

Planning for buffers and separation distances *Consultation Report*

May 2019

Department of Environment, Land, Water and Planning

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<https://www.planning.vic.gov.au/policy-and-strategy/planning-for-buffers-and-separation-distances>

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The need for review

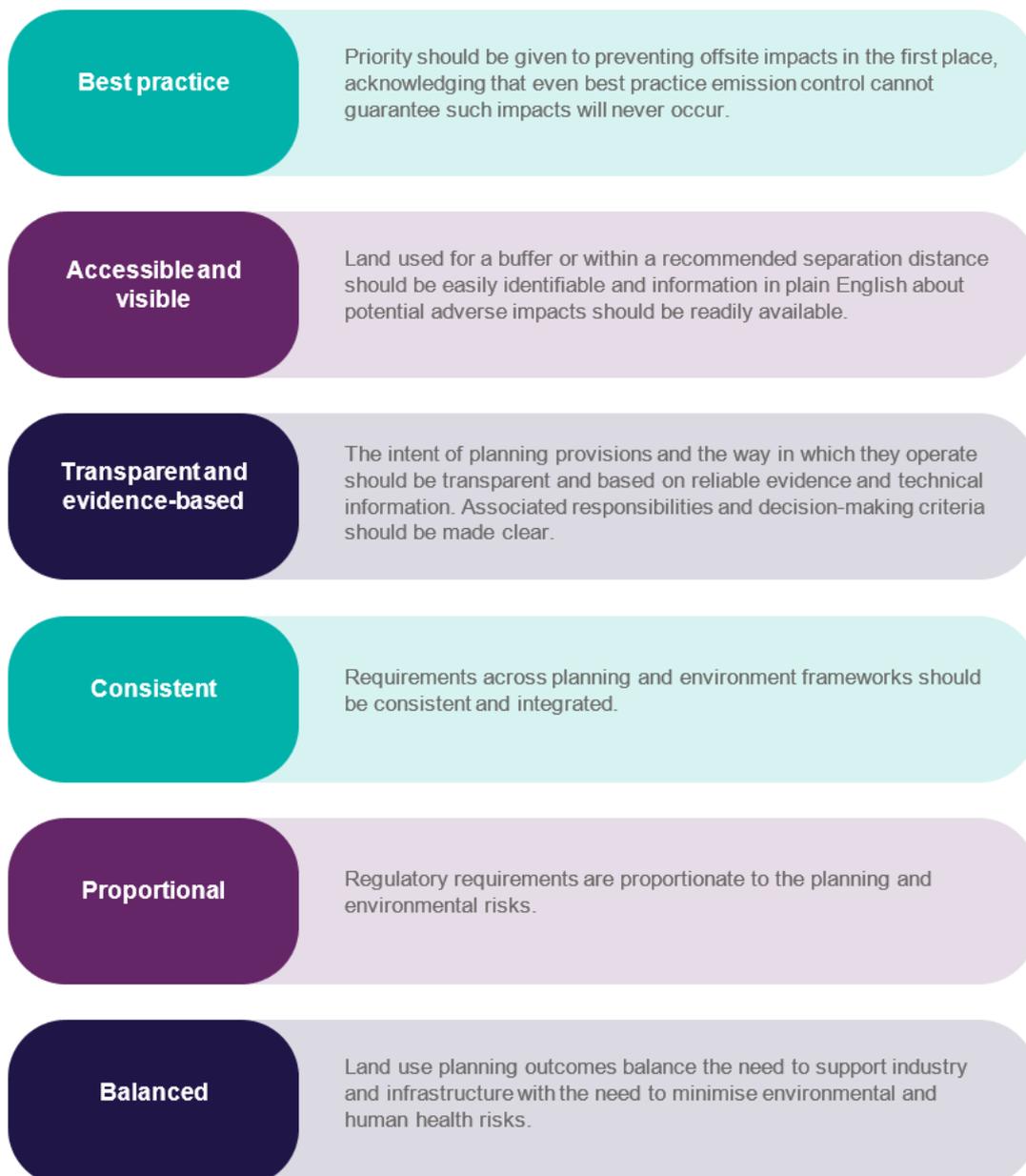
Managing the interface between industries and sensitive uses is a longstanding planning issue. Planning approaches to address buffer issues can vary, be complex and lead to inconsistent decision making.

In addition to the impact of land uses with offsite impacts on the amenity of sensitive uses, unplanned encroachment of sensitive uses can constrain the operation of industries.

Environmental Resources Management Australia Pty Ltd (ERM) was engaged to review how land use buffers and separation distances are currently managed in the Victorian planning system. The ERM technical report provided an assessment of the current planning policy and tools in the Victoria Planning Provisions (VPP) and analysed local and international case studies to understand how planning currently manages conflicting land uses.

Guiding principles

The following principles were identified to guide feedback and discussion about managing buffers and separation distances in Victoria and the future planning reforms.



Policy context

In 2016, the Major Hazard Facilities Advisory Committee made a number of recommendations to the Minister for Planning, including reform of Clause 53.10, in its Major Hazard Facilities Advisory Committee Final Report (July 2016).

Reviewing buffers is part of implementing Action 4 of the Government Response to the Major Hazard Facilities Advisory Committee (January 2018), which commits to reviewing threshold separation distances and the operation of Clause 53.10.

Recommendation 10.3 of the *Independent Inquiry into the Environment Protection Authority* (March 2016) also recommended developing strengthened land use planning mechanisms that establish and maintain buffers.

Action 98 of the *Plan Melbourne 2017-2050 Five-Year Implementation Plan* seeks to review and update guidelines for separation distances for sensitive uses.

Consultation process

Feedback was sought on 18 questions relating to planning for buffers and separation distances (see Appendix). The questions focused on planning policy, reverse amenity, improvements to zones, overlays and Clause 53.10 of the VPP and supporting advice and guidance. A technical report prepared by ERM was made available online to assist stakeholders in making a submission.

Public consultation was advertised by:

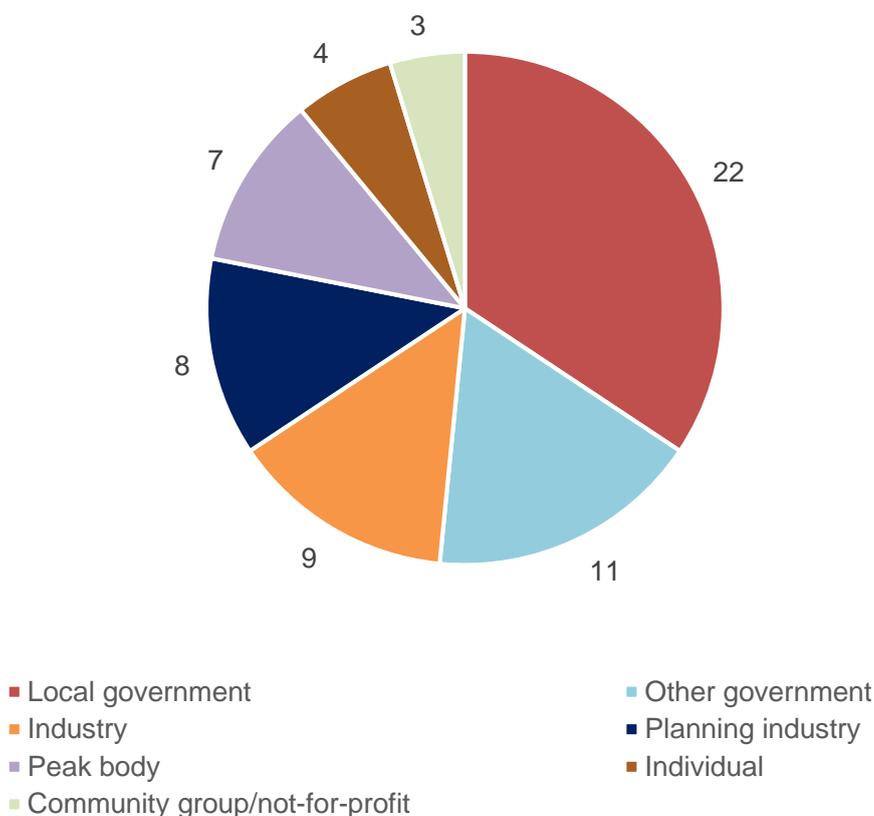
- Notifying planning directors at councils, submitters to the Major Hazard Facilities Advisory Committee and stakeholders who attended a workshop on planning for buffers and separation distances in August 2018.
- Publishing invitations in Planning Matters, a weekly planning update sent to over 5000 subscribers containing information on new planning scheme amendments, planning project updates and publications.
- Information on the home page of the DELWP Planning website.

Submissions opened on 20 December 2018 and closed on 15 February 2019. A number of late submissions were also accepted.

In total, 64 submissions were received.

Number of submissions by stakeholder group

Number of submissions by stakeholder group



What submitters said – Planning policy

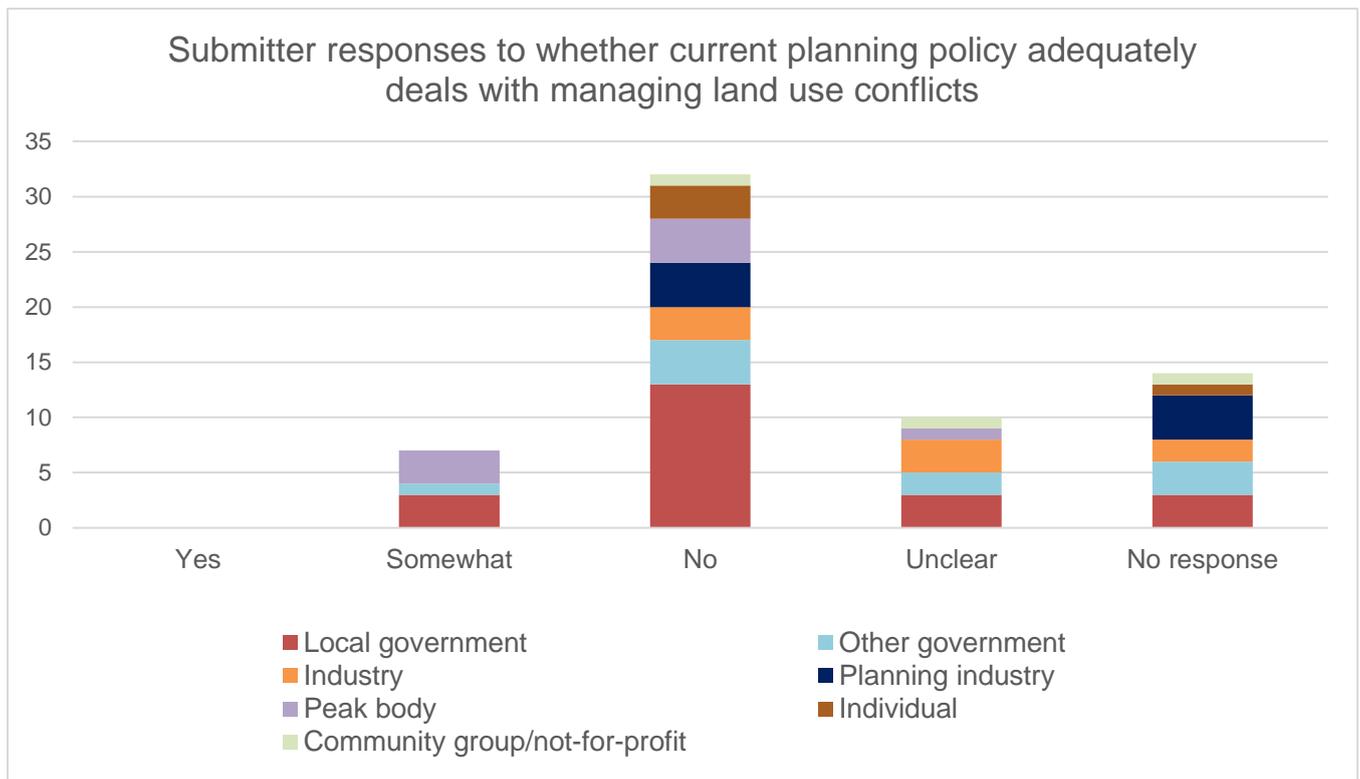
What submitters discussed in relation to planning policy

- Improving the Planning Policy Framework
- Linking policy to controls and mechanisms in the Victoria Planning Provisions
- Including reverse amenity in the planning scheme

Improving the Planning Policy Framework

Overall, submitters felt that existing planning policy does not adequately deal with managing land use conflicts. Some submissions highlighted the need to clearly articulate the rationale for buffers and how buffers should be applied. Submitters requested a review of all buffer-related requirements in the VPP and their associated guidelines to identify any gaps in guidance. Some submissions raised the need to more accurately reference and recognise critical infrastructure within the VPP to ensure their protection from incompatible sensitive use development, for example, water treatment plants and waste water treatment plants. Formal reference to relevant documents such as the EPA's *Best Practice Environmental Management – Siting, Design, Operation and Rehabilitation of Landfills* and Victoria's Waste and Resource Recovery Infrastructure Planning Framework was requested. Outdated references to EPA Publication 1518 *Recommended separation distances for industrial residual air emissions* (EPA IRAE guidelines) in the VPP were proposed to be updated to the most recent version to better integrate the planning and environmental protection frameworks.

Submitter responses to whether current planning policy adequately deals with managing land use conflicts



Linking policy to controls and mechanisms in the VPP

Some submissions raised the need to review policy throughout the planning scheme to ensure cohesion and flow of policy statements into zones, overlays, decision guidelines and incorporated documents. In some cases, the Planning Policy Framework identifies the need to protect certain industries or infrastructure, without any corresponding provisions in the VPP to help guide decisions. Competing objectives within the VPP also cause uncertainty about decision-making. Submitters identified the need for application requirements and decision guidelines to provide councils and other stakeholders more guidance on what is expected when an application is made and how it will be assessed.

Including reverse amenity in the planning scheme

Embedding reverse amenity within the planning scheme was considered critical by most submitters to help prevent inappropriate encroachment of sensitive uses. Many submitters raised the concern that current planning policy is not dealing with reverse amenity appropriately and that reverse amenity should be addressed. Submitters highlighted the importance of applying reverse amenity considerations at the planning permit stage as well as the rezoning stage. Submitters suggested that the introduction of a reverse amenity policy, planning controls and guidance into the VPP would strengthen councils' ability to assess applications, leading to better planning outcomes.

Overall, there was overarching support for including reverse amenity within planning policy, however, there were different views as to how it should be applied. Some submitters recommended the introduction of reverse amenity within Clause 53.10 or the Planning Policy Framework, while others called for a new overlay or reverse amenity buffer. Many submitters suggested a combination of tools depending on the situation. Various factors included importance of industry/infrastructure, severity of risk and whether the site is subject a legacy issue or greenfield site.

What submitters said – Reverse amenity

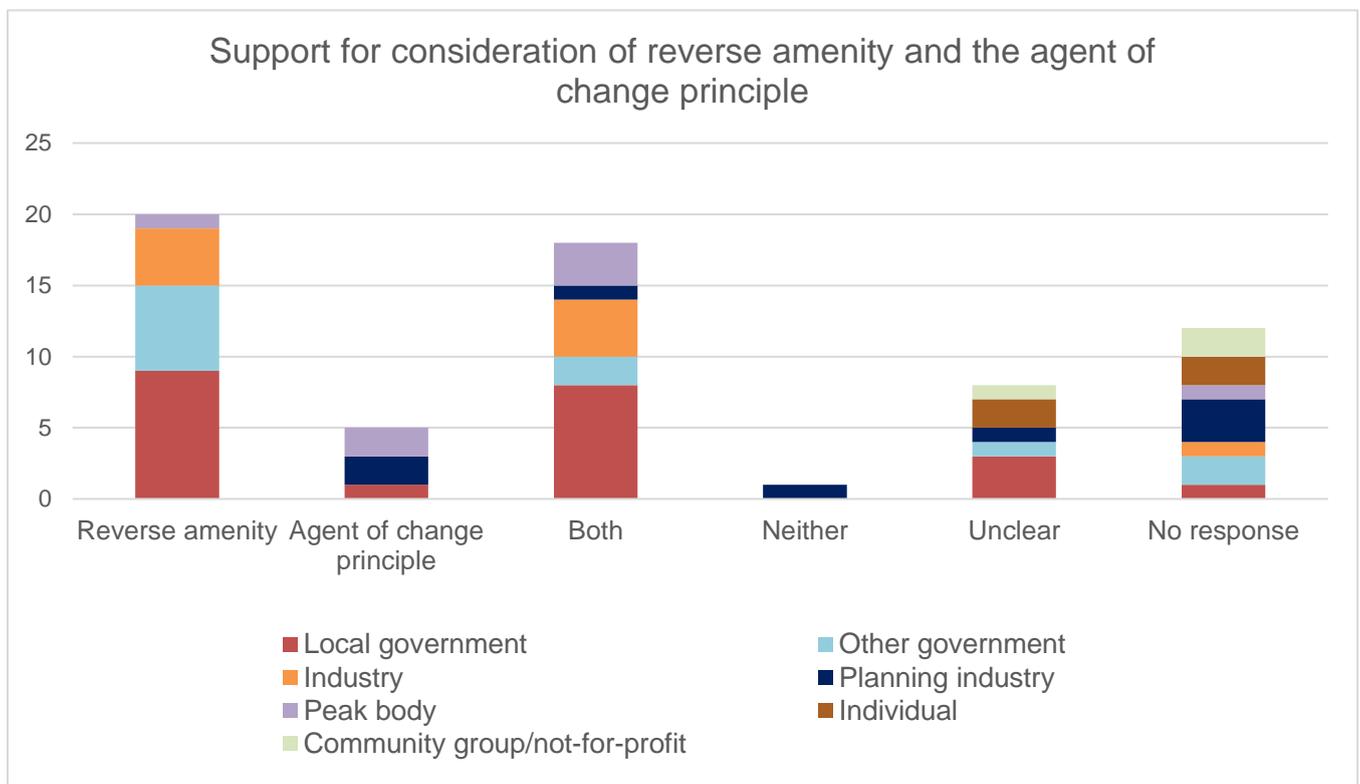
What submitters discussed in relation to reverse amenity

- Considering the agent of change principle
- Managing sensitive use encroachment in established areas with legacy impacts
- The need for consistency with EPA guidelines
- Defining sensitive uses
- Protecting certain industrial and infrastructure uses
- Determining ownership or control of buffers

Considering the agent of change principle

Inclusion of the agent of change principle in the planning system was often supported by submitters who also recommended reverse amenity. It was suggested that the agent of change principle would place onus on the proponent of new developments and recognise the right of existing uses to operate. The agent of change principle was regularly used interchangeably with reverse amenity in submissions. Similar concepts relating to implementation arose, with application of the principle within the VPP, Clause 53.10, buffers and overlays being suggested. It was suggested that the principle would require state and local government support to work.

Support for consideration of reverse amenity and the agent of change principle



Managing sensitive use encroachment in established areas with legacy impacts

A number of submitters suggested that sites where encroachment of inappropriate uses has already occurred should be considered separately from general buffer issues due to their complexity and sensitivity. However, submitters had different views as to how legacy sites should be managed. The majority of submitters suggested that legacy sites should be managed with a new overlay that imposes restrictions on development to prohibit intensification. In higher risk scenarios, submitters recommended restricting use as well as development. Some submitters suggested that development should be discouraged within the buffer distance through the use of a S173 agreement acknowledging the use of the land. Others suggested the onus should be placed on the EPA to ensure amenity impacts do not happen outside of the site, indicating that current zoning should be sufficient.

Consistency with EPA guidelines

A number of submissions identified the need to address the inconsistency between the EPA IRAE guidelines and Clause 53.10 in how they address reverse amenity. Unlike Clause 53.10, the EPA IRAE guidelines take into account the potential impacts of industry on sensitive land uses as well as the potential impacts of sensitive uses encroaching on industry. There was broad support for the reverse amenity and agent of change principles to be enshrined in both documents.

Defining sensitive uses

There is broad support for a consistent definition of sensitive uses in the planning scheme. Several submitters suggested categorising sensitive uses either by their type of use, level of sensitivity or the impact they are sensitive to. Some submitters recommended using existing sensitive use definitions, such as those defined in Australian Standards and by the EPA. Others suggested using existing definitions as a starting point to be expanded upon, creating a spectrum of sensitivity. Another option raised was defining incompatible uses rather than sensitive uses.

Protecting certain industrial and infrastructure uses

There was significant discussion about what industrial and infrastructure uses should be protected by reverse amenity. Industries and infrastructure raised included critical infrastructure, industries that provide economic value and important goods and industries that pose potential risk to amenity, life and property. Concern was raised over the potential to limit light industrial uses such as panel beaters, joiners, waste managers and commercial bakeries through onerous buffer distances. Many submissions raised that the EPA should be involved in determining which industrial and infrastructure uses should be protected.

Determining ownership or control of buffers

Many issues were raised about ownership or control of a buffer, including impact on planning objectives, fairness and the “polluter pays principle”. The majority of submitters suggested that the buffer should ideally be owned by the emitter but acknowledged that this scenario is not always possible, specifically in urban and legacy sites. A few submissions proposed compulsorily acquiring buffer land in this situation if there is a high risk of significant impacts. Many submissions suggested that the buffer should be controlled by the emitter or by the responsible authority. In greenfield scenarios, submitters recommended transitioning buffer ownership from the emitter to compatible uses upon the application of compatible zoning within the buffer.

What submitters said – Clause 53.10 improvements

What submitters discussed relating to Clause 53.10 improvements

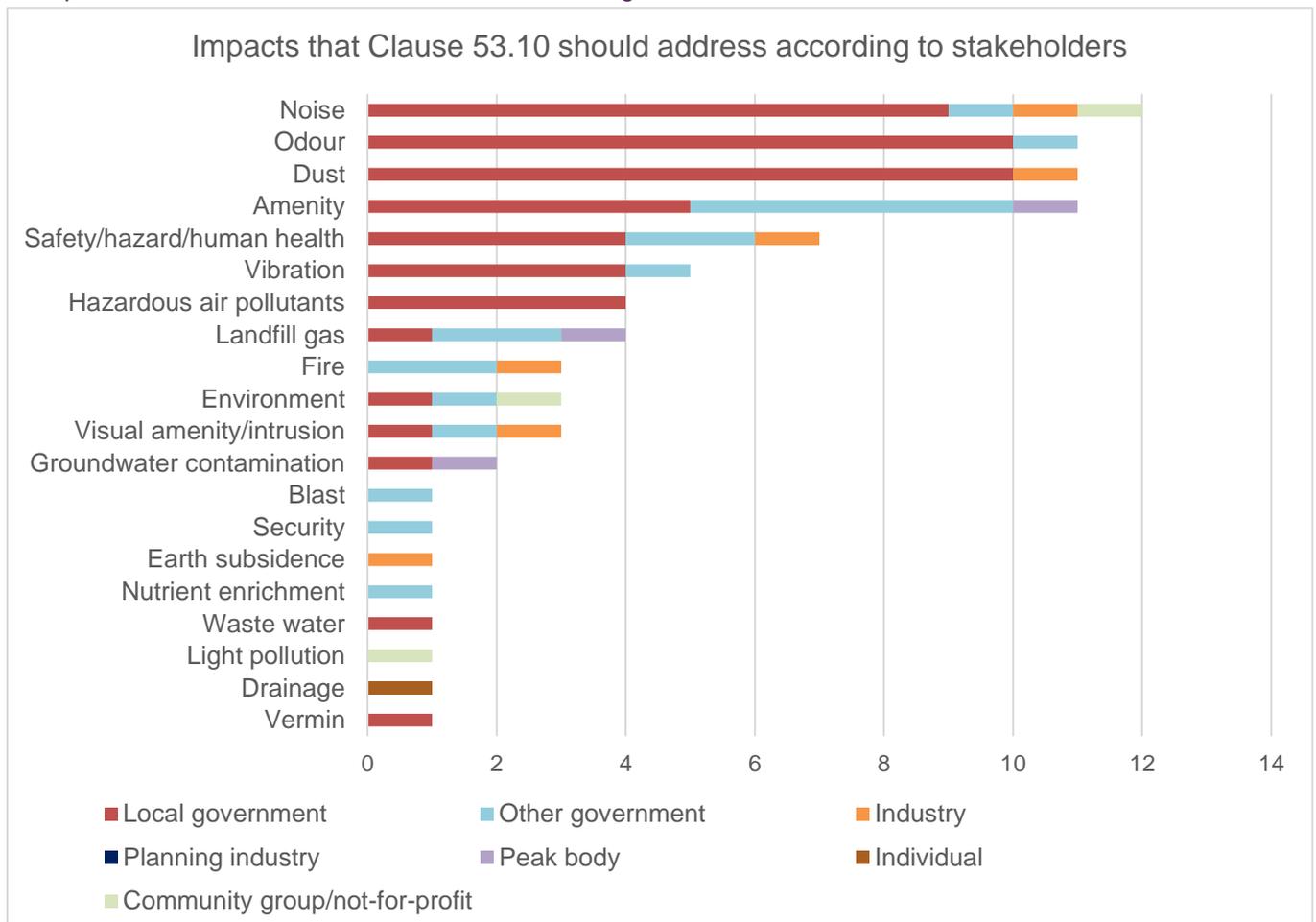
- The need to clarify and expand the scope of impacts
- The need to update the list of land uses
- The need to clarify the operation of threshold distances
- The need to clarify the operation of the provision
- The need to include consideration of reverse amenity in Clause 53.10
- The need to include application requirements and decision guidelines
- The need for consistency with various EPA guidelines
- The need to make Clause 53.10 land uses and threshold distances visible

Need to clarify and expand the scope of impacts

Submissions highlighted the need to be clear about what emissions or impacts Clause 53.10 addresses to avoid uncertainty, including resolving whether the clause aims to deal with protection of human life and property, or with amenity, or both. Overall, there was strong support for the clause to cover a wide range of amenity, safety, human health and environmental impacts. A number of specific impacts were identified by stakeholders.

One submitter suggested impacts relating to hazard could potentially be considered in a separate clause.

Impacts that Clause 53.10 should address according to stakeholders



Need to update the list of land uses

Many submitters raised the need to review the types production, use or storage listed in Clause 53.10 (referred to as “land uses” or “uses” in this document), given the redundant or changing nature of current uses and the exclusion of other uses that have potential for adverse impacts. The need for this update was framed by changes to industry and technology and the need to meet community expectations. It was suggested that the updated list of land uses should be consistent with the advice of expert agencies and be reviewed every few years. Land uses put forward to consider include:

- coal mining and extractive industry
- high pressure pipelines
- ‘cleanfill’ sites
- agriculture
- rural industry
- renewable energy facilities
- wastewater treatment plants.

The lack of a ‘catch-all’ provision for industries not captured in the list was raised as an issue.

There were different views about how land uses should be reflected in the clause. Some suggested that classifying land uses according to their level of adverse impact potential or their type and extent of activities could avoid the need for an exhaustive and prescriptive list of land uses. However, others supported referencing land uses individually as a more specific approach.

Many stakeholders advocated for land uses to be stratified based on scale of production or processes and the need to acknowledge smaller scale uses that adhere to modern standards, such as bakeries, microbreweries and coffee roasting facilities. At the other end of the spectrum, some stakeholders proposed that significant critical or major infrastructure and complex sites should be subject to a separate classification or provision.

Need to clarify the operation of threshold distances

A number of stakeholders indicated that clarification is needed on how distances are measured and applied, including standardising measuring practices. It was proposed that threshold distances should be modelled on upset conditions, rather than routine occurrences.

Significant discussion focused on the potential role of mandatory separation distances in Clause 53.10. Many submitters supported the idea of mandatory separation distances for land uses with the highest potential to detrimentally impact sensitive uses. While it was argued that mandatory separation distances would provide certainty, other stakeholders had concerns, including that mandatory distances may be challenged, may be inappropriate due to the ambiguity of land use terms and would be unlikely to be fair and reasonable. The operation of threshold distances to flag the need for closer consideration of a proposal or a scientific risk assessment was reinforced by some submitters.

Other comments raised the need for all land uses listed in Clause 53.10 to have a corresponding distance and one submitter suggested distances should be outlined in an incorporated document.

Need to clarify the operation of the provision

Submitters highlighted general difficulty locating and using Clause 53.10, and that its current provisions are not well understood and often not implemented. A holistic review and evidence-based approach is desired, and submitters raised the need for clarification of the purpose and title of the clause as a start. A prominent issue for submitters was the need to clarify referral requirements, including the operation of the references to Notes 1 and 2. One submitter suggested locating referral requirements in Clause 53.10 itself, rather than in Clause 66.

Many submitters called for better definitions of land uses listed in Clause 53.10 to make them more user-friendly and to align them with land use terms in Clause 73.03 of the VPP and definitions in the EPA IRAE guidelines.

Another key topic was the need for Clause 53.10 to take additional sensitive uses and zones into account. Currently the threshold distances in the clause refer to *“land (not a road) in a residential zone, Capital City Zone or Docklands Zone, land used for a hospital or an education centre or land in a Public Acquisition Overlay to be acquired for a hospital or an education centre”*. Suggestions provided by submitters were to include rural residential zones, Green Wedge Zone, Farming Zone, Commercial 1 Zone, Activity Centre Zone and child care centre.

Need to include application requirements and decision guidelines

Submitters strongly supported introducing application requirements and decision guidelines to provide information on what is expected with applications that trigger the requirements of Clause 53.10 and guidance on how applications will be assessed and decided. In particular, application requirements could require a risk assessment, report or similar to be prepared by a qualified professional to advise on risk mitigation for proposals. Submitters suggested that decision guidelines could ensure consideration of cumulative impacts, the precautionary principle, the obligation of the agent of change and the best practice environmental management to be utilised by the emitter.

However, it was suggested that inserting application requirements and decision guidelines in Clause 53.10 would be inappropriate, given its role as a reference for zones. It was instead suggested that any new application requirements or decision guidelines relating to Clause 53.10 should be included within the relevant zones.

Need for consistency with various EPA guidelines

Many submitters reinforced that consistency between Clause 53.10 and EPA guidelines is necessary. The need to clarify the relationship between Clause 53.10 and the EPA IRAE guidelines was raised, not just in terms of the threshold and separation distances, but also the inconsistency in how reverse amenity is addressed. However, some submitters emphasised the importance of recognising the different purposes of Clause 53.10 and the EPA IRAE guidelines. One submitter suggested application requirements or decision guidelines could have a role in requiring compliance with the EPA's State Environment Protection Policies (SEPPs) to be demonstrated.

The idea of consolidating Clause 53.10 with guidance documents produced by regulators was proposed as a way to ensure comprehensive understanding of all buffer requirements.

Need to make Clause 53.10 land uses and threshold distances visible

There was some discussion about identifying and mapping Clause 53.10 land uses and threshold distances, and making this publicly available. Options to do this included linking the clause to overlays shown on planning scheme maps. Alternatively, one submitter advocated for a control that would appear on Section 32 vendor statements to notify prospective landowners that land is within a buffer area.

What submitters said – Zone and overlay improvements

What submitters discussed relating to zone and overlay improvements

- *The capabilities and shortcomings of the existing system*
- *The consideration of a new overlay*
- *The potential application of a new overlay*
- *Concerns about a new overlay*
- *Improvements to industrial zones*

Capabilities and shortcomings of the existing system

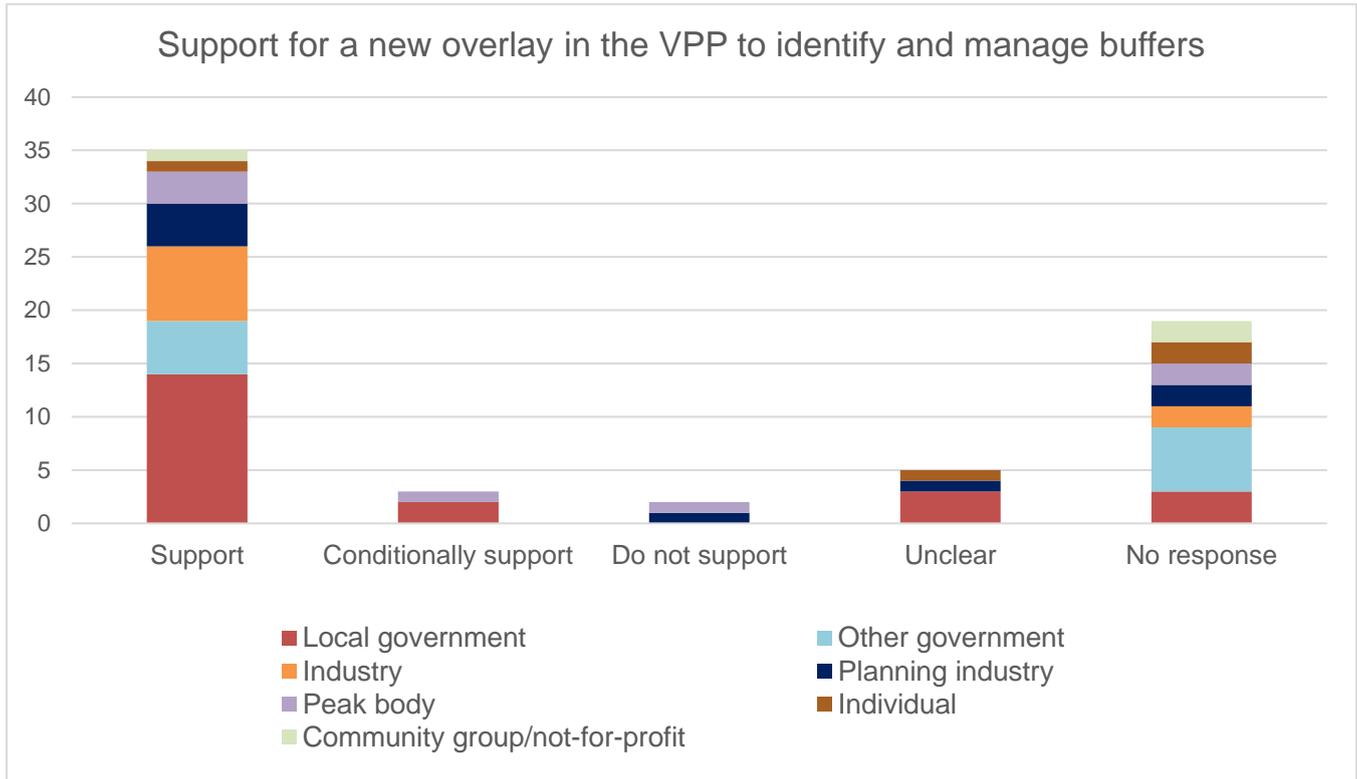
Submitters consider that the current zoning system is capable of effectively managing buffers, but there have been issues in the application of zones. Schedules to the Urban Growth Zone in growth areas and the Industrial 3, Low Density Residential and Mixed Use Zones were nominated as effective in transitioning between conflicting uses. However, the application of zoning around industrial areas is not often designed to address adverse impacts and encroachment of sensitive uses, nor does it adequately address inter-industry conflict.

A number of submitters indicated that the Environmental Significance Overlay (ESO) has been used satisfactorily to manage buffers, though others described existing overlays as inadequate. Use of the ESO to manage buffers was acknowledged as “not perfect” and “not its primary purpose”. The Design and Development Overlay was mentioned as another option to control development. The Melbourne Airport Environs Overlay (MAEO) was put forward as a good base for further work on a buffer specific control, given its success in controlling use, development and subdivision. Another existing overlay suggested as a way to manage buffers was the Specific Controls Overlay, due to its ability to control use and development.

Consideration of a new overlay

There was widespread support among submitters for creating, or considering the creation of, a new overlay to manage buffers and separation distances. Key features of a new overlay suggested by submitters include that it should restrict use and development (where appropriate) and outline what land uses are permitted and what circumstances trigger the need for a permit. The MAEO and Bushfire Management Overlay were cited as models on which a new overlay could be based. It was raised that a new overlay should differentiate between the different types of risk and many submitters advocated for an overlay that could be tailored to different industrial uses. One submitter noted that a new overlay should allow flexibility so that buffer distances and other specific requirements can be set on a site-specific basis. Further features proposed include application requirements, decision guidelines and referral to expert agencies.

Support for a new overlay in the VPP to identify and manage buffers



Potential application of a new overlay

It was suggested that a new overlay should be applied to critical infrastructure, such as waste and resource recovery facilities, waste water treatment plants and large scale, substantial industrial sites. Other submitters suggested that a new overlay would apply to uses likely to have significant offsite impacts or uses that have potential to impact human health and safety and cannot be managed in other ways. Application around industrial zones was also proposed.

In terms of implementation, one submitter preferred that DELWP introduce the overlay for identified major sites through a statewide amendment.

Concerns about a new overlay

Some submitters raised concerns about the prospect of a new overlay and issues that would need to be considered. It was suggested that it would be inappropriate to impose an overlay on land that has been subject to detailed strategic planning and ongoing residential development, and that applying an overlay where encroachment has already occurred may cause unnecessary alarm. Other comments focused on implementation, namely that it would be impractical and burdensome to apply an overlay to every new industrial use, and that it would be difficult to apply a “one size fits all” overlay to manage different types of buffers and impacts. One submitter mentioned that an overlay might be an option for some larger uses but would not address the majority of smaller uses.

Improvements to industrial zones

There was strong support for a review of which land uses are appropriate and inappropriate in industrial zones. Specific concerns related to the allowance of child care centres, education centres and places of assembly in industrial zones and the relaxing of maximum floorspace requirements for office uses. It was also suggested that lower impact industrial uses should be directed towards commercial zones and “sensitive industrial uses” should be recognised as a subset of industrial uses.

There was concern about current conditions on Section 1 uses in industrial zones that mandate that a

use must not have effects on the safety and amenity of the local community. This was said to be intangible and not appropriate for council planner discretion.

One submitter suggested that the Special Use Zone should be used in specific circumstances to manage buffers where use and development need to be controlled in a certain way. Another submitter supported aligning other zones that accommodate uses with adverse impacts (e.g. Public Use Zone) with the requirements of industrial zones.

Other comments focused on additional guidance, decision guidelines and including referral requirements in the zone itself rather than Clause 53.10.

What submitters said – Advice and guidance

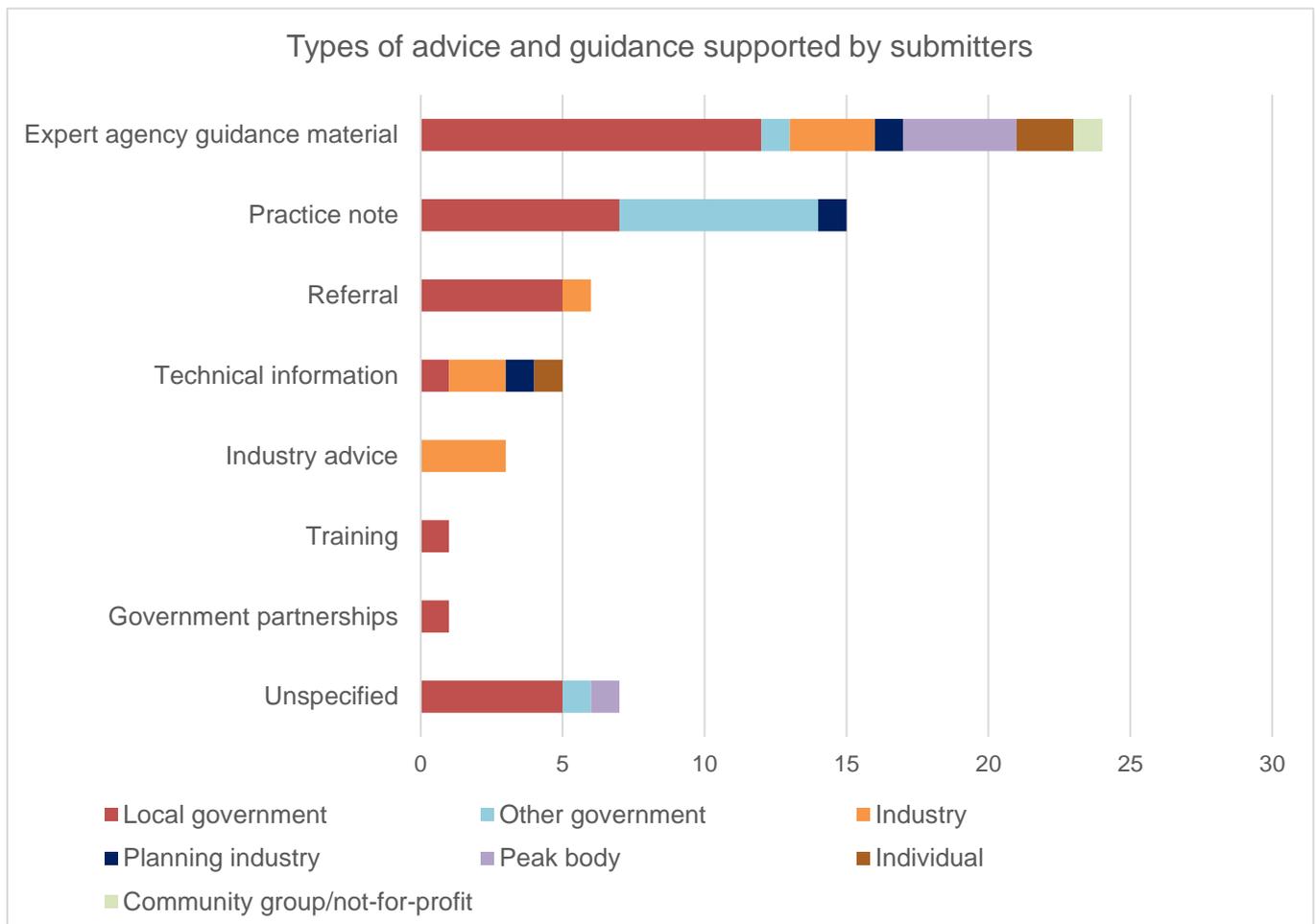
What submitters discussed relating to advice and guidance

- The need to create a practice note
- The role of technical information and guidance material
- The need for additional guidance in the Victoria Planning Provisions to inform assessment of proposals

Need to create a practice note

Many submitters suggested that a practice note is needed to provide certainty in terms of managing land use conflict to ensure consistency within the decision-making process. The need for a practice note is raised by submitters as a means to provide uniformity and guidance on the implementation and operation of new and existing planning controls for conflicting land use situations. Guidance has been requested for best practice zone application, planning scheme amendments, planning applications, buffer distance variation and strategic work for incorporated documents. Submitters called for the practice note to cover greenfield, legacy, transitional and industrial/infrastructure expansion scenarios. It was suggested that a practice note should be introduced whether or not the current planning system is ultimately changed.

Types of advice and guidance supported by submitters



Role of technical information and guidance material

Submissions emphasised the uncertainty around guidance on managing buffers, leading to inconsistent planning and decision-making. Submitters voiced that planners should not be expected to be experts on buffers and therefore should have relevant guidelines and regulations as incorporated documents to draw on. It was recommended that the EPA as the relevant expert authority should make the ultimate decisions where discretion is required. Submitters also made clear that the roles and responsibilities of the EPA need to be clarified and strengthened, so that they are better able to support and advise planners.

Submitters indicated that disparities between the EPA's guidance and the planning system have caused confusion about the roles of various instruments used to manage buffers and separation distances. Submissions revealed mixed responses with regard to the role and ideal use of the EPA IRAE guidelines. Disparities raised were the industries applied, impacts assessed and distances permitted. Some submitters suggested that Clause 53.10 should be aligned or replaced with the most recent version of the EPA IRAE guidelines to create cohesion. While others acknowledged the differing purposes of Clause 53.10 and the EPA IRAE guidelines, suggesting they should remain as separate materials that work independently of each other. The most prominent view was that the EPA policy including the EPA IRAE guidelines and SEPPs along with other risk assessment policy and guidance should be considered to inform Clause 53.10. It was suggested that these documents and other relevant materials are difficult to find and should be incorporated into Clause 53.10. Others suggested these documents should not be incorporated into the planning scheme and should be intended as guidance for the EPA when responding to referral requirements. Most submitters maintained that the EPA should be closely involved across any changes made to relevant technical information and guidance material. It was voiced that any decision guidelines and application requirements should require demonstration of compliance with EPA guidance.

Other issues raised by submitters included the need for clarity around precinct structure plans, sensitive uses, rezoning and planning control use. Guidance was requested about the implementation and use of existing and newly introduced planning controls. Specific guidance was requested on the circumstances in which a buffer would be required, the level of assessment required, when it is appropriate to reduce a buffer and how to measure a buffer. Information and guidance on these matters as well as relevant EPA guidelines were recommended to be included as incorporated documents in the PPF. In addition, councils requested training for any changes made to the planning system on buffers.

Appendix – Feedback questions

Planning policy	<p>Does current planning policy adequately deal with managing land use conflicts?</p> <p>How can it be improved?</p>
Reverse Amenity	<p>Should the Victoria Planning Provisions (VPP) include specific mechanisms to protect industrial, warehouse or infrastructure uses from encroachment of sensitive uses?</p> <p>How can it be improved?</p> <p>What type of activities and under what circumstances should a buffer be applied to manage encroachment of sensitive uses?</p> <p>Who should own or control the buffer area?</p> <p>How should sensitive uses be managed in the buffer area?</p> <p>What uses should be considered as sensitive uses? Are there different categories of sensitive uses?</p> <p>How can the planning system manage new development in areas where sensitive uses are already established in the buffer area?</p>
Clause 53.10 improvements	<p>How can clause 53.10 be improved to assist its operation and useability?</p> <p>What impacts should clause 53.10 take account of?</p> <p>Is the list and description of uses in clause 53.10 adequate or can it be improved? If so, how? For example, classifications of industry types rather than lists of individual industries.</p> <p>Should the threshold distances in clause 53.10 set out a minimum mandatory separation distance that must be met? If so, what industries or for what impacts should this apply to?</p> <p>What additional features in clause 53.10 are required, for example application requirements and decision guidelines?</p>
Zones and overlay improvements	<p>How well does the existing suite of zones and overlays manage buffers?</p> <p>How can the existing industrial zones be improved to better manage buffers?</p> <p>Is a new overlay to identify and manage buffers required, and if so, what scope and features should it include?</p>
Advice and guidance	<p>What information and guidance is required to support the management of buffers in the planning system?</p> <p>What role should the EPA's Recommended Separation Distances for Industrial Residual Air Emissions, the State Environment Protection Policies (SEPPs) and other relevant documents have in the VPP to assist decision making?</p>