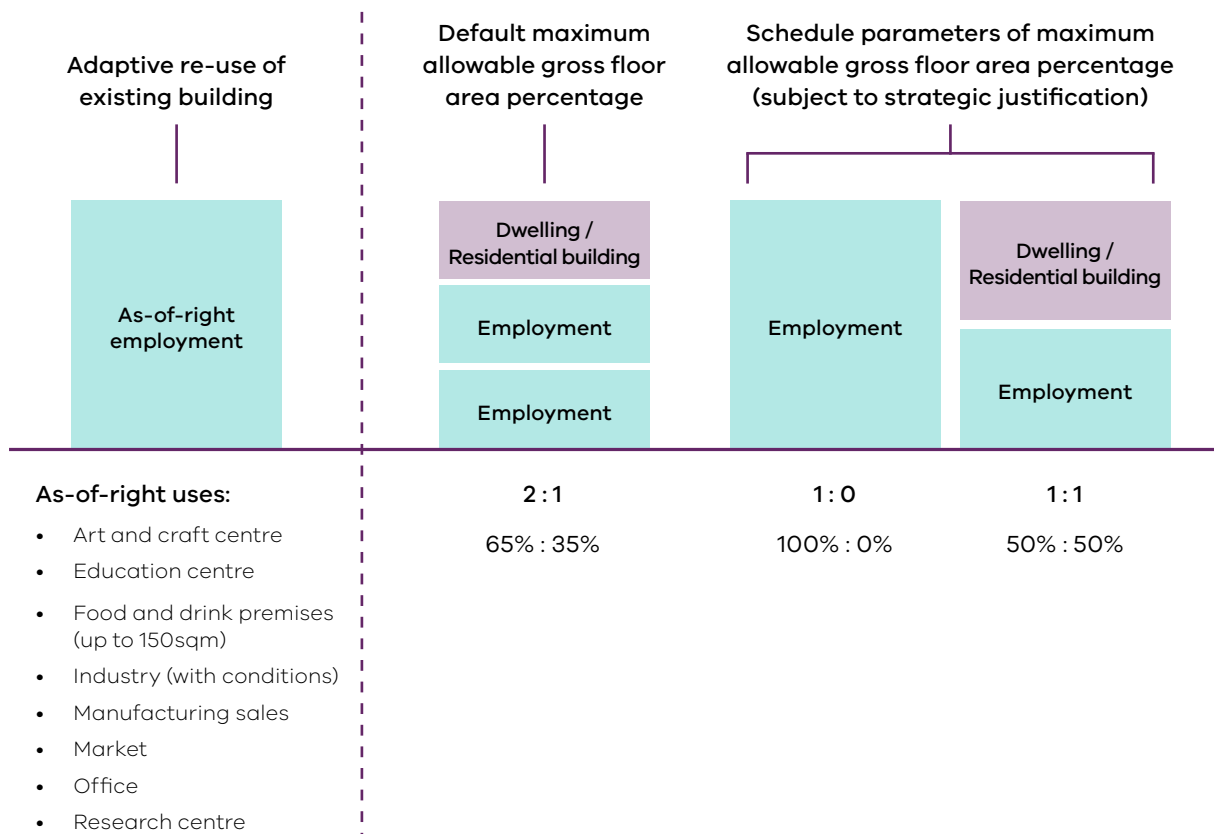
The Commercial 3 Zone applies a default maximum allowable gross floor area percentage of 35 per cent for residential uses. This is broadly equivalent to an employment to residential floor area ratio of 2:1 (i.e. the gross employment floor area must be at least twice the gross residential floor area).

A schedule can specify a different requirement, noting that the schedule template in the *Ministerial Direction – The Form and Content of Planning Schemes* prescribes a maximum allowable gross floor area of 50 per cent. This parameter prevents the gross floor area of residential uses from exceeding the gross floor area for employment uses on the land. 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 in the diagram below.

Diagram 1: Land use and gross floor area percentage requirement





To vary the zone requirement, a strategic land use assessment should be completed that 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 the right mix of uses for a given locality will necessarily be informed by requisites for 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 in 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 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 which deliver affordable commercial or industrial floorspace that might not otherwise be provided.

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

Other considerations

Car parking requirements in the Commercial 3 Zone

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 clause 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).

Subdivision

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

Buildings and works

A permit is required to construct a building or to 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, to maintain the viability of the building for employment uses and adaptability into the future.

Notice and review

An exemption from the notice and review requirement applies to applications for buildings, works and subdivision. The exemption does not apply to land within 30 metres of a residential zone or to land used for hospitals, together with land used for education in particular circumstances.

Decision guidelines

Specific decision guidelines apply to the assessment of permit applications including a guideline that seeks to ensure that:

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

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.

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

Signs

Signage controls are included and apply the category 1 provisions of clause 52.05.



Planning publications

For further information see planning.vic.gov.au to access the following guidelines and directions:

- *Practitioner's Guide to Victoria's Planning Schemes*
- *Using Victoria's Planning System*
- *Strategic Assessment Guidelines: Planning Practice Note 46*
- *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*
- Planning Practice Notes.

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