



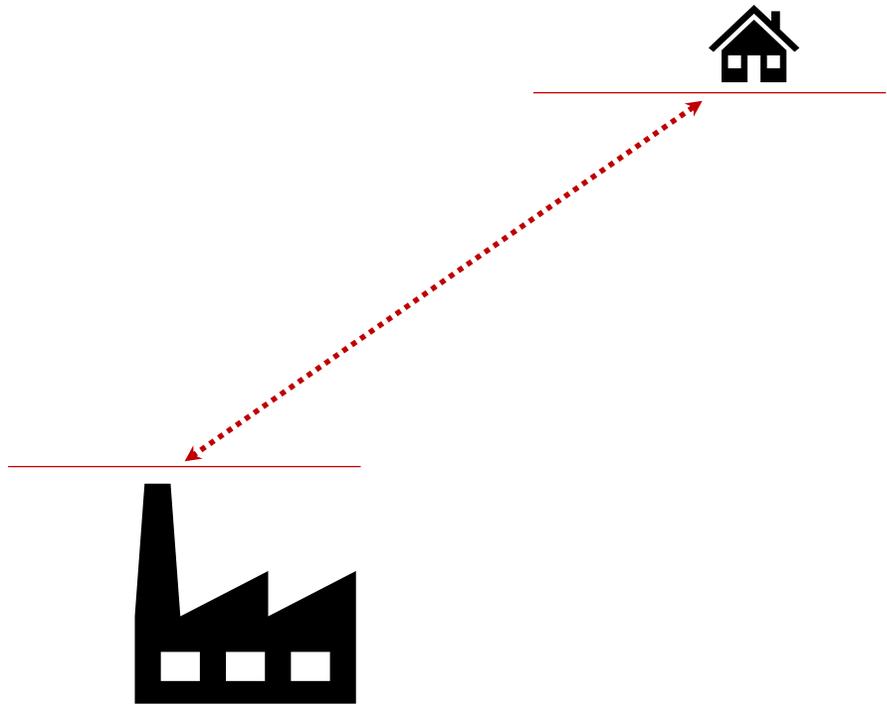
Land Use & Air Quality

IN NEW ZEALAND

Photo credit: Sarah Roberts / JUN 2014

Contents

- Problem definition
- Regulatory context
- Case law
- Where to from here?



What is the purpose of a separation distance?



For when things go wrong



Managing the unmanageable



Preventing reverse sensitivity effects

Separation Distances



So how
close is too
close?

Case study:

Oil & Gas



180 m?

Cheal A
Stratford District

Photo credit: [Tag Oil](#) / SEP 2014



280 m?

Ngatoro G
New Plymouth District

Photo credit: [Sarah Roberts](#) / SEP 2012



300 m?

Mangahewa E
New Plymouth District

Photo credit: [Fiona Clark](#) / DEC 2014



620 m?

Cheal B

Stratford District

Photo credit: [Pip Guthrie](#) / JAN 2012

Case study:

Quarries



ACACIA
PARK

PEGRAM
BLOCK

RAUMANGA
INDUSTRIAL
AREA

SMEATON
RESIDENTIAL
AREA

GENERAL WORKS

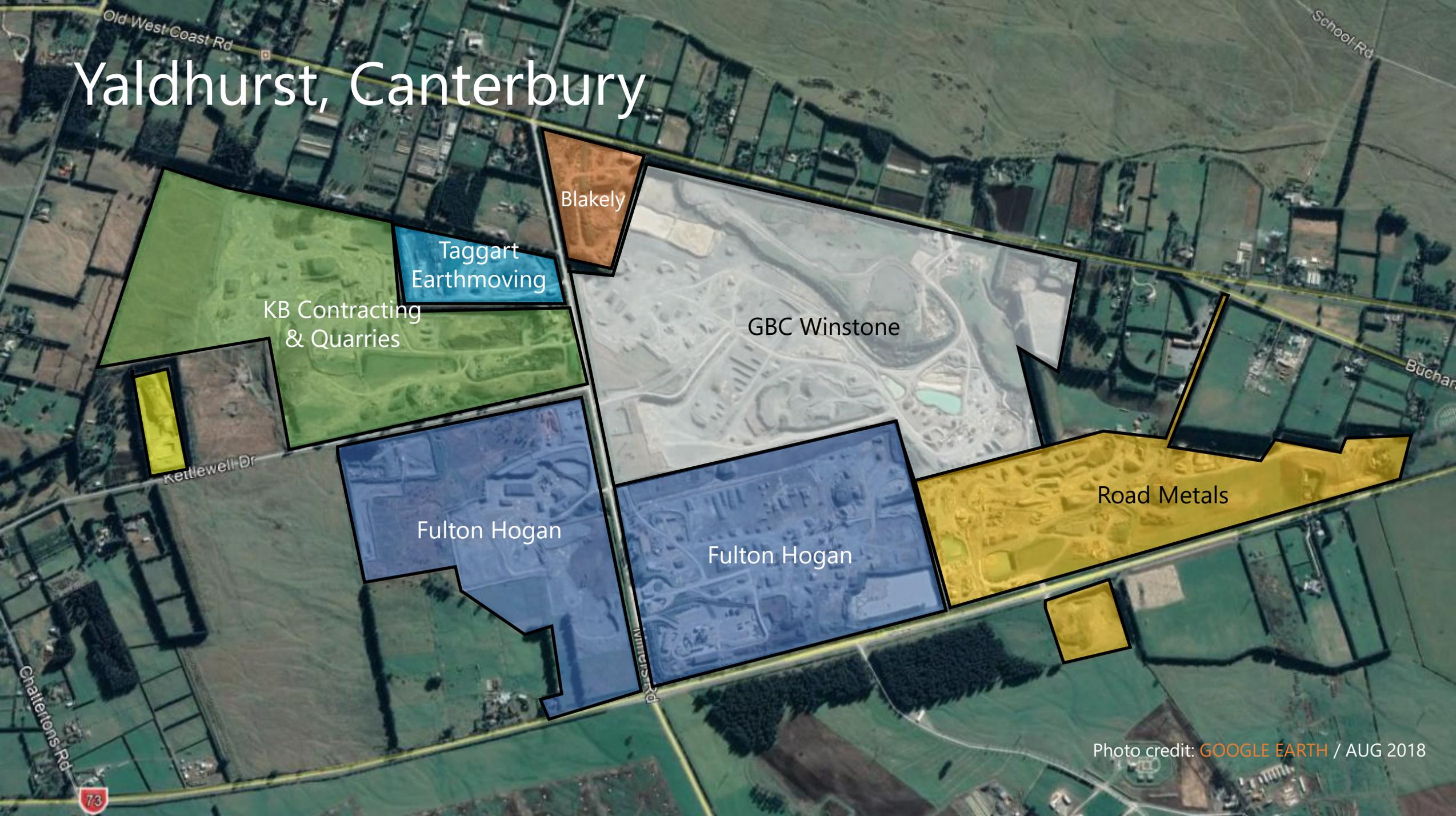
ENABLING WORKS

70 m?

Otaika Quarry, Whangarei

Figure credit: Boffa Miskell / MAR 2017

Yaldhurst, Canterbury



Blakely

Taggart
Earthmoving

KB Contracting
& Quarries

GBC Winstone

Fulton Hogan

Fulton Hogan

Road Metals



Winstone Aggregates

Fulton Hogan

Existing Quarry

Area A & B

BUCHANANS ROAD

OLD WEST COAST ROAD

RM2

RM3

WEST COAST ROAD

150 m?

Roads Metals Quarry, Yaldhurst

Base Figure credit: [Golder Associates](#)

Case study:

Industrial



Photo Credit: [Louise Wickham](#) / JUL 2016



200 m?

Balance Fertiliser
Mt Maunganui

Photo Credit: [Google Earth](#) / DEC 2012

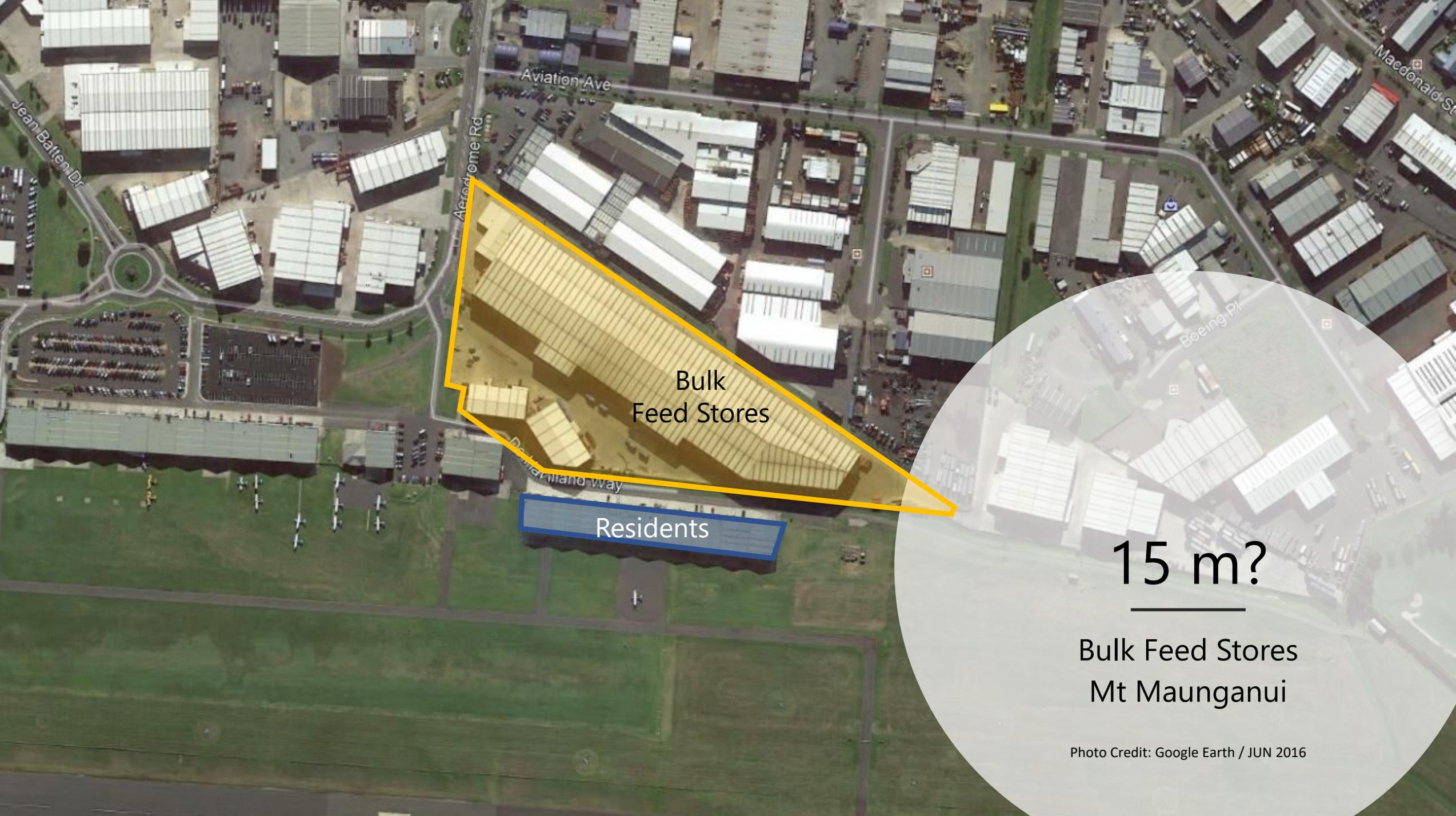


Kereiti St

Totara St

Taiaho Pl

Photo Credit: Google Earth / JUN 2016



Aviation Ave

Aerodrome Rd

Macedonald St

Boeing Pl

Bulk
Feed Stores

Deer Island way

Residents

15 m?

Bulk Feed Stores
Mt Maunganui

Photo Credit: Google Earth / JUN 2016



McLaughlin Rd

Ha-Grescent

Adjacent?

WOSL / Women's Prison
Wiri

Photo Credit: Google Earth / JUN 2016



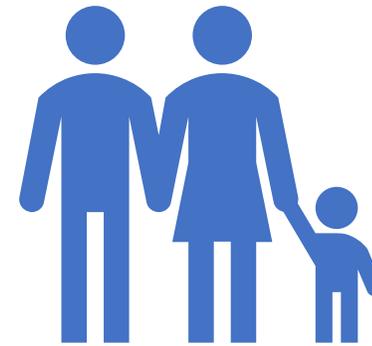
land use &
air quality

Regulatory Context

[s5] RMA 1991



Promote sustainable management of natural and physical resources while:



**safeguarding the life-supporting
capacity of air**



Control discharges to air



Establish, implement and review objectives, policies and methods to **achieve** integrated management of the natural and physical resources of the region

[s30] REGIONAL COUNCILS



Control **actual and potential effects** of land use



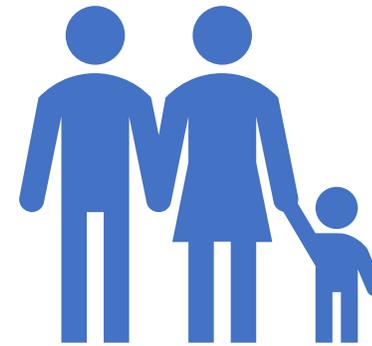
Establish, implement and review objectives, policies and methods to **achieve** integrated management of the effects of the use, development, or protection of land

[s31] TERRITORIAL AUTHORITIES

NES for Air Quality 2004



[Reg 13] introduces ambient air quality standards for New Zealand



[Reg 14] standards apply in the open air wherever people are likely to be exposed

National Air
Quality
Compliance
Strategy 2011

Regional councils
(who have the primary responsibility for air
quality management)
and
territorial authorities
(that have functions that impact on air quality)
must
observe and enforce the air quality standards

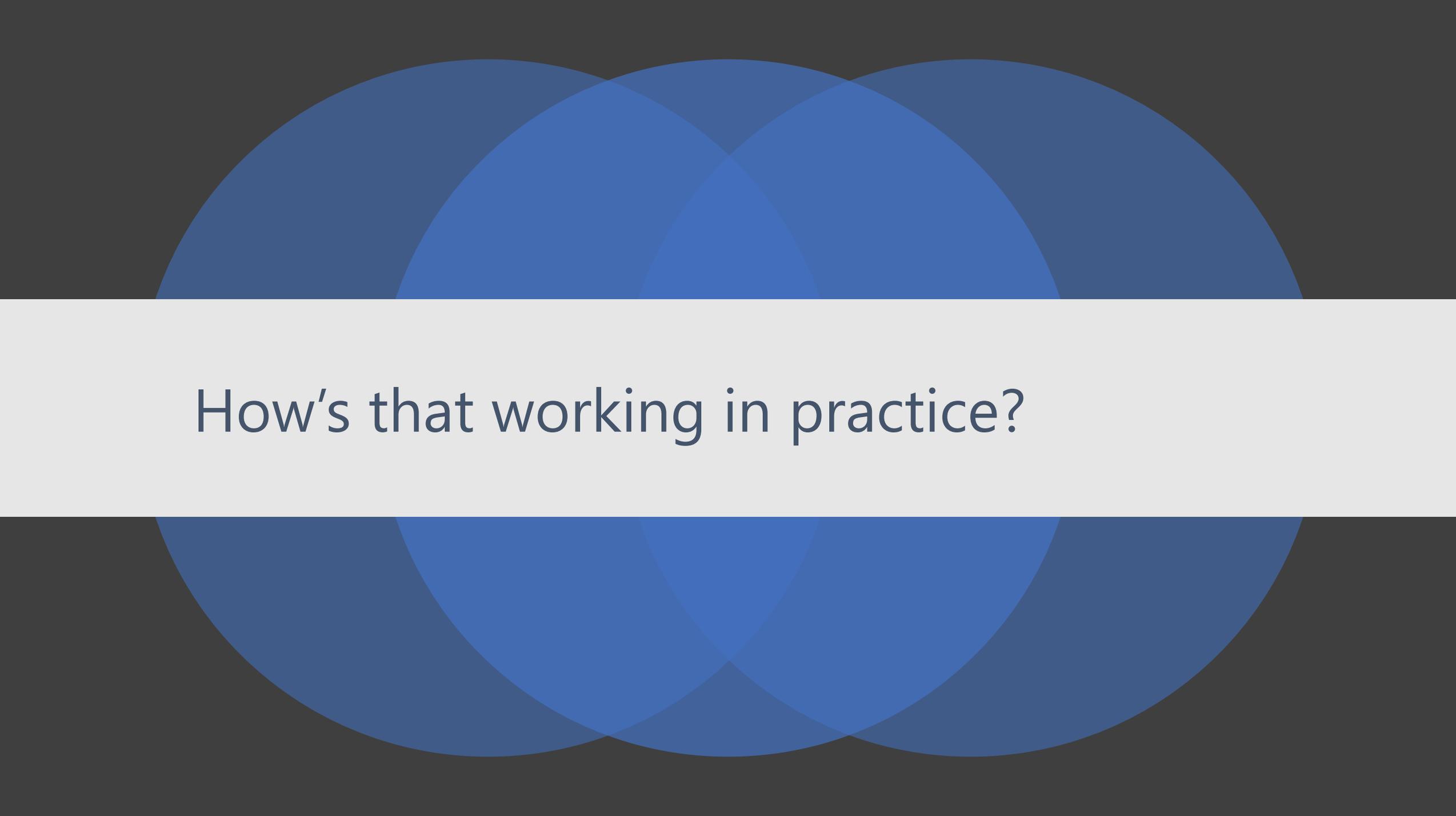
Good Practice Guidance: Planning

- Encourage appropriate location of industry
- Graduated zoning
- Zone / planning provisions to flag future potential reverse sensitivity effects
- Separation/buffer distances in district or regional plans for determining activity status

Good Practice Guidance: Planning and Consents

Use separation distances (buffers) to manage:

- effects of unintended or accidental discharges
- adverse effects of activities that cannot always be adequately avoided, remedied or mitigated without a separation distance, even with the adoption of best practice (e.g. landfills)
- reverse sensitivity effects



How's that working in practice?



Great for some things...

- There is generally good policy requiring adequate separation distances in most plans
- Most plans separate industry from sensitive uses (e.g. no childcare centres)
- Good example: intensive farming setbacks



...not so great for others

- No examples for toxic gases (noting exception of Nelson fumigant setbacks)
- No examples of integrated management (e.g. unsealed roads)
- Existing policies being undermined in practice

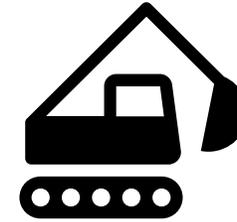
Case Law

Yaldhurst Quarries Action Group
vs Harewood Gravels and CCC

[2017] NZEnvC 165

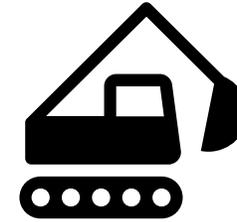
Can the court consider the amenity effects of dust on a land use consent?

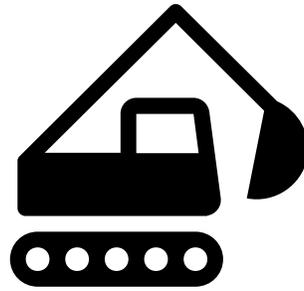
- In *Pokeno Farm Family Trust v Franklin District Council*, the Environment Court, acknowledging the appeal was limited to land use consent, held the effect of fertiliser dust on neighbouring properties was a matter which it could properly consider.
- *Beadle v Minister of Corrections* where Judge Sheppard held the court may have regard to the consequential effects of granting a consent, particularly environmental effects for which there is no other forum, within the limits of nexus and remoteness.



Can the court consider the amenity effects of dust on a land use consent?

- There is overlapping jurisdiction under the RMA when dealing with the effects of dust and the City Council has jurisdiction under s31 RMA to manage the effect of dust on amenity.
- This includes visual and nuisance effects and associated effect on amenity.





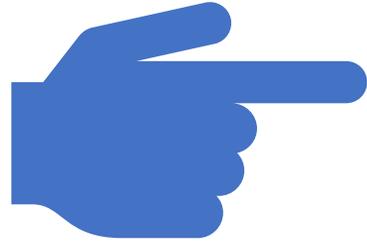
What about other effects?

- This section [s31] does not preclude the City Council from managing effects of emissions, aside from their quality as a contaminant.
- Given the outcome of the decision on other matters we decline to make any findings on whether we have jurisdiction to consider the effects of respirable silica on general amenity.

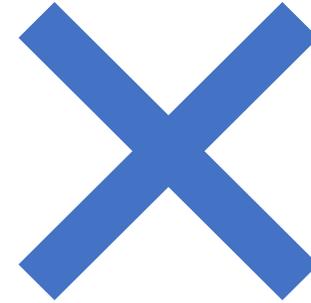
Case Law

Craddock Farms Ltd
vs Auckland Council

[2016] NZEnvC 051



Craddock advanced 400 m separation distance for 180,000 birds merely sets status of activity

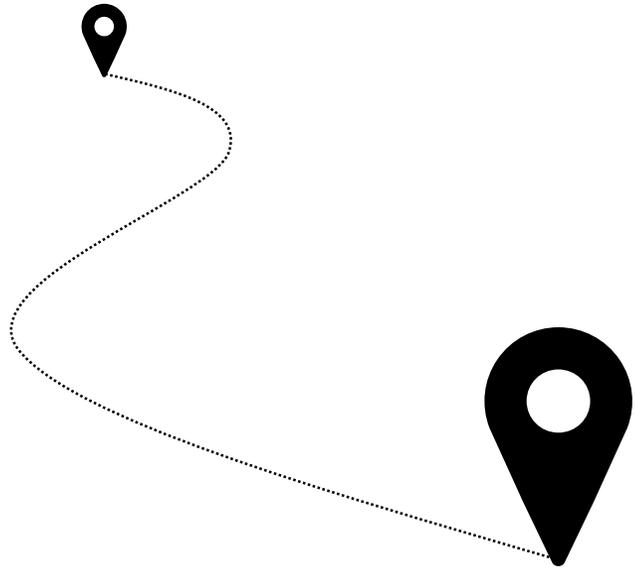


Court disagreed [124]: We think that is to unjustifiably downgrade the **importance** of the **consideration** that should be given **to separation** as an approach.

Separation Distances

Taranaki Energy Watch v South Taranaki DC

BEFORE THE COURTS NOW



Conclusions

Conclusions

- Formalisation of separation distances in plans is patchy
- Implementation of separation distances in consents is inconsistent - some are woefully inadequate
- Case law supports separation distances
- Without them we have problems – ranging from odour complaints to risk to life and limb



Where to from here?

- Keep trying to get separation distances in plans (fight the good fight)
- Look to guidance when processing consents
- Minimum means minimum – even with good control



Australian Guideline Update

- Each State has different guidelines
- Significant revision in last couple of years (2017 Tas, 2016 SA, 2015 WA)
- NB: Victorian guidelines do not address hazardous air pollutants (i.e. amenity only)



Why no NZ guidelines??



thank you

Louise Wickham