BEFORE THE INDEPENDENT HEARINGS PANEL

THE PROPOSED WAIKATO DISTRICT PLAN (STAGE 1)

UNDER	the Resource Management Act 1991 (**RMA**)
IN THE MATTER OF	A submission and further submission by TaTa Valley Ltd on the Proposed Waikato District Plan – Hearing 5 **Topic 5 - Definitions**
BY	**TATA VALLEY LTD** Submitter

STATEMENT OF PRIMARY EVIDENCE OF AILSA JEAN FISHER ON BEHALF OF TATA VALLEY LTD

Planning

Dated: 19 November 2019

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1. EXECUTIVE SUMMARY

1.1 My full name is Ailsa Jean Fisher. I am an Associate (Planning) in the firm of Beca Ltd. This evidence is presented on behalf of TaTa Valley Ltd (**TVL**).

1.2 In this statement of evidence, I provide commentary on a range of definitions that are either included in the Proposed Waikato District Plan (**PWDP**) as notified, are within the Definitions Standard of the National Planning Standards (**the Standards**) or are new definitions sought by TVL and other submitters.

1.3 The key points from my statement of evidence are:

(a) In my opinion the mandatory definitions included in the Standards (Section 14) should be incorporated in full as part of the PWDP process, regardless of whether there is a submission point in relation to the specific definition. This is because incorporation of the Standards definitions is mandatory. It is therefore efficient to incorporate the definitions now, and appropriate to formulate plan provisions at the same time to avoid retrofitting provisions later. Application and use of the definitions should be rechecked at relevant Zone hearings to identify unintended outcomes and whether consequential amendments are needed. Objectives, policies and rules may need to be amended to take into account changes to the definitions.

(b) I do not consider that "Primary Production" and "Productive Rural Activities" are interchangeable as suggested by the Reporting Officer for the s42A Report: Definitions (**the s42A Report**). "Productive Rural Activities" as discussed in the PWDP as notified has a wider ambit and it would not be appropriate to replace it with "Primary Production". I agree with the Reporting Officer that further thought and consideration be given to this matter at Hearing 21A: Rural.

(c) I support the definition for "Visitor Accommodation" as defined in the Standards. However, I suggest further consideration of relevant rules is required to differentiate between different types

of Visitor Accommodation. This can occur at the relevant Zone Hearings.

(d) On reflection, I consider the definition for “Recreation Facility”, proposed by TVL, is not necessary and can be replaced by the “Accessory Building” term.

(e) In my opinion “Commercial Activity”, “Commercial Services” and “Retail Activity” are not interchangeable as suggested by some submitters and agreed with by the Reporting Officer. Instead separate terms should be retained and incorporated into a nesting table (this is provided for by the Standards and there is a “live” example from the Auckland Unitary Plan).

(f) Given the new definitions for “Structure” and “Building” from the Standards I consider there are consequential amendments necessary to retain the intent of the original provisions of the PWDP and the proposed TaTa Valley Resort Zone.

(g) I consider the definition “Workers Accommodation” should be considered at this Hearing and not deferred. I support the proposed definition as sought by Ports of Auckland Ltd which would achieve the relief sought by TVL.

(h) I do not consider it appropriate to include “Places of Assembly” within the “Noise Sensitive Activity” definition as this definition generally applies to healthcare, education and residential uses where sensitive receivers occupy buildings on a more permanent than transient basis.

(i) I do not agree with the Reporting Officer to retain both “Allotment” and “Lot” within the PWDP because this approach is inconsistent with the Standards.

(j) I support the Reporting Officer’s recommendations in relation to “Notional Boundary”, “Sensitive Land Use”, “Temporary Event”, “Reverse Sensitivity”, “Community Facility”, “Community Activity” and “Accessory Building”.

2. INTRODUCTION

2.1 My full name is Ailsa Jean Fisher. I am an Associate (Planning) in the firm of Beca Ltd and am the Team Leader for the Beca Environments section in Tauranga. I have over 10 years' experience in town planning.

2.2 I hold a Bachelor of Planning (honours) from the University of Auckland. I am a full member of the New Zealand Planning Institute.

2.3 My previous experience is listed in my statement of evidence prepared on behalf of TVL for Hearing 1 of the PWDP.

2.4 I have been engaged by TVL to prepare and present this planning evidence to the Hearings Panel in relation to TVL's submission and further submission points of relevance to Hearing 5: Definitions of the PWDP. TVL is submitter number 574 and further submitter number 1340.

2.5 In preparing this evidence I have reviewed the s42A Report and Appendices relating to Hearing 5: Definitions and further submissions that are relevant to TVL and the section 42A Report.

3. CODE OF CONDUCT

3.1 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and that I agree to comply with it. I confirm that I have considered all material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

4. SCOPE OF EVIDENCE

4.1 My evidence will cover the following topics:

(a) My opinion about the implementation of the Standards (Section 14: Definitions);

(b) Commentary on the following definitions:

(i) Primary Production and Productive Rural Activities;

(ii) Visitor Accommodation and Travellers Accommodation;

(iii) Recreation Facility and Outdoor Recreation;

(iv) Commercial Activity, Commercial Services and Retail Activity;

(v) Entertainment Facility;

(vi) Temporary Event;

(vii) Structure;

(viii) Building;

(ix) Notional Boundary;

(x) Workers Accommodation;

(xi) Noise Sensitive Activity;

(xii) Sensitive Land Use;

(xiii) Temporary Event;

(xiv) Reverse Sensitivity;

(xv) Community Facility and Community Activity;

(xvi) Accessory Building;

(xvii) Allotment; and

(xviii) Consequential amendments for the proposed TaTa Valley Resort Zone Chapter.

5. TATA VALLEY LIMITED'S INTERESTS

5.1 The statement of evidence I prepared for TVL for Hearing 1 and opening legal submissions for TVL set out a summary of the TVL interests and the intent of the submission. For conciseness, I do not repeat this detail here.

6. SCOPE OF S42A REPORT

6.1 I understand that not all submission points relating to the definitions in the PWDP have been considered in this s42A Report. Rather, some have been deferred to another hearing that the Reporting Officer deems

a more appropriate setting in which to consider the definition. I note that TVL's submission point in relation to the definition of "Workers Accommodation" has been deferred[1]. I do not agree that it should be deferred and discuss this matter in paragraph 15.3.

6.2 There are also several other submission points of TVL relating to a definition, which are not discussed in the s42A Report. I have reviewed the excel spreadsheet compiled by WDC which 'codes' submission points to certain hearings and note that the following submission points (relating to a definition not mentioned in the s42A Report) have been coded as follows:

(a) 574.13 - "Significant Natural Area" – Hearing 22A

(b) 574.15 - "Special Event" – Hearing 25 (although this submission point was coded to Hearing 5 as its "Secondary Hearing", it is not discussed in the s42A Report)

(c) 574.23 - "Outdoor Recreation" – Hearing 25

(d) 574.24 - "Recreation Facility" – Hearing 5

(e) 574.25 - "Entertainment Facilities" – Hearing 25

6.3 In relation to these definitions:

(a) As notified, the definition of "Significant Natural Area" refers to *an area of significant indigenous biodiversity that is identified as a Significant Natural Area on the planning maps*. TVL's submission sought this definition be amended to provide guidance regarding the characteristics or qualities of an area considered to be a "Significant Natural Area". In this regard, I agree that this definition is most appropriately considered at Hearing 22A with the rest of the natural environment provisions.

(b) I agree that "Special Event" should be considered at Hearing 25 because the proposed definition specifically references the Resort Zone.

[1] Appendix 3 of the s42A Report, deferred to Industrial Zone, Industrial Heavy Zone, Rural Zone, Country Living Zone, TaTa Valley Resort Zone hearings

(c) I note that “Recreation Facility” was coded to this hearing but has not been discussed in the s42A Report. I will discuss the proposed definition in my evidence below.

(d) I do not agree that “Outdoor Recreation” should be considered at Hearing 25 because the term is referenced in “Recreation Facility” (which is coded to this Hearing). Furthermore, I note that this term is not intended to be used exclusively for the TaTa Valley Resort Zone (ie the use of such an activity could be applied in other zones such as the Reserves Zone) and accordingly TVL's submission sought to include the definition in Chapter 13 to enable wider application if desired, Given this, I discuss the definition in this statement of evidence.

(e) On a similar vein, I do not agree that “Entertainment Facilities” should be considered at Hearing 25 because this term is not intended to be used exclusively for the TaTa Valley Resort Zone.

7. IMPLEMENTATION OF THE NATIONAL PLANNING STANDARDS: DEFINITIONS

7.1 I understand that Section 14 (Definitions) of the Standards is a mandatory direction which is also noted by the Reporting Officer[2]. My understanding of the mandatory direction in regard to the process within the Resource Management Act 1991 (RMA) is that:

(a) Section 58I(3) of the RMA states that mandatory directions within the Standards must be made without using the processes set out in Schedule 1 of the RMA. Section 17 (Implementation) of the Standards states that the amendments to comply with the Definitions Standard must be made by 7 years from when the Standards come into effect (i.e. May 2026)[3]. Given those obligations, I acknowledge that the Standards do not have to be implemented as part of the PWDP and that process could be delayed to a later process. However, I still consider there are efficiencies to be gained from addressing them through the current review process.

[2] Paragraph 41 of the s42A Report
[3] Refer to section 6(a) of the Implementation Standards

(b) As part of this process, any consequential amendments arising from incorporation of the Standards definitions can be undertaken at the same time (s58I(3)(d))[4]. This can also be undertaken without a Schedule 1 process.

7.2 Section 14 of the Standards sets out the mandatory definitions[5]. From my review of this Section I note that:

(a) Where the term is used in a plan with the same context as the definition in the Standards local authorities must use the term in Section 14[6].

(b) If required, local authorities may define terms that are a subcategory of or have a narrower application than the defined term in Section 14. These definitions must be consistent with the higher level definition[7].

(c) Additional terms can be included in the Definitions if they do not have the same or equivalent meaning as a term within the Definitions List[8]

(d) Consequential amendments may be required so that the 'new' definition does not alter the effect or outcomes of the plan[9].

7.3 The Reporting Officer discusses the application of the Standards in the context of the (mandatory) Definitions Standard and recommends an "all

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[4] Section 58I includes:

(2)If a national planning standard so directs, a local authority must amend each of its documents—

(a)to include specific provisions in the documents; and

(b)to ensure that the document is consistent with any constraint or limit placed on the content of the document under section 58C(2)(a) to (c).

(3)An amendment required by subsection (2) must—

(a) be made without using any of the processes set out in Schedule 1; and

(b) be made within the time specified in the national planning standard or (in the absence of a specified time) within 1 year after the date of the notification in the Gazette of the approval of the national planning standard; and

(c) amend the document to include the provisions as directed; and

(d) include any consequential amendments to any document as necessary to avoid duplication or conflict with the amendments; and

(e) be publicly notified not later than 5 working days after the amendments are made under paragraph (d).

[5] https://www.mfe.govt.nz/sites/default/files/media/RMA/national-planning-standards.pdf

[6] National Planning Standards, Section 14 (1)

[7] National Planning Standards, Section 14 (1)(a)

[8] National Planning Standards, Section 14 (1)(b)

[9] National Planning Standards, Section 14 (3)

or nothing"[10] approach to updating the PWDP in light of the definitions. In summary, the Reporting Officer:

(a) Recommends where definitions in the Definitions List have been submitted on, the Standards definition should be adopted through the PWDP process[11] as well as consequential changes and provides commentary on the reasons for this recommendation in section 2.5.1 of the s42A Report.

(b) Notes that the "all or nothing" approach does not extend to those Standards definitions which have not been submitted on given time and capacity constraints[12].

7.4 I do not consider that the approach recommended by the Reporting Officer actually constitutes an "all or nothing" approach but somewhere in between, as if a definition has not been submitted on it is not covered in the s42A Report or recommended to be included in the PWDP. As such, I do not agree with aspects of the intended approach and some of the reasoning in the s42A report:

(a) There is no necessity for submissions to provide scope for making these changes as the mandatory directions provide for these amendments to be made without a Schedule 1 process as long as the context is the same.

(b) Notwithstanding this, I note that if there is uncertainty about whether certain changes (particularly regarding consequential amendments) can be made as part of the above process, in my view, there is sufficient scope within the more general submissions to incorporate the Standards (and consequential amendments) as part of the PWDP[13].

(c) Updating all the definitions in one process is more efficient and transparent than a council only update. The greater involvement of the public should assist to identify and reduce unintended consequences. It also enables the provisions of the PWDP to be prepared and determined in light of the mandatory definitions at

[10] Refer section 2.5 of the s42A Report
[11] Paragraph 48 of the s42A Report
[12] Paragraph 58 of the s42A Report
[13] For example, submission point 749.26

the same time. The alternative would be for the definitions to changed at a later date once all the other provisions are already set which appears to be an inefficient approach.

(d) The reasons the Reporting Officer provides in section 2.5.1 of the s42A Report for incorporating (some of) the definitions now can be generally applied to all of the definitions and not just the ones submitted on.

7.5 In light of the above I support updating all the definitions in the PWDP to implement the Standards now.

7.6 I have compiled a list in Attachment A of those definitions within the Standards which are not discussed in the s42A Report nor recommended for deferral to other hearings (Appendix 3 of the s42A Report)[14] and compared these with the PWDP definition.

7.7 I have considered whether the "leftover" definitions could be brought into the PWDP concurrently with the rest of those discussed in the s42A Report in light of the Reporting Officer's comments regarding time and capacity constraints. In my opinion the changes appear fairly straight forward, and (in a similar approach to the other definitions) I recommend these should be rechecked at relevant Zone hearings to identify unintended outcomes and if further consequential amendments are needed (noting that I have not done this analysis myself). However, I do not believe time and capacity constraints will be an issue in the context of the full PWDP process and overall it is likely to be more efficient undertake the exercise as part of this Plan review process.

Identification of mandatory changes

7.8 As noted, the definitions can be incorporated without a Schedule 1 process as long as they are used in the same context. With this in mind, I think it is helpful to consider how the 'mandatory' definitions (and consequential amendments) are displayed in the Decisions Version of the PWDP.

7.9 I consider the mandatory changes could be shown by a simple change in colour. For example, it is common that amendments in Decisions

[14] However, I note these definitions may be brought up in subsequent Hearings.

Versions of plans are shown as red text, with additions underlined and deletions struck through. Text changes that are a result of implementation of the mandatory directions of Section 14 of the Standards (including consequential changes) could be done in green instead (for example).

7.10 In summary, I think it is most efficient and practical to incorporate all of the definitions of the Standards into the PWDP as part of the Decisions Version. I believe these amendments should be shown in a different colour.

8. PRIMARY PRODUCTION AND PRODUCTIVE RURAL ACTIVITIES

8.1 Submissions were received seeking definitions for "Productive Rural Activities"[15]. The Reporting Officer makes the following comments on this matter[16]:

(a) Section 1.4.3.1 of the PWDP indicates what is meant by "Productive Rural Activities"[17] although noting this is not set out in Chapter 13: Definitions.

(b) The adoption of "Primary Production" as per the Standards would achieve the relief sought by submission point 797.20 (regarding a suggested definition for "Productive Rural Activities") because the wording is similar.

(c) That further thought should be given to replacing the term "Productive Rural Activities" with "Primary Production" including in Objective 5.1.1, at the Hearing 21A: Rural.

(d) That there are overlaps between the "Farming" definition of the PWDP as notified and the "Primary Production" definition of the Standards. This is a matter deferred to Hearing 21A: Rural.

8.2 As outlined in the evidence of Mr Scrafton for Hearing 3, as currently drafted, Objective 5.1.1 is of critical importance to all provisions in the rural environment and zones. Any defined terms within the Objective

[15] Submission point 797.20. TVL did not further submit on this definition but has a number of general submission points on the appropriateness of the rural zone provisions.
[16] Refer to Paragraphs 828 – 833 of the s42A Report for this discussion
[17] Chapter 1.4.3.1 starts with *"Productive rural activities are those activities that use rural resources for economic gain or which cannot be carried out easily or appropriately in an urban setting…"*

need very careful consideration particularly where the Objective seeks to avoid all other activities. My concern with the recommendations of the Reporting Officer in relation to these rural definitions is as follows:

(a) I do not agree that "Productive Rural Activities" and "Primary Production" are interchangeable. The two concepts (i.e. "Productive Rural Activities" and "Primary Production") are different and it will lead to a different, and in my view inappropriate, planning outcome to replace one with the other. "Productive Rural Activities" is not yet defined so a comparison of the two terms is difficult. However, as the Reporting Officer suggests, the PWDP indicates the intention of this term in Chapter 1.4.3.1(a) and as such I use this as the basis for comparison:

(i) "Primary Production" does not reference locality in the definition whereas the description of "Productive Rural Activities" in Chapter 1.4.3.1(a) does ("*Productive rural activities are those activities that use rural resources for economic gain or <u>which cannot be carried out easily or appropriately in an urban setting</u>…*" (<u>emphasis</u> added). As such "Primary Production" activities do not necessarily have to be located within the Rural environment. Although I anticipate such a scenario is generally unlikely in the Waikato District, there are examples that spring to mind which would fit the definition, such as Three Kings Quarry and Stonefields in Auckland (former quarries) and the market gardens in Otahuhu/Favona (horticultural).

(ii) Should the Panel decide to swap the terms then I suggest there needs to be careful consideration of the impacts on other parts of the PWDP (eg Chapter 1.4.3.1(a) and Objective 5.1.1) and consequential amendments may be necessary so that the terminology swap does not alter the effect or outcome of the provisions (in accordance with section 14(3) of the Standards).

(iii) The wording in Chapter 1.4.3.1(a) also references the use of "rural resources for economic gain". This is broad and

is not limited to primary production. For example, TVL is seeking to use rural resources (such as large open spaces) which are rural but not in all circumstances productive resources for economic gain to provide a rural New Zealand experience. Other examples of the use of rural resources for economic gain include Hampton Downs, dog kennels and recreation activities[18]. None of these activities easily fit within the term "Primary Production".

(b) Having regard to the above, I consider the text in Chapter 1.4.3.1(a) indicates that the PWDP seeks to enable a wide range of rural based activities that are not necessarily limited to primary production activities but those activities seeking to use rural resources for economic gain or those activities which are not compatible in an urban setting or in other words, "Rural Activities".

8.3 More generally, I note that an appropriate grouping of rural activities definitions would be beneficial to the future administration of the PWDP rather than sole reliance on primary production or rural productive activities. There may be instances where Primary Production needs to be managed in a certain way but wider rural activities or productive rural activities need to be managed in a different way. I suggest that Hearing 21A: Rural would be an appropriate forum to consider these issues and that through that hearing, consideration should be given to what is an appropriate range of rural activities and what consequential changes to the policy framework would be required to provide for such a range of activities.

9. VISITORS ACCOMMODATION / TRAVELLERS ACCOMMODATION

9.1 TVL seeks to amend the definition of "Travellers Accommodation"[19] to delete the words "for the use of the guests staying at the site" in connection with "recreation facilities" which forms part of the definition.[20].

[18] I discussed Chapter 1.4.3.1 in more detail in my statement of evidence on behalf of TVL for Hearing 1.
[19] Submission point 574.14
[20] I note that the relief sought by submission point 574.14 is not accurately shown in the s42A Report. It should be noted as "...and recreation facilities ~~for the use of the guests staying at the site~~. It includes hotels...

9.2 The Reporting Officer notes there is a definition for “Visitors Accommodation” in the Standards which generally aligns with “Travellers Accommodation”[21] and recommends that the definition be replaced within the PWDP[22].

9.3 The relief sought by TVL is achieved with the incorporation of the Standards definition for “Visitors Accommodation” because this definition does not restrict the use of facilities to guests only.

9.4 I support the Reporting Officer's recommendation in this regard. However, I note that the PWDP definition for “Travellers Accommodation” as notified provides helpful guidance in terms of the wide ranging types of accommodation that fall under this definition. I consider the different types of visitor accommodation should be managed differently due to their different nature and effects. A large, multi-activity resort is different from a campground. To reflect this in the PWDP, I suggest that there are two broad options to consider:

(a) The inclusion of a subcategory table to reference visitor accommodation sub types (eg hotels and motels, backpacker hostels, camping grounds and tourist cabins). This could be similar to the nesting tables in other plans, like the AUP[23]. This would enable these 'sub-definitions' to be used and differentiated in terms of activity status in the Zone rules (if desired), to align with overarching policy direction and potential level of effects of the sub-types. This approach is consistent with the Standards (Section 14(1)(a)); alternatively

(b) The inclusion of different standards for building bulk, location and effects (which can be considered in more detail at the relevant Zone Hearings). This provides flexibility to visitor accommodation providers without restricting them to one category, whilst setting the expectations of Council in terms of bulk, location and effects.

9.5 I consider that including the second option would provide a more flexible approach to visitor accommodation within the PWDP. This approach would allow WDC to simply list “Visitor Accommodation” in an activity

[21] Paragraph 483 of the s42A Report
[22] Paragraph 491 of the s42A Report
[23] An example of a nesting table is shown in section 11 of my evidence in relation to Commercial Activities

table, with subsequent rules to manage bulk, location and effects. I suggest that such rules be considered and refined within the relevant Zone hearings. For the TaTa Valley Resort Zone the precinct plan can potentially also be used to identify locations within the site where different rules apply in order to enable larger scale Visitor Accommodation in some locations and restrict it in others. In my view, the appropriate plan provisions to achieve this are best considered at Hearing 25.

10. RECREATION FACILITY AND OUTDOOR RECREATION

10.1 TVL seeks two new, related definitions ("Recreation Facility"[24] and "Outdoor Recreation"[25]) and four other submitters (**the Kimihia Lakes Submitters**) seek a definition for "Recreation Activity and Facilities" [26] in relation to a new bespoke zone (being the Kimihia Lakes Recreation and Events Park Zone).

10.2 As previously noted in paragraph 6.3, submission point 574.24 (regarding "Recreation Facility") was coded to Hearing 5 but has not been discussed in the s42A Report. Given the link between "Recreation Facility" and "Outdoor Recreation" I consider it appropriate to address the two proposed definitions together. In addition, and having considered this point further, in my view if the plan includes a definition for outdoor recreation, it would seem appropriate to also include a definition for indoor recreation.

10.3 In relation to these definitions, I note it was not the intention of the submitter to seek exclusive use of these definitions within the proposed TaTa Valley Resort Zone and as such they were drafted to enable the ability to use the activities in other Zones.

10.4 I note that the definition "Recreation Facility" as submitted seeks to provide for ancillary facilities to support outdoor recreation activities i.e. bike storage sheds and changing rooms . Upon reflection, I consider the need to include a specific definition in relation to such accessory

[24] Submission point 574.24 – "Recreation Facility" – *A facility where the primary purpose is to provide for outdoor recreation activities.*
[25] Submission point 574.23 – "Outdoor Recreation" – *Physical activity undertaken in outdoors or natural settings to connect to the outside environment and whose primary aim is the enjoyment of leisure. Activities include: Walking and cycling, bush walks, bird watching, mini golf, paintball, zip lining, golf driving range.*
[26] Submission point 184.9, 260.9, 335.14 and 584.9

buildings is not necessary (because use of the general "Accessory Building" term can be applied instead) and as a result, in my view there is no need to include a definition of "Recreation Facility". I note this will require consequential changes to the TaTa Valley Resort Zone provisions (i.e. to replace "Recreation Facility" within the activity table with Accessory Buildings), which will be addressed at Hearing 25.

10.5 I have also reviewed the proposed definition for "Recreation Activity and Facilities" by the Kimihia Lakes Submitters and from my reading it includes reference to built form, location and activities relating to recreation in a way that is specific to the Zone.

10.6 I consider the general intent of the two definitions are reasonably similar. It is also my understanding that the intent of the proposed Kimihia Lakes Recreation and Events Park Zone has similarities with the proposed TaTa Valley Resort Zone in that recreation and tourism activities are envisaged in both Zones.

10.7 Notwithstanding the above, given the Kimihia Lakes Submitters proposed definition has been crafted specifically for their proposed Zone I do not think it is appropriate to merge the two definitions.

11. COMMERCIAL ACTIVITY, COMMERCIAL SERVICES AND RETAIL ACTIVITY

11.1 Waikato District Council (**WDC**) seeks to rationalise "Commercial Services" and "Commercial Activity" into "Commercial Activities" as having both creates confusion and only a single term is needed[27]. The Reporting Officer agrees with this submission and recommends that the two terms be replaced with the Standards definition for "Commercial Activity.

11.2 I note that although TVL supported this submission point[28] in its further submission, upon reflection and taking into account the discussion regarding "Retail Activity" (below), in my opinion these definitions should remain separate.

[27] Submission point 697.374
[28] Further submission FS1340.123

11.3 The Oil Companies seek to rationalise "Commercial Activity" and "Retail Activity" into one term, because as currently defined in the PWDP they are interchangeable (involving the sale of goods and services) and there does not appear to be any particular effects based justification for differentiating these two activities[29]. The Reporting Officer agrees with the relief sought by the Oil Companies and recommends "Retail Activity" be deleted and replaced with "Commercial Activity"[30].

11.4 In general, I support (where appropriate), the rationalising of terms so that the plan is clear and concise, in line with WDC's obligations under s18A(b)(ii) of the RMA[31]. In this instance, however, I consider that the three terms above are not completely interchangeable. They have their own role in the PWDP and should not be rationalised into one term for the following reasons:

(a) From a plain English perspective, I consider "Commercial Services" involves an activity that sells a service, and "Retail Activity" involves an activity that sells goods. I agree that the Standards definition for "Commercial Activity" generally combines these two (with reference to an activity trading in goods, equipment and services).

(b) I do not agree with the Reporting Officer that there is no effects based justification for differentiating between "Commercial Services" and "Retail Activity". I consider that they have different characteristics that may generate different effects, such as:

(i) Their commercial offering and customer typologies affects rates of traffic generation, parking requirements and choice of transport modes;

(ii) Their commercial offering impacts on floor space requirements which have subsequent impacts on density and urban form (for example in my experience District

[29] Submission points 785.32 and 785.33
[30] Paragraph 874 of the s42A Report
[31] S18A of the RMA Procedural principles

Every person exercising powers and performing functions under this Act must take all practicable steps to—
…(b) ensure that policy statements and plans—
…(ii) are worded in a way that is clear and concise

Plans commonly differentiate between small scale and large format bulk retail in rules to direct such land use activities to appropriate locations);

(iii) The type of retail or commercial services may influence the design of the public interface (streetscape frontages, landscaping, parking location) which can impact on amenity levels. This is also a relevant consideration in relation to drive-through restaurants (which falls under "Retail Activity");

(iv) Retail activities that are considered "anchor" tenants (eg supermarkets, department stores) can affect the viability of centres depending on where they are located. Commercial services normally act as a supporting role and are less likely to impact the same way.

11.5 With this in mind, I support the use of "Commercial Activity" as the overarching definition from the Standards with subcategories that refine the term further including "Commercial Services" and "Retail Activity". This approach of subcategories is provided for within the Standards (Section 14(1)(a)).

11.6 This is consistent with the approach for the TaTa Valley Resort Zone Chapter as submitted by TVL in that the proposed provisions separate commercial services from retail premises in the activity table as follows:

(a) Up to two small-scale ancillary retail premises are provided for as a permitted activity, with a resource consent requirement triggered as the number and size of the premises increase.

(b) Ancillary commercial services of any number would require a restricted discretionary or discretionary consent (depending on the total number of premises).

(c) The intention of separating the two activities is to identify that some (small scale) ancillary retail is generally anticipated to support the Resort as of right (such as a souvenir shop), but the addition of any type of commercial service should be considered

further as part of a resource consent process, as such services should generally be provided for within a town centre (or similar).

11.7 A "live" example of the use of subcategories is the AUP which uses subcategories (referred to as a "nesting table" in the AUP) extensively in Chapter J: Definitions. The figure below shows this approach, taken from the AUP (Chapter J: Definitions) for the overarching term "Commercial Activity".

Table J1.3.1 Commerce

Commercial activities	Offices		
	Retail	Food and beverage	Bars and taverns
			Restaurants and cafes
			Drive-through restaurant
		Dairies	
		Show home	
		Large format retail	Supermarket
			Department store
		Trade supplier	

ıckland Unitary Plan Operative in part 6

J1 Definitions

		Service station	
		Markets	
		Marine retail	
		Motor vehicle sales	
		Garden centres	
	Commercial services	Veterinary clinic	
		Funeral director premise	
		Commercial sexual services	
	Entertainment facilities		

11.8 "Retail" and "Commercial Services" have separate definitions in the AUP as well[32].

11.9 In considering the above approach, I suggest that "Offices" should be included as a subcategory (and the definition in the PWDP for "Office" is aligned with the overarching "Commercial Activity" definition in that it relates to a premise for administrative or professional services).

[32] "Commercial Services" is defined in the AUP as *Businesses that sell services rather than goods. For example: banks, real estate agents, travel agents, dry cleaners and hair dressers.*
"Retail" is defined in the AUP as *Selling goods to the general public*

11.10 It should also include “Entertainment Facility”, and TVL has submitted seeking to include the following definition for “Entertainment Facility:[33]

A facility used for entertainment, including: cinema, showground, performance/cultural venue.

11.11 As noted in paragraph 6.3 it is not the intention of TVL to exclusively apply this definition to the TaTa Valley Resort Zone Chapter but to enable its use throughout the District.

12. STRUCTURE

12.1 WDC seeks to include a definition for “Structure”[34] and TVL supports this submission point[35].

12.2 The Reporting Officer agrees that a definition is beneficial and recommends that the Standards definition for “Structure”[36] be included in the PWDP[37]. I support this recommendation to be consistent with the Standards.

12.3 I note that the definition refers to structures that are fixed to land, as opposed to the Standards definition for “Building” which can be fixed or located on land[38]. As such I consider that there are some associated consequential amendments:

(a) The TaTa Valley Resort Zone provisions as submitted have rules relating to “Temporary Structures”[39]. The intention of these rules from TVL’s perspective is to provide for temporary structures that support temporary or special events. This includes coffee carts, food truck caravans and other such amenities that may not be fixed to land (eg portable toilets) and are subsequently (under the definition Standards) not a “Structure” but deemed to be a “Building”. In light of this I consider a consequential change is

[33] Submission point 574.25
[34] Submission point 697.510
[35] FS1340.130
[36] “Structure” in the Standards *has the same meaning as in section 2 of the RMA: means any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*
[37] Paragraph 237 of the s42A Report
[38] “Building” in the Standards *means a temporary or permanent movable or immovable physical construction that is: a. partially or fully roofed, and*
b. is fixed or located on land, but
c. excludes any motorised vehicle or other mode of transport that could be moved under its own power.
[39] Proposed rule 29.2 and 29.4.4

necessary to the term “Temporary Structures” in the Tata Valley Resort Zone to provide for both temporary “Structures” and “Buildings” in proposed rules 29.2 and 29.4.4. I note that this and other consequential amendments will be addressed further in evidence for Hearing 25.

(b) In a similar vein, policy and rules relating to “Temporary Event” within the PWDP as notified refers to “Associated Structures”[40] and “Temporary Structures”[41]. As such I consider the policy and rules should be amended to provide for “Buildings” as well, as per my discussion in paragraph 12.3(a) above. I note the Reporting Officer recommends a similar course of action in considering if the two terms be included together or not[42]. This can be tested through the Zone hearings and careful consideration on the implications for rules.

13. BUILDING

13.1 There are a number of submission points relating to the definition of “Building” including retaining or amending the wording[43]. The Reporting Officer does an analysis, comparing the definition in the PWDP as notified (with reference to the Building Act 2004) and the definition within the Standards[44]. The Reporting Officer concludes by highlighting items which would now be considered a “Building” under the Standards (as opposed to the PWDP)[45] and the potential implications of this.

13.2 In relation to TVL’s interests, I note that coffee carts and (food truck type) caravans could now be considered “Buildings”[46] and would therefore be subject to bulk and location rules. I agree with the recommendation of the Reporting Officer that such rules should be reviewed at the relevant Zone Hearings and recommendations made as to whether they should apply to all “Buildings” or if exclusions are justified.

[40] Policy 5.3.10 of the PWDP as notified
[41] Including rules 16.1.2, 16.5.2, 18.1.2, 22.1.2, 22.7.1.1, 22.8.2, 23.1.1, 27.2.14, 28.1.1
[42] Paragraph 240 of the s42A Report
[43] Paragraph 244 of the s42A Report
[44] Section 3.17.3 of the s42A Report
[45] Paragraph 262 of the s42A Report
[46] Under the PWDP (and associated definition in the Building Act 2004), only immoveable vehicles that are occupied by people on a permanent or long term basis are considered a “Building”.

13.3 An example of where I consider further consideration is necessary is application of the setback rules. Coffee carts and food truck caravans are commonly found on the road or within the road setback to attract and enable easy access for customers. On a temporary, transient basis this may be acceptable (eg an ice cream truck over the summer holidays) and perhaps should not be subject to the setback rules, however if such a building was proposed to locate there permanently (eg a coffee cart which remains insitu all year round), it may be appropriate to consider the setback rules.

13.4 Accordingly, I recommend that rules relating to "temporary" buildings be considered in the Zone hearings to exclude them from certain rules (and what makes them "temporary" can be defined through standards limiting duration of their location for example).

14. NOTIONAL BOUNDARY

14.1 There is a definition of "Notional Boundary" within the Standards and as such the Reporting Officer recommends the current definition be replaced with this[47]. However, they note that:

(a) The definition of "Notional Boundary" within the Standards refers to its application in respect of a "noise sensitive activity"[48] (whereas the PWDP definition simply referred to a "sensitive land use"); and accordingly,

(b) The Reporting Officer considers that the use of this term is not appropriate when it is used in the PWDP for rules that do not relate to noise sensitive activities (eg rules regarding glare and artificial light spill and subdivision layout) and subsequently, a series of consequential amendments is recommended[49].

14.2 I agree that if the Standards definition of "Notional Boundary" be included in the PWDP that it relates to noise sensitive activities only.

14.3 I note that to be consistent with this definition and the consequential amendments recommended by the Reporting Officer, that consequential

[47] Paragraph 146 of the s42A Report

[48] "Notional Boundary" in the Standards *means a line 20 metres from any side of a residential unit or other building used for a noise sensitive activity, or the legal boundary where this is closer to such a building.*

[49] Section 3.10.5 of the s42A Report

change will be needed for the TaTa Valley Resort Zone (rule 29.3.3) which refers to “Notional Boundary” in the context of glare and artificial light spill. I note that this will be further addressed in Hearing 25.

15. WORKERS ACCOMMODATION

15.1 TVL[50] and Ports of Auckland Ltd[51] (**POAL**) both seek to include a definition for “Workers Accommodation” in the PWDP. In addition, Perry International Trading Group Ltd (**PITGL**) provided a further submission in support of TVL[52] with a suggested amendment to the definition.

15.2 All three suggest different definitions being:

(a) TVL: *Means a dwelling for people whose duties require them to live onsite. This definition includes seasonal workers*

(b) POAL: *A dwelling for people whose duties require them to live on-site, and in the rural zones for people who work on the site or in the surrounding rural area. Includes:*
a) accommodation for rangers;
b) artists in residence;
c) farm managers and workers; and
d) staff

(c) PITGL: *Workers accommodation: Accommodation for people whose duties require them to live on-site, and in the rural zones for people who work on the site or in the surrounding rural area*

15.3 The Reporting Officer notes that in addition to the aforementioned submissions that there are related submissions seeking “caretaker accommodation”[53] or “minor dwelling” for farm workers[54]. The Reporting Officer notes that there appears to be demand for this type of accommodation but defers further consideration of the definition to a number of future Zone Hearings (being Industrial Zone, Heavy Industrial

[50] Submission point 574.22
[51] Submission point 578.80
[52] FS1348.16
[53] Waikato District Council submission point 697.372
[54] NZ Pork submission point 197.14

Zone, Rural Zone, Country Living Zone and potential TaTa Valley Resort Zone) given the impact on rules in these Zones[55].

15.4 In my view it would be more efficient to consider this definition in this hearing to provide for a consistent approach moving forward. Any consequential changes required to the rules can then be considered at subsequent Hearings. This approach is consistent with how the Reporting Officer has treated other such matters in this s42A Report (eg their approach to incorporating definitions from the Standards such as "Site", "Net Site Area" and "Building"[56]).

15.5 Accordingly, I consider the definition of "Workers Accommodation" in this statement of evidence. I have reviewed the three definitions of TVL, POAL and PITGL. I note that the POAL proposed definition replicates that of the AUP (for "Workers Accommodation"), and that PITGL seeks similar wording to POAL without the detailed examples of POAL (a) to d)).

15.6 I generally agree with the wording of POAL and PITGL, and this wording also provides for the relief sought by TVL. However, I note that the Reporting Officer recommends replacing the term "Dwelling" with "Residential Unit" in the PWDP to align with the Standards[57] and therefore I consider that this should be updated in this definition as well.

16. NOISE SENSITIVE ACTIVITY

16.1 KiwiRail submitted seeking to add "Places of Assembly" to the definition of "Noise Sensitive Activity"[58]. The Reporting Officer agrees with the submission point and recommends that the definition be amended to include "Places of Assembly" [59].

16.2 I note that there is an error in TVL's further submission[60], it was identified as in support, but should have been in opposition, in that "Places of Assembly" should be excluded from being a "Noise Sensitive Activity".

[55] Paragraphs 508 – 509 of the s42A Report
[56] However, noting that such consequential changes in relation to the definitions of the Standards can be done without a Schedule 1 process.
[57] Paragraph 398 of the s42A Report
[58] Submission point 986.48
[59] Paragraph 548 of the s42A Report
[60] FS1340.200

16.3 In considering the definition of "Place of Assembly" in the PWDP as notified (which includes recreation, cultural and entertainment activities) I do not think it should be included. In my opinion typical activities which are sensitive to noise are those relating to healthcare, education and residential uses. These are places where sensitive receivers tend to stay for a long period of time (for example a whole day for a school or permanent residents) and on a regular basis. By contrast places of assembly are occupied on a more intermittent basis and so do not justify or need increased protection from noise generating activities. People are less likely to be annoyed and suffer health effects if exposed to high levels of noise for a short period of time.

16.4 This is consistent with the definitions used in other Plans around New Zealand including:

(a) AUP: "Activities Sensitive to Noise"[61]

(b) Hamilton City District Plan: "Noise Sensitive Activities[62]

(c) Tauranga City Plan: "Noise sensitive activities"[63]

16.5 I consider it good practice to be consistent with other plans particularly those subject to relatively recent reviews and updates. For these reasons in my opinion the KiwiRail submission point should be rejected.

17. SENSITIVE LAND USE

17.1 NZ Pork seeks to add additional activities to the definition of "Sensitive Land Use" including café, restaurant, tourism/entertainment activity and community services[64]. TVL opposes this submission point in that it is overly restrictive[65].

17.2 The Reporting Officer does not consider it necessary to include the activities sought by NZ Pork in the definition for "Sensitive Land Use"

[61] Refer to the following website for the definition of "Activities Sensitive to Noise" https://unitaryplan.aucklandcouncil.govt.nz/Images/Auckland%20Unitary%20Plan%20Operative/Chapter%20J%20Definitions/Chapter%20J%20-%20Definitions.pdf
[62] Refer to the following website for the definition of "Noise Sensitive Activities": https://www.hamilton.govt.nz/our-council/council-publications/districtplans/ODP/appendix1/Pages/1.1-Definitions-and-Terms.aspx
[63] Refer to the following website for the definition of "Noise Sensitive Activities": http://econtent.tauranga.govt.nz/data/city_plan/ch/3/3_definitions.pdf
[64] Submission point 197.16
[65] FS1340.32

because rules relating to this activity are included in a number of zones[66], the amendment would significantly broaden the scope of the rules, and reverse sensitivity may not be an issue when the activities are located in those zones (eg a café in a village zone). For this reason, the Reporting Officer suggests that the relief sought by NZ Pork would be better addressed in the Rural Hearing and applicable rules, rather than a district wide definition[67].

17.3 I concur with the commentary by the Reporting Officer. The amendment sought by NZ Pork is too broad and overly restrictive at a district wide level.

17.4 I understand from reading NZ Pork's submission that it is concerned about sensitive activities located or seeking to locate in rural areas (as this is the location for pork production). In relation to this concern:

(a) I do not agree that in all instances the aforementioned activities (café, restaurant, tourism/entertainment activity and community services) would be considered "sensitive" in the rural environment. This is dependant on the activity itself and the rural activities surrounding it.

(b) I agree that in some instances, locating activities such as café/restaurants in the rural environment could result in reverse sensitivity effects – but not in every situation.

(c) For example, a café with outdoor seating in close proximity to a piggery or chicken farm may generate reverse sensitivity effects and suffer direct effects like odour, but a café surrounded by general sheep/beef farming may not.

(d) A tourist/entertainment activity in the rural environment could include adventure sports such as mountain biking or motorised sports and I do not consider these to be "sensitive".

(e) Given the various environmental and location specific factors to take into account, I do not consider it appropriate to take a rural-wide approach to including café, restaurant,

[66] Refer to paragraph 567 of the s42A Report for a list of zones in which "sensitive land uses" are referenced
[67] Paragraph 567 of the s42A Report

tourism/entertainment activity and community services in the definition of “Sensitive Land Use” either.

17.5 Lastly, I also note other submissions seek to consolidate “Sensitive Land Use” with “Noise Sensitive Activity”[68]. The Reporting Officer notes that this term is not interchangeable with “Noise Sensitive Activity” as it relates to effects wider than just noise (eg odour). I agree with this point and do not consider it should be consolidated.

18. TEMPORARY EVENT

18.1 TVL and WDC seek to amend the definition of “Temporary Event” to remove reference to duration within the definition[69]. This is more appropriately addressed in a rule (and is included in the PWDP rules as notified).

18.2 The Reporting Officer agrees with these submissions and recommends that “Temporary Event” be amended by deletion of the reference to duration. I support this recommendation.

19. REVERSE SENSITIVITY

19.1 KiwiRail seeks to include a definition for “Reverse Sensitivity” in reference to the proposed term in the (draft) Standards[70]. TVL opposed this submission[71] given the draft status of the Standards (at the time).

19.2 The Reporting Officer notes that the inclusion of a definition for “Reverse Sensitivity” in the Standards was proposed but dismissed as case law around the term is evolving and for that reason the Reporting Officer does not recommend that the definition be included in the PWDP[72]. I concur with the Reporting Officer’s recommendation that it is not appropriate to include it in the PWDP. In my view, it is a concept that is difficult to capture or codify through plan provisions and is best considered on a case by case basis.

[68] Submission points 742.75, 777.19 and 923.140
[69] TVL submission point 574.16 and WDC submission point 697.511
[70] Submission point 986.46
[71] FS1340.199
[72] Paragraph 571 of the s42A Report

20. COMMUNITY FACILITY AND COMMUNITY ACTIVITY

20.1 WDC seeks to rationalise "Community Facility", "Community Activity (Te Kauwhata Lakeside Precinct)" and "Community Activity" into one term[73] and TVL supports this submission point[74]. WDC also seeks specific amendment to "Community Facility" to delete the reference to the "Business Zone Tamahere"[75] which TVL supports so that the definition is not exclusive to one zone[76].

20.2 The Reporting Officer agrees with the submissions and recommends that given "Community Facility" is a defined term in the Standards, that this term be adopted and that "Community Activity" be deleted"[77]. With that change, the relief sought in WDC's submission point 697.376 would also be met.

20.3 I agree that the terms of the PWDP are generally consistent with "Community Facility" of the Standards. I note that in the PWDP "Community Activity" refers in the definition to (emphasis added) "…public land and buildings…" whereas "Community Facility" (in both the PWDP and the Standards) do not differentiate between land ownership. In my opinion, it is not appropriate to reference land ownership in this definition because community type activities can occur on public and private land. As such, I support the recommendation of the Reporting Officer.

21. ACCESSORY BUILDING

21.1 WDC seeks to replace the definition of "Accessory Building"[78] to one which notes that the building is detached and is incidental to a principal building, land use or permitted use. TVL supported this amendment[79].

21.2 The Reporting Officer notes that the relief sought is similar to the Standards definition for "Accessory Building" and recommends the PWDP be updated accordingly[80].

[73] Submission point 697.375
[74] Further submission FS1340.124
[75] Submission point 697.376
[76] FS1340.125
[77] Paragraph 909 of the s42A Report
[78] Submission point 697.483
[79] FS1340.127
[80] Paragraph 432 of the s42A Report

21.3 I support the recommendation of the Reporting Officer.

22. ALLOTMENT

22.1 WDC seek to use both "Allotment" and "Lot" in the PWDP interchangeably and seek that "Lot" be cross referenced in Chapter 13 to "Allotment"[81]. The Reporting Officer agrees that using "Lot" and "Allotment" interchangeably would improve clarity and recommends that the submission be accepted.

22.2 I do not agree with the recommendation for the following reasons:

(a) I consider it confusing to interchange the two terms. One term should be used throughout the PWDP in line with the direction of s18A(3)(ii) of the RMA[82] for plan-makers to word plans in a clear and concise way, as well as the directions of the Standards to have two definitions that mean the same[83].

(b) I note other submission points from WDC seek to reduce the number of words that have the same meaning[84], this contradicts the relief sought in this submission.

(c) The recommendation of the Reporting Officer to accept this submission point contradicts with their recommendations (relating to amalgamating words which are synonyms) to avoid implied difference in interpretation[85] and that the Standards prohibit using a term with the same context as a definition in the Standards[86].

22.3 Accordingly, in my opinion "Lot" should be replaced with "Allotment" (which is a defined term in the Standards).

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[81] Submission point 697.397

[82] S18A of the RMA Procedural principles

Every person exercising powers and performing functions under this Act must take all practicable steps to—

…(b) ensure that policy statements and plans—

…(ii) are worded in a way that is clear and concise

[83] National Planning Standards, section 14(1)(b)

[84] Eg submission points 697.374, 697.375 and 697.376

[85] Paragraph 140 of the s42A Report

[86] Paragraphs 383 and 434 of the s42A Report

23. CONSEQUENTIAL AMENDMENTS TO TATA VALLEY RESORT ZONE

23.1 Following the review of the s42A Report, I note that there will be changes required to the TaTa Valley Resort Zone chapter as submitted by TVL to reflect:

(a) Definitions that have been changed to reflect those of the Standards (refer to Attachment B);

(b) Consequential changes to maintain the intent of the provisions due to changes to the definitions (some of which I have noted in this statement of evidence).

23.2 I consider it appropriate to discuss these matters in further detail at Hearing 25 (including the provision of an updated, track change version of the proposed Zone provisions which reflect the above).

Ailsa Jean Fisher
19 November 2019

Attachment A - List of "Leftover" NPS Definitions not included in s42A Report

National Planning Standard Definition	Commentary	Recommendation
Abrasive blasting	The term "blasting" on its own is discussed and has a definition in the PWDP. Abrasive blasting is only mentioned in the Hampton Downs Zone at present but with no corresponding definition.	Include "Abrasive Blasting" in the PWDP as per the Standards. Confirm at Hampton Downs Zone hearing that definition is appropriate.
Bed	The PWDP includes this as a definition by reference to 'section 3' of the RMA (but not written in full). This is an error in that it should reference section 2.	Update "Bed" in the PWDP as per the Standards.
Hazardous Substances	The PWDP definition of Hazardous Substances is different to the Standards as it appears to have a wider application (referencing those substances with radioactive or high Biological Oxygen Demand properties as well as those covered in the section 2 RMA definition). The Standards only refers to the section 2 RMA definition.	Consider this definition Hearing 8: Hazardous substances, contaminated land and genetically modified organisms.
Historic Heritage	The PWDP includes this as a definition by reference to section 2 of the RMA (but not written in full).	Update "Historic Heritage" as per the Standards
Home Business	The PWDP includes a definition for "Home Occupation". The definition is similar to Home Business but is more restrictive because it excludes panel beating / car wrecking.	Update "Home Occupation" to "Home Business" in the definitions as per the Standards but consider a consequential amendment to exclude panel beating / car wrecking from the rules instead (following the same approach taken for other definitions, in order to achieve the same intent of the PWDP). Revisit at the zone hearings where "Home Occupation" is a listed activity.
Network utility operator	The PWDP includes this as a definition by reference to section 166 of the RMA (but not written in full)	Update "Network Utility Operator" as per the Standards

Attachment B – List of Proposed Term Changes in TaTa Valley Resort Zone to align with the Standards

NB: This table does not include any further consequential amendments required to maintain the intent of the TaTa Valley Resort Zone provisions (if required) as a result of the change in terminology. Some of these have been noted in this statement of evidence and will be discussed at Hearing 25.

Term in TaTa Valley Resort Zone Chapter (as submitted by TVL)	**Replace with Standard definition**
Daylight Admission	Height in Relation to Boundary
Cleanfill	Cleanfill Material
Operational Requirement	Operational Need
Functional Requirement	Functional Need
(Temporary) Structure	(Temporary) Structure or Building
Travellers Accommodation	Visitor Accommodation