

Planning for amenity, health and safety buffers

Consultation report –
Updates to the Planning Policy Framework and Clause 53.10



Acknowledgment

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



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Introduction

The Department of Environment, Land, Water and Planning (DELWP) is proposing updates to the Planning Policy Framework (PPF) and Clause 53.10 of the Victoria Planning Provisions. Our proposed updates aim to improve the way the planning system addresses buffers for amenity, human health and safety impacts. These updates and further background can be found on the Engage Victoria website at: <https://engage.vic.gov.au/planning-amenity-health-and-safety-buffers>.

Public consultation

DELWP invited feedback on proposed updates to planning provisions through an online survey on the Engage Victoria website. The survey was open from 18 November 2019 until 16 December 2019, with some late submissions also accepted.

In total, 64 submissions were received from councils, industry, other organisations and individuals (see Figure 1).

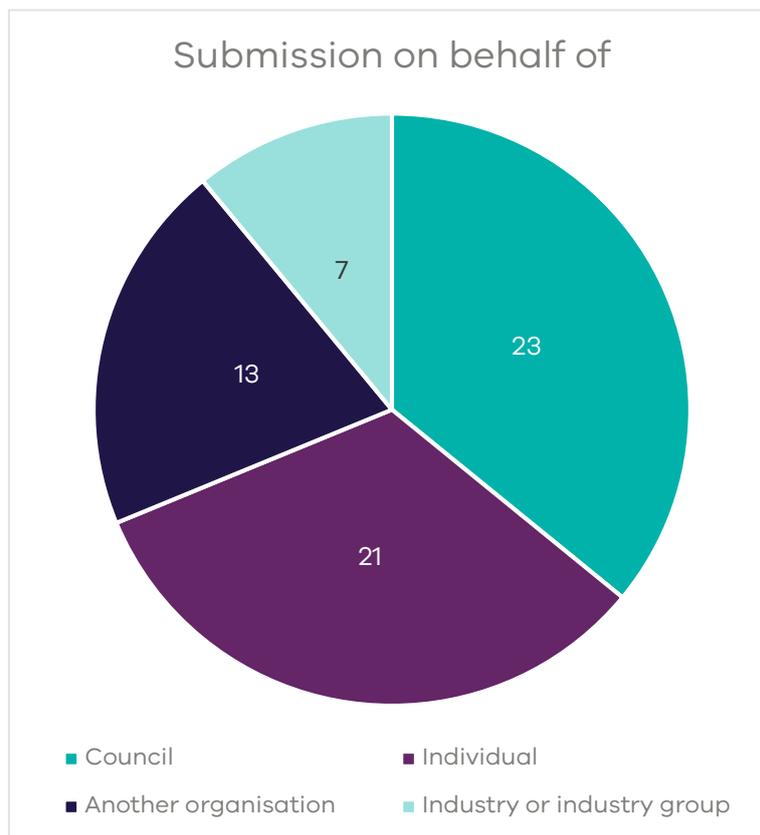


Figure 1

Proposed Planning Policy Framework updates

Draft updates to Clause 13.07-1S of the PPF to strengthen policy for managing buffers were provided on the Engage Victoria website. Participants were asked to indicate whether they agreed or disagreed with the following statements:

- Including human health and safety impacts within the scope of the clause is important
- The additional and updated strategies adequately support the need to protect existing industrial, commercial and other uses from encroachment
- It is helpful to include the current Environment Protection Authority (EPA) guideline on separation distances as a policy document.

Participants could also provide additional comments about the proposed updates. This section outlines a summary of feedback received, organised by emerging key themes.

Scope of impacts

Most participants agreed or strongly agreed that including human health and safety impacts within the scope of the clause is important (see Figure 2). One submitter supported the fact that the management of off-site health and safety impacts is not limited to major hazard facilities. Others raised that consideration should also be extended to impacts on the natural environment and environmental assets.

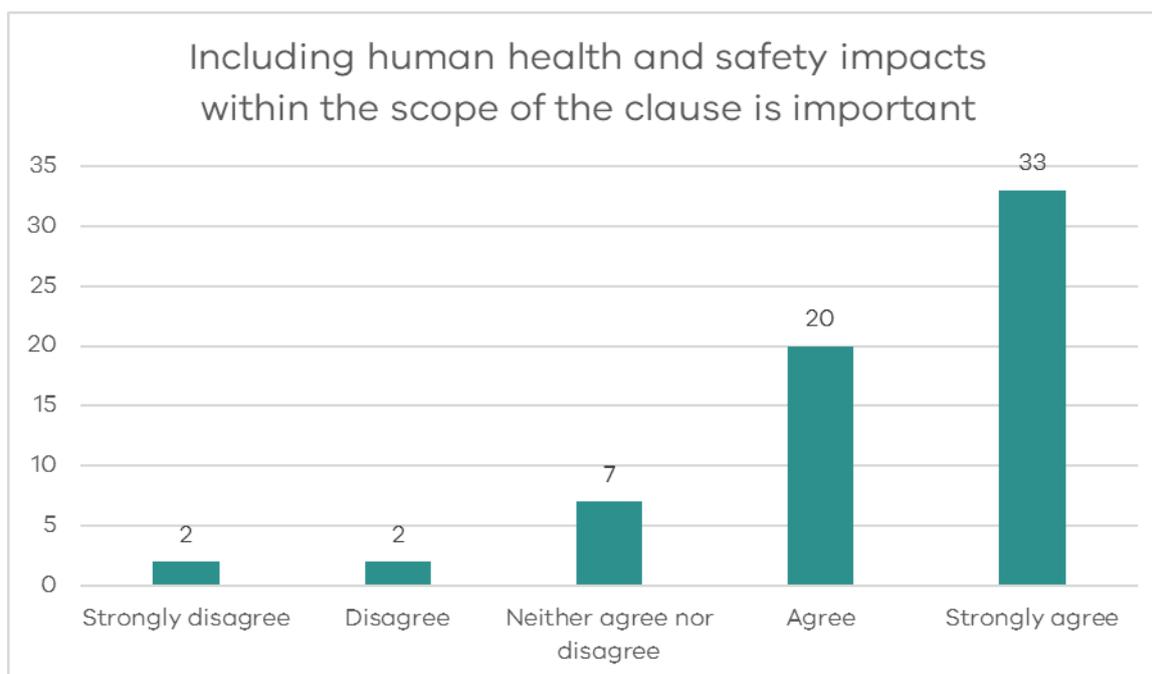


Figure 2

Additional and updated strategies

Roughly half of participants agreed or strongly agreed that additional and updated strategies adequately support the need to protect existing industrial, commercial and other uses from encroachment (see Figure 3).

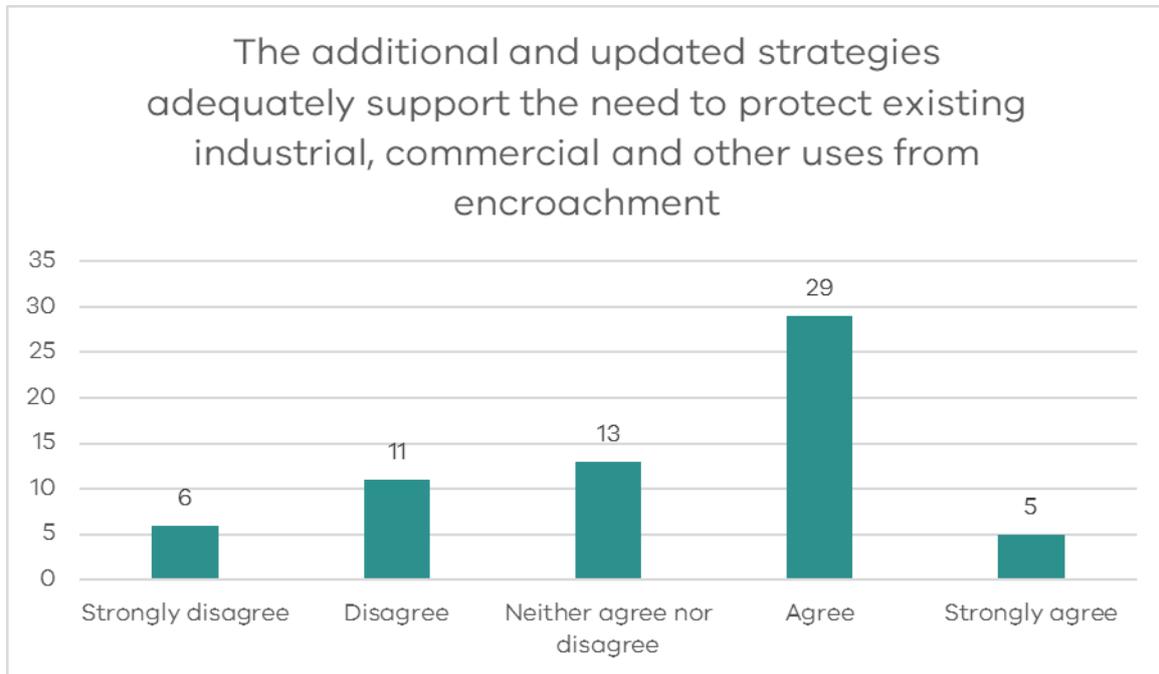


Figure 3

A key message received was that, while policy support through updated strategies is important and strengthens consideration of encroachment and reverse amenity, specific planning provisions are needed to achieve this in practice.

Suggestions for updated strategies included considering other types of uses, the importance of critical infrastructure, how risk evolves over time, tools to avoid or minimise off-site impacts and interpretation in rural areas.

A number of submitters raised that the policy should make reference to the 'agent of change' principle. Others suggested that the term 'sensitive use' should be defined, although it was also recommended that 'sensitive use' be replaced with the term 'incompatible use'.

Policy documents

Most participants either agreed or strongly agreed that including the current EPA guideline on separation distances as a policy document is helpful (see Figure 4). The guideline was described as useful in providing definitions and further details about industrial activities, while one submitter felt that including the guideline as a policy document does not sufficiently enable the 'agent of change' principle to be considered. The need to clarify the role of the guideline was also raised, to avoid misleading planners and applicants who may not be experts in the field.

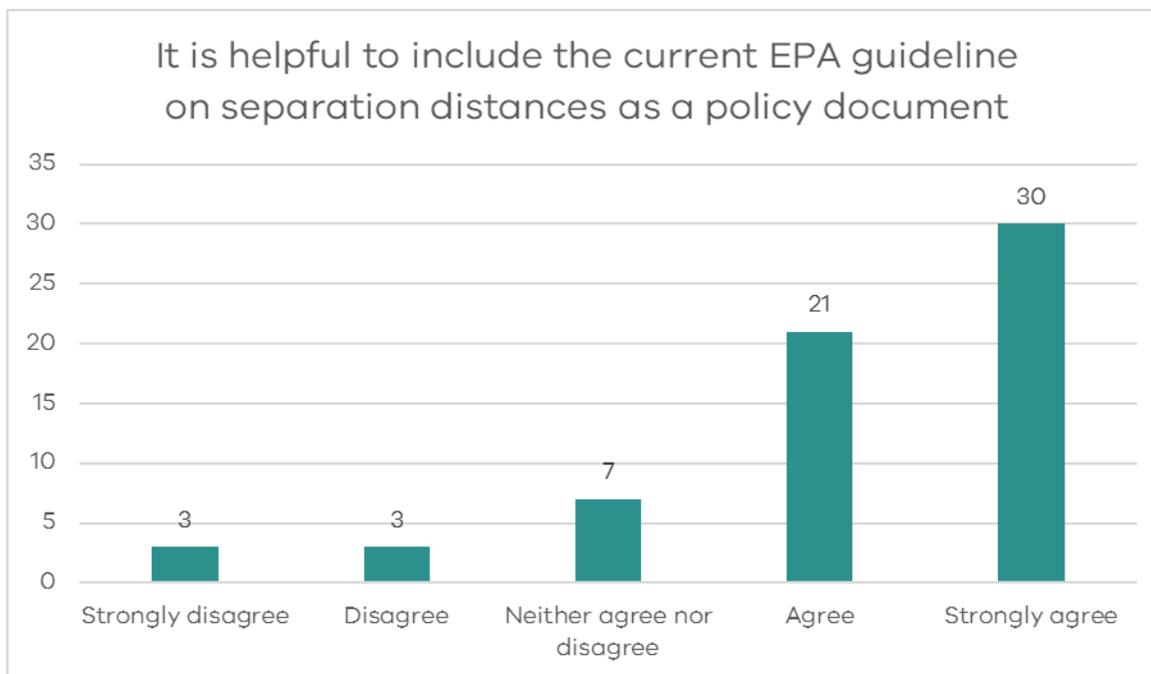


Figure 4

Several submitters suggested other guidelines should be included as policy documents, including EPA's *Assessing planning proposals within the buffer of a landfill* guideline.

Proposed Clause 53.10 updates

Draft updates to Clause 53.10 were also provided on the Engage Victoria website. Participants were asked to indicate whether they agreed or disagreed with the following statements:

- The operation of the clause will be clearer than it is now, including how it links to zones and referral provisions
- The updated list of “sensitive zones” where the threshold distance applies is relevant
- The list of uses and activities seems appropriate
- The threshold distances for uses and activities seem appropriate
- It is clear how to measure and apply the threshold distances
- How referrals operate is clear with the replacement of Note 1 and Note 2.

Participants could also provide additional comments about the proposed updates. This section outlines a summary of feedback received, organised by emerging key themes.

Operation

Most participants agreed or strongly agreed that based on the proposed draft Clause 53.10, the operation of the clause will be clearer than it is now, including how it links to zones and referral provisions (see Figure 5). While the replacement of current outdated and confusing provisions was welcomed by some, others suggested areas where improvement and further clarification could be made.

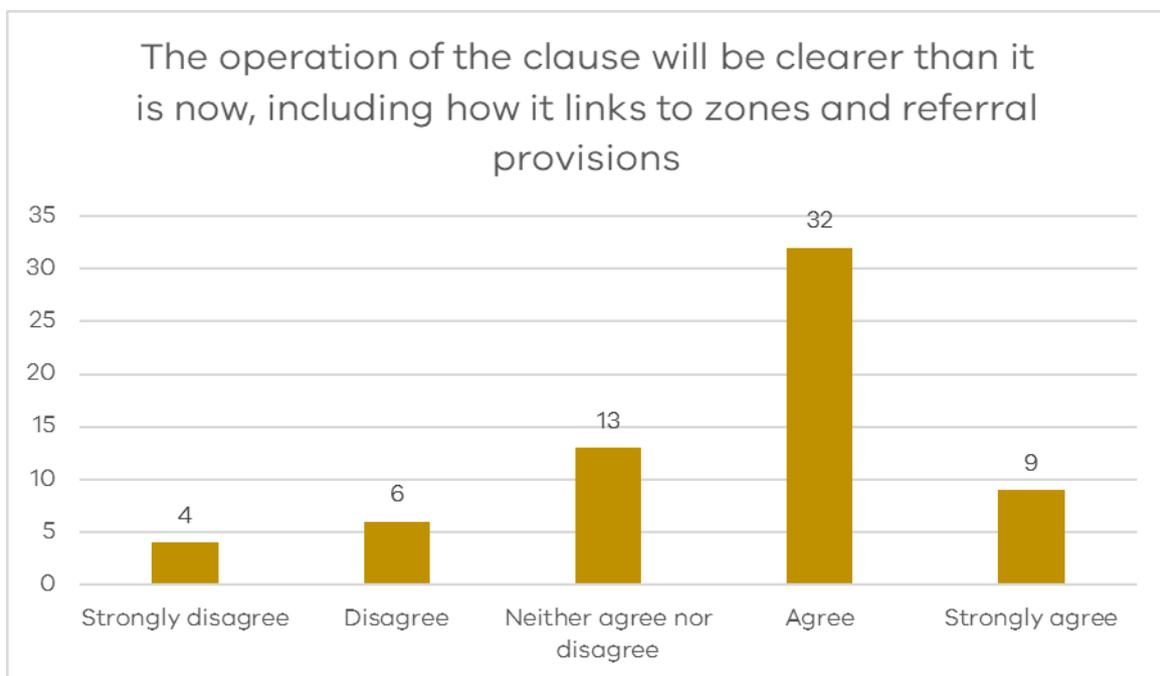


Figure 5

One emerging theme from feedback on the operation of the provision was that Clause 53.10 should ‘work both ways’ to also apply to new uses that are sensitive to adverse off-site impacts. It was also suggested that the provision could elaborate further on which sensitive uses are being protected and which impacts or issues are being considered.

Some participants raised the need to clarify whether Clause 53.10 addresses proposed expansion of existing uses through applications for new development, which could intensify off-site impacts. Other comments considered EPA referral processes, mapping threshold distances and referring to industry operation and cumulative impacts in Clause 53.10.

“Sensitive zones”

Most participants agreed or strongly agreed that the updated list of “sensitive zones” where the threshold distance applies is relevant (see Figure 6).

Participants suggested additional zones and land uses to consider for inclusion, such as:

- Public Conservation and Resource Zone
- Special Use Zone, Comprehensive Development Zone and Urban Growth Zone where sensitive uses are the primary purpose
- Rural zones (e.g. Green Wedge Zone)
- Dwelling in a Farming Zone
- Corrective institution
- Areas with environmental values (e.g. vegetation and creeks)
- Land used for grazing

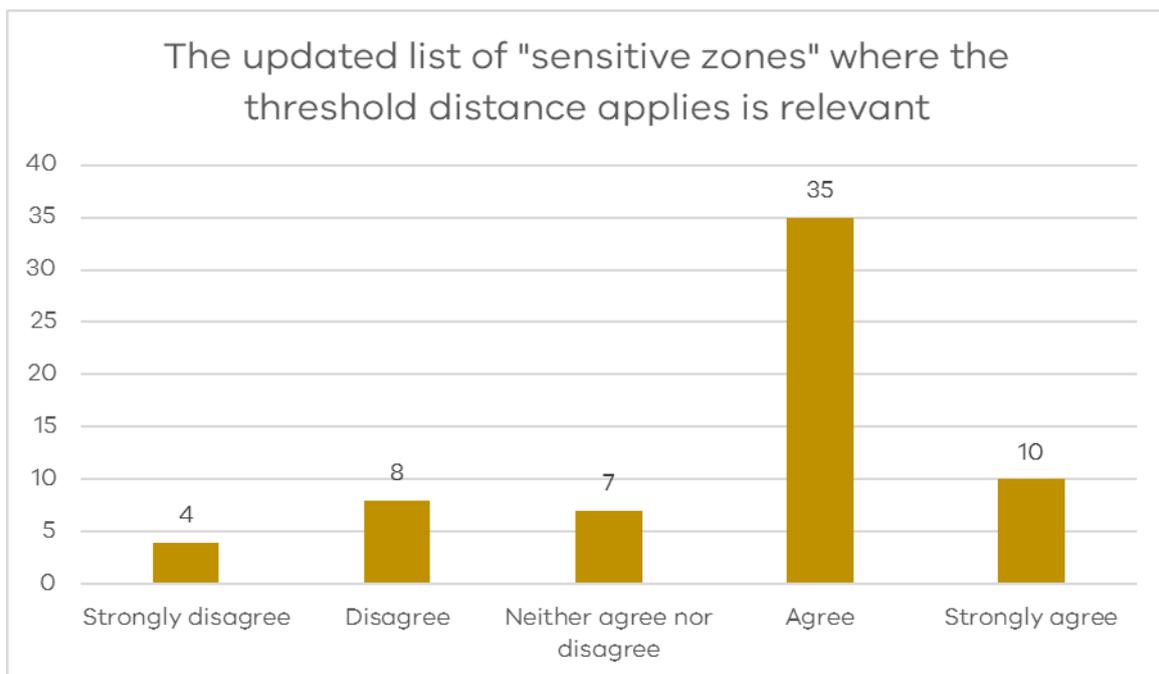


Figure 6

There was significant discussion about the Rural Living Zone and the consequences of including it as a sensitive zone. One concern related to an expected increase in the number of industrial proposals triggering planning permits for use. It was also suggested that for the Rural Living Zone, the threshold distance should be measured to the existing sensitive activity rather than any land in the zone. However, another participant argued that rural zones should not be used as buffer areas at all.

Uses and activities

Most participants agreed or strongly agreed that the list of uses and activities in Clause 53.10 seems appropriate (see Figure 7).

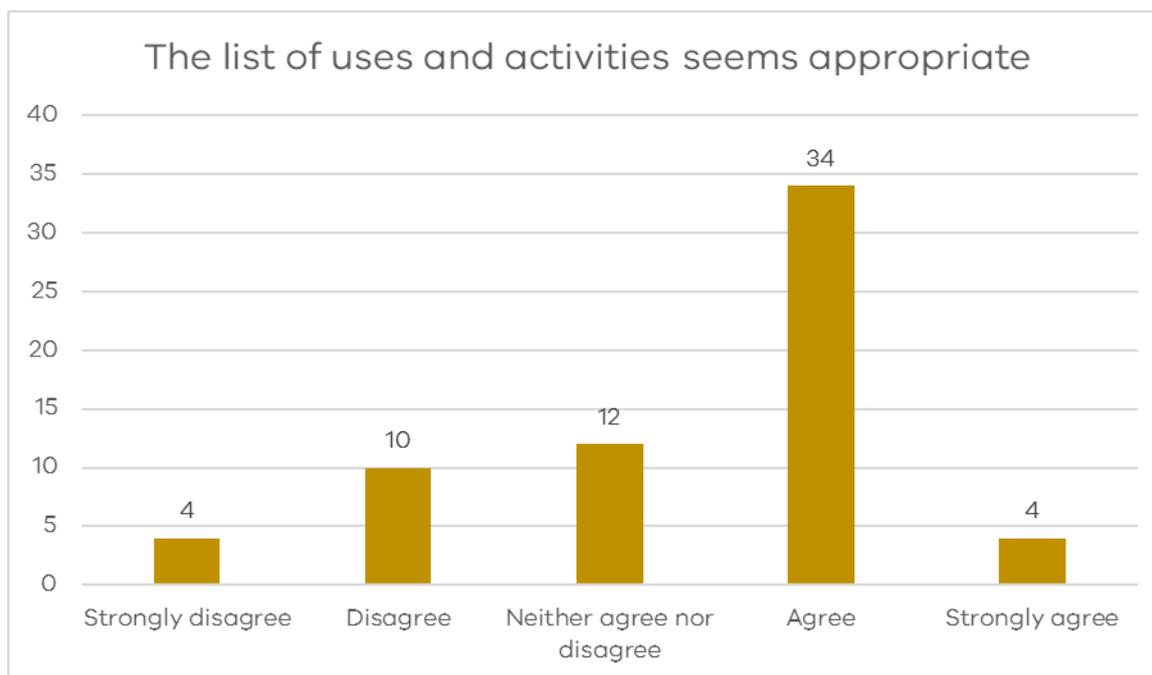


Figure 7

Some participants suggested rewording certain listed uses, while many proposed including additional uses and activities such as:

- Quarries and mines
- High-pressure gas pipelines
- Agricultural uses
- Energy generation
- Road traffic to and from industry

Participants acknowledged that production thresholds appear to make it easier for small businesses and should potentially apply to other uses in the list. However, some felt that production thresholds need to be clarified and questioned whether it is always appropriate to remove permit requirements for uses that fall below the thresholds. One participant argued that production thresholds should not be included at all.

Several participants asked for greater clarity and definition about what is captured by listed uses and activities. For example, whether the listing for a use encompasses other similar facilities, or whether it includes both production and storage.

Threshold distances

Most participants agreed, or neither agreed nor disagreed, that the threshold distances for uses and activities seem appropriate (see Figure 8).

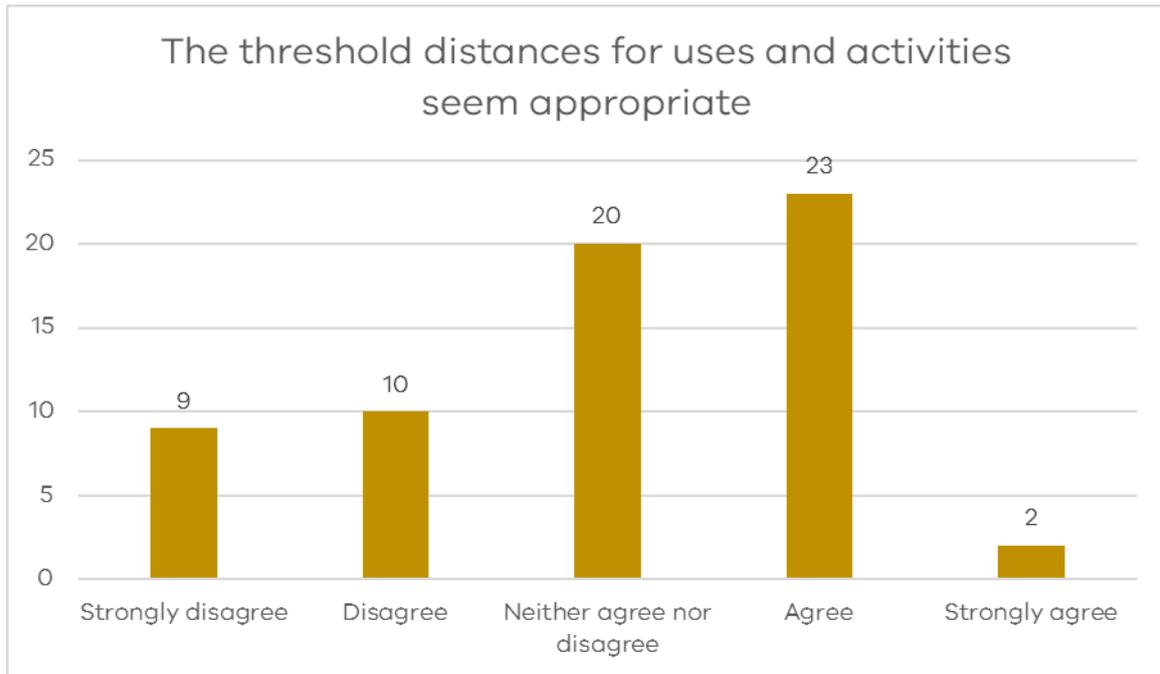


Figure 8

A number of participants advocated increasing distances for a number of uses, while others had concerns about limiting industry and imposing regulatory burden.

The relationship between the threshold distances in Clause 53.10 and separation distances in EPA Publication 1518 was also raised.

Measuring and applying threshold distances

Almost half of participants agreed or strongly agreed that it is clear how to measure and apply the threshold distances in Clause 53.10 (see Figure 9).

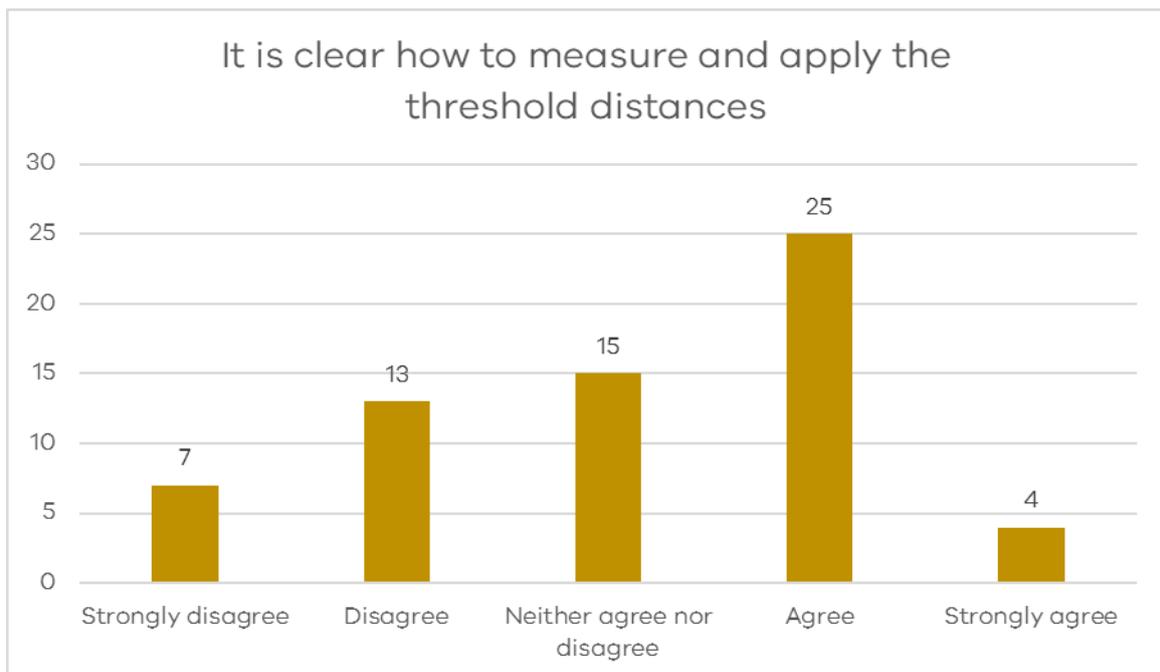


Figure 9

Significant feedback received on this topic related to whether threshold distances are measured to the property boundary of a use with potential adverse off-site impacts or to the source of potential impacts. Participants were split on the preferred approach, but clarity was sought to remove potential for dispute over the matter. Others suggested that Clause 53.10 should follow the method outlined in EPA Publication 1518 for measuring separation distances.

It was also raised that threshold distances should be able to be varied, and the process to do so needs to be clarified. However, another participant suggested distances should not be able to be varied based on building design and operational measures.

Other responses indicated confusion over threshold distances listed as 'none specified' for some uses in the table to Clause 53.10.

Referral

Over half of participants agreed or strongly agreed that how referrals operate is clear with the replacement of Note 1 and Note 2 in Clause 53.10 (see Figure 10). Several participants supported replacing Note 1 and Note 2 because it avoids ambiguity and makes it easier to understand when a referral to EPA is required.

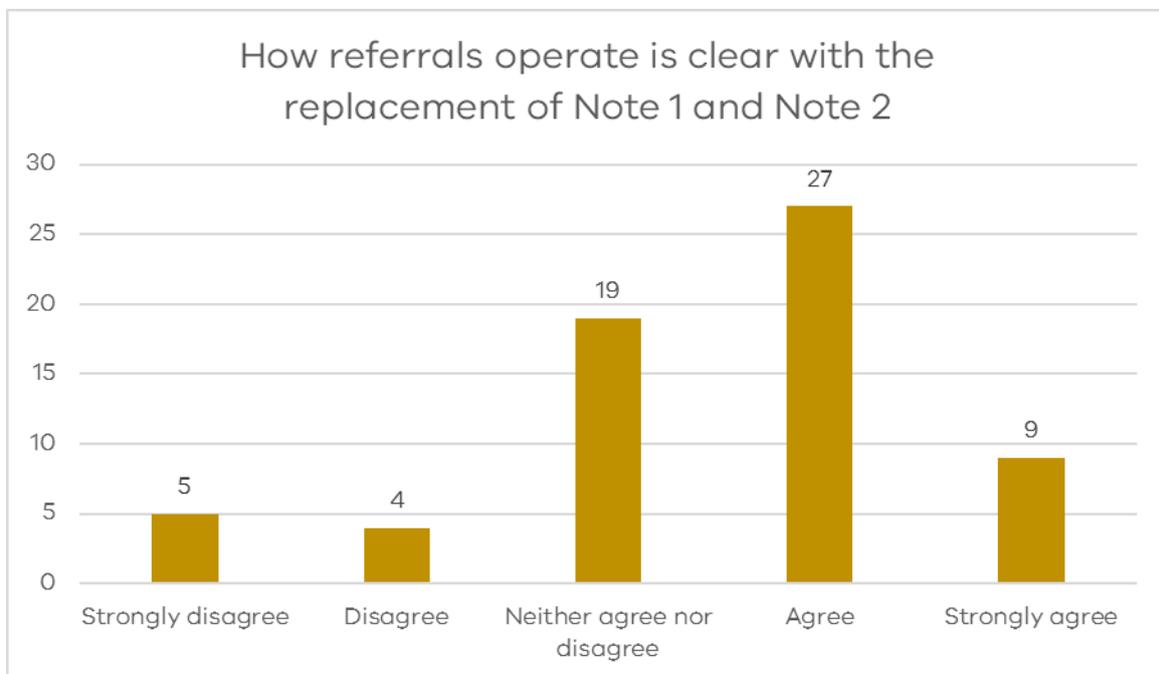


Figure 10

In response to consequential changes in the Industrial 1 Zone to replace Note 2, a number of participants suggested there is a need to simplify language and reduce burden.

Participants reiterated the importance of EPA and WorkSafe Victoria having referral roles.

Other feedback

Comments were also received on relevant topics beyond the scope of PPF and Clause 53.10 changes.

Many participants called for an overlay tool to be developed to address encroachment and reverse amenity for a range of industries.

Others recommended updating zones, embedding more triggers for built form responses in buffer areas and implementing further consequential changes throughout planning schemes. Further measures suggested to support implementation of PPF and Clause 53.10 changes include mapping Clause 53.10 uses and activities and establishing formal requirements at sale or transfer of land.