

## **Before the Hearings Commissioners**

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Under the Resource Management Act 1991 (the **RMA**)

In the matter of a submission by KiwiRail Holdings Limited (submitter 20) on Plan Change 6

and in the matter of Bay of Plenty Regional Policy Statement

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**Primary statement of evidence of Catherine Lynda Heppelthwaite for  
KiwiRail Holdings Limited**

Dated 19 June 2023

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## 1 INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

- 1.0 My full name is Catherine Lynda Heppelthwaite. I am a principal planner for Eclipse Group Limited. I am presenting this planning evidence on behalf of KiwiRail Holdings Limited (**KiwiRail**).
- 1.1 I hold a Bachelor Degree in Resource Studies obtained from Lincoln University in 1993. I am a full member of the New Zealand Planning Institute, a member of the Resource Management Law Association and the Acoustical Society of New Zealand. I have more than 25 years' experience within the planning and resource management field which has included work for local authorities, central government agencies, private companies and private individuals. Currently, I am practicing as an independent consultant planner and have done so for the past 18 years.
- 1.2 I have extensive experience with preparing submissions and assessing district and regional planning documents in relation to infrastructure including the Auckland Unitary Plan, Wellington RPS, Northland Regional Plan and various district plans/plan changes. I provide similar specialist planning advice and evidence for other infrastructure providers including for Waka Kotahi and Auckland Transport.
- 1.3 I have prepared evidence for KiwiRail in relation to Tauranga City District Plan Change 33 and will (when available) prepare evidence in relation to Western Bay of Plenty District Plan Change 92 (**DC plan changes**). Both these plan changes respond to the NPSUD and Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Enabling Supply Act**).

## 2 CODE OF CONDUCT

- 2.0 I have read the Environment Court's Code of Conduct for Expert Witnesses (2023) and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my areas of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

### 3 SCOPE OF EVIDENCE

3.0 My evidence will address the following:

- a. The statutory and higher order planning framework;
- b. KiwiRail submissions on Plan Change 6;
- c. Council's s42A recommendations; and
- d. Further amendments required.

3.1 In preparing my evidence, I have considered the Councils Overview Report on Submissions prepared by Ms Samantha Pottage, dated 6 June 2023 and attachments (**Overview Report**).

### 4 THE STATUTORY AND HIGHER ORDER PLANNING FRAMEWORK

4.0 In preparing this evidence I have specifically considered the following:

- a. The purpose and principles of the RMA (sections 5-8);
- b. Provisions of the RMA relevant to plan-making and consenting;
- c. National Policy Statement on Urban Development 2020 (**NPSUD**) (addressed further in Section 7); and
- d. Bay of Plenty Regional Policy Statement; specifically:
  - KiwiRail's network is defined as being of regional and/or national significance<sup>1</sup>.
  - Objective 6  
*Provide for the social, economic, cultural and environmental benefits of, and the use and development of nationally and regionally significant infrastructure and renewable energy*
  - Policy EI 3B: Protecting nationally and regionally significant infrastructure  
*Protect the ability to develop, maintain, operate and upgrade existing, consented and designated nationally and regionally significant infrastructure from incompatible subdivision, use or development. Ensure that where potentially incompatible subdivision, use or development is proposed near regionally significant infrastructure, it should be designed and located to avoid potential reverse sensitivity effects.*

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<sup>1</sup> As defined in the Regional Policy statement: *Regionally significant infrastructure: Is infrastructure of regional and/or national significance and includes: [...] The Bay of Plenty rail network; [...]*

Objective 6 and Policy EI 3B are given effect to by:  
*Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans* (for regional, city and district councils)

*Method 17: Identify and manage potential effects on infrastructure corridors* (for regional, city and district councils)

- Objective 7  
Provide for the appropriate management of:
  - (a) Any adverse environmental effects (including effects on existing lawfully established land uses) created by the development and use of infrastructure and associated resources;
  - (b) any reverse sensitivity effects on established, consented or designated infrastructure.
  
- Policy EI 7B: Managing the effects of infrastructure development and use  
*Manage the development and use of infrastructure and associated resources so as to address actual or potential effects on existing lawfully established activities in the vicinity.*

*Explanation:*

*The planning, development and operation of infrastructure and any associated resources need to be carefully managed to ensure that potential adverse effects (including reverse sensitivity effects) are appropriately avoided, remedied or mitigated.*

Objective 7 and Policy EI 7B are given effect to by:

*Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans* (for regional, city and district councils)

*Method 17: Identify and manage potential effects on infrastructure corridors* (for city and district councils)

- 4.1 In addition, the National Adaptation Plan (to be had regard to<sup>2</sup>) includes Action 8.5<sup>3</sup> *Progress the Rail Network Investment Program*. In particular, it requires KiwiRail's Rail Network Investment (10-year) Programme *to restore it to a resilient and reliable state. Mitigating climate change is a key focus within the RNIP [...]*. This action assists in implementing National Adaptation Plan Objective INF2 *Ensure all new infrastructure is fit for a changing climate*.<sup>4</sup>
- 4.2 The Emissions Reduction Plan is a matter to be had regard to by Council of particular relevance within the Emissions Reduction Plan (for rail) is *Action*

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<sup>2</sup> RMA, section 61(2)(a)(iia).

<sup>3</sup> National adaptation plan, Action 8.5 Page 135.

<sup>4</sup> National adaptation plan, Table 8, *government objectives to building resilient infrastructure*, page 125.

10.3.1: *Support the decarbonisation of freight* which includes as a key initiative:

- *Continue to implement the New Zealand Rail Plan and support coastal shipping.*

4.3 For completeness, the New Zealand Rail Plan (**NZRP**) lists as strategic investment priorities<sup>5</sup> :

- *Investing in the national rail network to restore rail freight and provide a platform for future investments for growth; and*
- *Investing in metropolitan rail to support growth and productivity in our largest cities.*

4.4 While the Emissions Reduction Plan is *to be had regard to*, its support for the NZRP (among other things) illustrates a strategic forward plan to generally improve and increase train services over time<sup>6</sup>.

## 5 KIWIRAIL SUBMISSIONS

5.0 In summary, KiwiRail's primary submission:

- a. Supports the description of **Issue 2.8.1**, but considers amendments are required to (2)<sup>7</sup> and (9)<sup>8</sup> to recognise reverse sensitivity and manage interface between conflicting land uses (including support for low density which may be an appropriate response);
- b. Supported **Objective 25**<sup>9</sup> subject to amendments providing that growth plans are responsive the needs of network utility providers and operators;
- c. Proposed an amendment to **Policy UG 7A**<sup>10</sup> and consequential amendments to the explanation of **Policy UG 14B** to recognise reverse sensitivity when providing for out of sequence growth.

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<sup>5</sup> The New Zealand Rail Plan, Part B, pages 25 and 38 for key details.

<sup>6</sup> Statement of Mr Michael Brown, 19 June 2023, Section 2.

<sup>7</sup> Submission 20:2.

<sup>8</sup> Submission 20:3.

<sup>9</sup> Submission 20:4.

<sup>10</sup> Submission 20:6.

- d. Supports the intent of **Policy UG 7Ax**<sup>11</sup> and seeks an amendment to minimise land use conflicts as far as practicable, including avoiding the potential for reverse sensitivity effects.
- e. Amend **Policy UG 10B**<sup>12</sup> to ensure the policy is sufficiently broad to enable consideration of local and central government financial resources in decision making. **Policy UG 6A**<sup>13</sup> is supported on the basis that changes to Policy UG 10B are made.
- f. Proposed multiple amendments to **Policy UG 13B**<sup>14</sup> to better provide for transport corridor operation, reverse sensitivity and to recognise that qualifying matters may require appropriate reductions in building height or/and density of urban form.
- g. Sought to expand **Policy UG 14B**<sup>15</sup> by providing for the avoidance of reverse sensitivity on urban activities outside of urban environment.
- h. Supported **Policy UG 20B**<sup>16</sup> and methods under **3.2.1** as notified.
- i. Proposed a **definition** of well-functioning urban environments" which is consistent with the NPS-UD<sup>17</sup>.

## 6 COUNCIL EVIDENCE AND ASSESSMENT

6.0 Although no specific submission numbers are referred to, Ms Pottage appears to have grouped all KiwiRail submissions and addressed them in *Section 18 Reverse sensitivity effects* of the Overview Report. All KiwiRail submissions seeking amendments have been rejected based on the following broad assessment:

*18.3 The RPS recognises reverse sensitivity effects on existing lawfully established activities through various policies. Of relevance to the submissions the following operative RPS direction is still relevant to consider for further urban growth:*

- *Policy UG 20B: Managing reverse sensitivity effects on rural production activities and infrastructure in rural areas.*
- *Policy EI 7B: Managing the effects of infrastructure development and use.*
- *Policy AQ 1A: Discouraging reverse sensitivity effects associated with odours, chemicals and particulates.*

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<sup>11</sup> Submission 20:7.

<sup>12</sup> Submission 20:5.

<sup>13</sup> Submission 20:5.

<sup>14</sup> Submission 20:9.

<sup>15</sup> Submission 20:10.

<sup>16</sup> Submission 20:11.

<sup>17</sup> Submission 20:13.

- Policy EI 3B: Protecting nationally and regionally significant infrastructure.

18.4 The primary purpose of Proposed Change 6 is to give effect to the responsive planning and intensification requirements of the NPS-UD. Broader urban and rural growth management issues will need to be addressed as part of the pending RPS review, and particularly Proposed Change 8. In the interim, staff consider reverse sensitivity effects are appropriately recognised by the aforementioned RPS provisions which remain relevant to new urban growth proposals.

6.1 A review of the S32AA Assessment indicates that a range of KiwiRail's submission points were considered as a reasonably practical option<sup>18</sup>.

3. Recognition of reverse sensitivity effects throughout the whole of Change 6, specifically Policies UG 7A, UG 7Ax, UG 14B, 18B, 20B and 24B.

6.2 The S32AA Assessment draws a similar conclusion as the Overview Report, ie. that the existing RPS framework is adequate and [additional] *policy would add little and so is not considered necessary*<sup>19</sup>.

6.3 I note that KiwiRail's submission proposing a definition (to match the NPSUD) of *well-functioning urban environments* is not addressed in Section 17 Appendix A – Definitions.

## 7 ASSESSMENT

7.0 I have reviewed KiwiRail's submissions in light of the Overview Report recommendations and considered whether the existing and proposed RPS provisions identified are sufficient and appropriate to manage potential effects on the rail corridor in light of both the NPSUD, Enabling Supply Act and the concurrent DC Plan Changes.

7.1 Firstly, I acknowledge that the Council proposes a future plan change which Ms Pottage advises will address *urban and rural growth management issues*<sup>20</sup> and, I assume, also addresses reverse sensitivity. It is unclear from Council's website on the timing of this process and how this would coordinate with the DC Plan Changes.

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<sup>18</sup> Proposed Change 6 (NPS-UD) to the Bay of Plenty Regional Policy Statement: Section 32AA evaluation of changes, June 2023, prepared by Ms Pottage, Section 3.1.

<sup>19</sup> Proposed Change 6 (NPS-UD) to the Bay of Plenty Regional Policy Statement: Section 32AA evaluation of changes, June 2023, prepared by Ms Pottage, Section 3.3 point 3.

<sup>20</sup> Overview Report Paragraph 18.4.

- 7.2 Secondly, of the specific policies identified by Ms Pottage<sup>21</sup> as already addressing the matters raised in submissions:
- a. Policies EI 3B and 7B are relevant and outlined in Section 4 above;
  - b. Policy AQ 1A *Discouraging reverse sensitivity effects associated with odours, chemicals and particulates* is not relevant to the rail corridor.
  - c. Policy UG 20B it titled *Managing reverse sensitivity effects on rural production activities and infrastructure in rural areas* appears relevant but on reading the associated Explanation, focuses almost entirely on the loss of rural production from:
    - i. rural lifestyle subdivision causing reverse sensitivity concerns with adverse effects on land productivity, versatility, and the efficient operation of rural production activities;
    - ii. effects of farming and horticultural practices affecting the wellbeing of people through spray drift, noise, shading, etc; and
    - iii. quarrying and mining.
- 7.3 Within the Policy UG 20B Explanation, there is no mention of rail (or transport) infrastructure or the direct effects that can arise from the operation and maintenance of the same. When reading Policy UG 20B in the context of its Explanation, I conclude that it does not address reverse sensitivity effects relative to rail (or other transport) infrastructure.
- 7.4 Thirdly, in assessing the RPS changes, the existing RPS framework and KiwiRail's submission, I have also considered the primary outcomes of the NPSUD and the Enabling Supply Act as they affect intensification and the RPS.
- 7.5 The NPSUD Policy 3 requires, among other things, regional policy statements to enable intensification of urban form of generally six stories around centres and other identified areas.
- 7.6 The Enabling Supply Act requires specified territorial authorities (ie. Tauranga and Western Bay of Plenty) to implement the medium density residential standards (MDRS) providing for additional height and increased density of

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<sup>21</sup> Overview Report Paragraph 18.3.



urban form. MDRS applies in urban areas unless qualifying matters are identified and a less enabling approach is proposed that meets the relevant statutory tests.

- 7.7 Where urban development is enabled in new areas and at a higher density adjacent to recognised regionally significant infrastructure, there is a need to ensure reverse sensitivity effects do not constrain the safe and efficient operation of that infrastructure. This is reflected in the existing RPS framework by Objectives 6 and 7 and Policies EI 3B and 7B in addition to the Enabling Supply Act's identification of qualifying matters. Qualifying matters are a new concept which is not currently addressed within the RPS. Qualifying matters are defined in Section 3.32 of the NPSUD and include:

*(c) any matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure*

- 7.8 While the detailed implementation of the Enabling Supply Act and NPSUD is through the DC Plan Changes, in my opinion, qualifying matters and a strengthened recognition of potential reverse sensitivity (within the UG chapter) is needed. This will ensure the required intensification is:
- a. appropriately located and managed, and
  - b. the district planning framework have support from and a linkage to legislative requirements.

## **8 FURTHER AMENDMENTS SOUGHT**

- 8.0 Below I address changes I consider appropriate, where I set out amendments, the (black) base text is from the Overview Report with changes accepted; the red underline or ~~strikethrough~~ reflects my amendments.

### Issue 2.8.1 (2)

- 8.1 I support the changes proposed by KiwiRail. Policy 8 of the NPSUD directs local authorities to be responsive to unanticipated and out of sequence plan changes; this may result in additional unexpected plan changes and therefore recognising potential reverse sensitivity conflicts will be increasingly important. In addition, I agree that in some (likely limited) situations, low density land use maybe a reasonable response.

2. *Land supply and inefficient patterns of land use*  
*An imbalance of land supply, demand, and uptake can have adverse economic and social effects, yet it is very difficult to plan and predict. Inefficient ~~and low density patterns~~ of land use and ad hoc development, are difficult and costly to service and maintain, and contribute to increasing greenhouse gas emissions. A shortage of appropriate developable land and housing supply reduces housing choices and leads to increases in prices. Unplanned growth and inefficient land use also have the potential to create land use conflicts and reverse sensitivity effects, adversely affect rural production activities and to reduce the ability of versatile land to be used for a range of productive purposes.*

Issue 2.8.1 (9)

8.2 As described in paragraphs 7.4 to 7.8, the NPSUD and Enabling Supply Act provide for significant growth to be enabled and with that growth primarily anticipated by intensive urban development. As with Issue 2.8.1(2), a stronger basis for recognising reverse sensitivity and managing the interface between conflicting land uses is, in my opinion, appropriate when faced with growth. I would however suggest an alternative approach to that put forward in KiwiRail's primary submission (but with the same outcome).

KiwiRail Submission:

9. *Intensive urban development*  
*More intensive urban development is necessary to accommodate growth but has the potential to:*

- *Increase road congestion leading to restricted movement of goods and services to, from, and within the region and ~~compromising the safe and efficient operation of the transport network, where the interface between conflicting land uses is not appropriately managed if not undertaken in conjunction with wellplanned transport improvements~~*

8.3 I prefer not to delete the text *if not undertaken in conjunction with well planned transport improvements* as I consider this is a relevant matter to consider under Issue 9. In my opinion, it is preferable to retain reference to transport improvements and also addresses land use conflict but as separate points.

9. *Intensive urban development*  
*More intensive urban development is necessary to accommodate growth but has the potential to:*  
[...]  
*Create unforeseen social, economic and cultural effects.*

- *Increase road congestion leading to restricted movement of goods and services to, from, and within the region, and compromising the efficient operation of the transport network, if not undertaken in conjunction with wellplanned transport improvements.*

• *Compromise the safe and efficient operation of the transport network, where the interface between conflicting land uses is not appropriately managed*

- 8.4 I recommend this change as it continues to recognise that (road) transport improvements (capacity / safety) may be necessary and that this is a separate issue to conflict between land use and transport network (reverse sensitivity).

#### Objective 25

- 8.5 In its submission, KiwiRail sought to include reference to 'network utility providers and operators' in the context of not only integration of long-term planning and funding mechanisms but also their growth plans. The amendment sought by KiwiRail is necessary to ensure that funding mechanisms are expressly responsive to network utility operator growth plans in addition to industry sector groups and other development entities.

#### Policy UG 7A and Explanation of Policy UG 14B

- 8.6 Policy UG 7A is a very specific list of 'criteria' which must be met when considering unanticipated or out of sequence growth. I support the submission of KiwiRail to include the following within the criteria:

*(g) The development avoids the potential for reverse sensitivity effects on the safe and efficient operation of transport corridors.*

- 8.7 The proposed text is consistent with Objective 6 and Policy EI 3B (particularly *Ensure that where potentially incompatible subdivision, use or development is proposed near regionally significant infrastructure, it should be designed and located to avoid potential reverse sensitivity effects*) via Method 3 (review and replacement of plans).
- 8.8 I accept that Policy EI 3B (and EI 7B) reference this issue however Policy UB 7A is a very specific list of 'criteria' which must be met when considering unanticipated or out of sequence growth; including the following text ensures that this matter will be included as a matter to be directly addressed at plan change stage.
- 8.9 I note KiwiRail requested consequential changes to the explanation of Policy UG 14B, on review, I am comfortable with the text proposed in the Overview Report.

### Policy UG 7Ax

8.10 Policy UG 7Ax seeks to enable density in a set of particular circumstances. I support the additional clause as proposed by KiwiRail. As with Policy UG 7A, UG 7B reads as a specific 'list' to be met and there is no reference to EI 3B or EI 7B as matters which may limit urban form. In addition to EI 3B and EI 7B, the safe and efficient operation nationally significant infrastructure (rail) is a qualifying matter<sup>22</sup> which may lead to a territorial authority decision to reduce the density of urban form of sites.

### Policy UG 10B (and related UG 6A)

8.11 I have considered this further and agree with the Council staff that the policy is broad and the listed matters are items to be *taken account of*.

### Policy UG 13B

8.12 As alluded to in my paragraphs 7.7, the safe and efficient operation of the rail network (being nationally significant infrastructure) is a qualifying matter which may limit the urban form. Including the changes proposed in KiwiRail's submission supports both EI 3B and 7B along the Enabling Supply Act (in particular, recognising qualifying matters). Recognising that the proximity of transport networks may limit urban form is appropriate at an RPS level within the Urban Growth Chapter:

*Policy UG 13B: Promoting the integration of land use and transportation  
In promoting the integration of land-use and transport activities, regard  
should be given to:*

*[...]*

*(f) Existing and future transport corridors are defined and protected to ensure their safe and efficient operation, and*

*~~(e)(g) Integrated transport packages for funding are developed,~~*

*(h) The interface between land use and transport activities, including potential reverse sensitivity effects on transport corridors, and*

*(i) Any appropriate reductions in building height and/or density of urban form to provide for qualifying matters.*

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<sup>22</sup> NPSUD 3.32(1)(c) any matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure

### Policy UG 14B

8.13 For the same reasons set out for Policies 7Ax, 10B and 14B, an amendment to Policy UG 14B is proposed for the avoidance of reverse sensitivity on urban activities outside of urban environment.

### Definition of well-functioning urban environments

8.14 KiwiRail proposed a definition of *well-functioning urban environments* which is consistent with the NPS-UD. The NPSUD Policy 1 requires that planning decisions contribute to a well-functioning urban environment (WFUE). The RPS does not currently import the definition of WFUE from the NPSUD and would benefit from this to avoid any interpretive questions.

## **9 CONCLUSION**

9.0 The existing RPS, while providing a good basis for managing potential reverse sensitivity effects, needs to be updated to reflect growth enabled by the NPSUD and Enabling Supply Act. This will ensure concepts such as qualifying matters are appropriately reflected to provide support for lower order planning documents.

9.1 I recommend a range of amendments and have consolidated these as Attachment A.

**Cath Heppelthwaite**  
19 June 2023

## Attachment A: Proposed Amendments

The (black) base text is from the Overview Report with changes accepted; the red underline or ~~strikethrough~~ reflects my amendments.

### Issue 2.8.1 (2) and (9)

#### 2. Land supply and inefficient patterns of land use

An imbalance of land supply, demand, and uptake can have adverse economic and social effects, yet it is very difficult to plan and predict. Inefficient ~~and low density patterns~~ of land use and ad hoc development, are difficult and costly to service and maintain, and contribute to increasing greenhouse gas emissions. A shortage of appropriate developable land and housing supply reduces housing choices and leads to increases in prices. Unplanned growth and inefficient land use also have the potential to create land use conflicts and reverse sensitivity effects, adversely affect rural production activities and to reduce the ability of versatile land to be used for a range of productive purposes.

#### 9. Intensive urban development

More intensive urban development is necessary to accommodate growth but has the potential to:

[...]

Create unforeseen social, economic and cultural effects.

- Increase road congestion leading to restricted movement of goods and services to, from, and within the region, and compromising the efficient operation of the transport network, if not undertaken in conjunction with wellplanned transport improvements.
- Compromise the safe and efficient operation of the transport network, where the interface between conflicting land uses is not appropriately managed.

### Objective 25

Urban subdivision use and development is located and staged in a way that integrates with the long term planning and funding mechanisms of local authorities, central government agencies and network utility providers and operators whilst also being responsive the growth plans of relevant industry sector groups, network utility providers and operators, and other development entities.

### Policy UG 7A:

Providing for unanticipated or out-of-sequence urban growth – urban environments  
Private plan changes, submissions on plan changes, or submissions on plan reviews providing for development of urban environments and urban growth that forms part of an urban environment, that is unanticipated or out-of-sequence, will add significantly to development capacity based on the extent to which the proposed development satisfies the following criteria:

[...]

- (f) Required development infrastructure can be provided efficiently, including the delivery, funding and financing of infrastructure without materially reducing the benefits of other existing or planned development infrastructure, or undermining committed development infrastructure investment ~~and~~
- (g) The development avoids the potential for reverse sensitivity effects on the safe and efficient operation of transport corridors.

### Policy UG 7Ax

Provide for and enable increased-density urban development in urban environments that:

- (a) Contributes to a well-functioning urban environment,  
(b) Encourages increased density in areas of identified demand, ~~and~~

- (c) Is well served by existing or planned development infrastructure and public transport, ~~and~~  
(d) minimising land use conflicts as far as practicable, including avoiding the potential for reverse sensitivity effects.

### **Policy UG 13B**

*Promoting the integration of land use and transportation*

*In promoting the integration of land-use and transport activities, regard should be given to:  
[...]*

- (f) Existing and future transport corridors are defined and protected to ensure their safe and efficient operation, and  
~~(e)(g)~~ Integrated transport packages for funding are developed,  
(h) The interface between land use and transport activities, including potential reverse sensitivity effects on transport corridors, and  
(i) Any appropriate reductions in building height and/or density of urban form to provide for qualifying matters.

### **Policy UG 14B**

*Restricting urban activities outside urban environments.*

*Restrict the growth of urban activities located outside urban environments unless it can be demonstrated that sound resource management principles are achieved, including:*

- (a) The efficient development and use of the finite land resource, ~~and~~  
(b) Providing for the efficient, planned and co-ordinated use and development of infrastructure, ~~and~~  
(c) The avoidance of reverse sensitivity effects.

### **Appendix A – Definitions**

**Well-functioning urban environment** has the meaning in Policy 1 of the National Policy Statement on Urban Development 2020.