

BEFORE THE ENVIRONMENT COURT

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Decision No [2016] NZEnvC 180
ENV-2015-WLG-000016

IN THE MATTER of an appeal under s120 of the
Resource Management Act 1991

BETWEEN AVATAR GLEN LIMITED
Appellant

AND NEW PLYMOUTH DISTRICT
COUNCIL
Respondent

AND KAREN ANDERSON,
DEBORAH BLOOR &
FRAYNE BLOOR,
STEPHEN BROWN, OWEN CARTER,
MARY CARTER, JENNIFER JOHNSTONE,
BARNABY PERKINS, BRIAN WESTON
& SANDRA WESTON
Section 274 Parties

Court: Environment Judge C J Thompson
Environment Commissioner J A Hodges
Environment Commissioner C J Wilkinson

DECISION ALLOWING APPEAL AND APPROVING CONDITIONS OF
CONSENT

Decision issued: 9 SEP 2016



[1] In decision number [2016] NZEnvC 78 issued on 5 May 2016, the Court indicated that, subject to appropriate conditions being settled between the Appellant and the other parties, not least Mr and Mrs Weston, the owners of an adjoining property, we believed that the resource consents allowing the establishment and operation of the dementia care home could appropriately be granted.

[2] There has been considerable discussion and negotiation between the parties since that time, which have not been without their difficulties, but we congratulate the parties on eventually being able to reach a workable conclusion.

[3] As a matter of formality, we allow the appeal with the intent that the necessary resource consents may issue to enable Avatar Glen Limited to establish and operate a Specialist Dementia Care Home at 450 Mountain Road, Lepperton, New Plymouth.

[4] The conditions on which those consents are to be issued are as attached to this decision and marked as Appendix A. In settling those conditions, we have had regard to the memoranda lodged by counsel for the parties – Mr Webb for the Council dated 2 September 2016, Ms Wallace for Mr and Mrs Weston also dated 2 September 2016, and Mr Grieve for the appellant, dated 5 September 2016.

[5] The conditions requiring comment are:

- 6.10A – This was sought by Mr and Mrs Weston and we think it reasonable. Certainly, it will involve some extra cost but as a reassurance that the building achieves its design parameters, that will be justified.
- 6.13 and 6.14 – We do not consider that these go beyond what was contemplated in the interim decision. They seem to us to address possible issues in a sensible way.
- 10.3(i) and (ii) – We agree that the proposal by Mr and Mrs Weston on this issue was probably unworkably precise and we have left it to the good sense of those involved to be able to confirm that the necessary people are inside. We do not think it necessary to include staff in this – they of course must be advised of when spraying may occur, but there could be good reason for them to have to be outside buildings during spraying events.



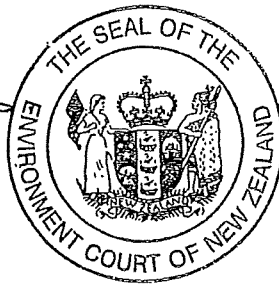
[6] For clarity and completeness, we also attach as Appendix B a copy of the covenants agreed between Avatar Glen Limited and Mr and Mrs Weston. It should be clearly understood however that those covenants do not form part of the conditions of any resource consent and cannot be enforced in this Court. Indeed, as paragraph 3.2 of the covenants notes, if there is a dispute between the parties then that will need to be resolved by negotiation, or through arbitration, or by way of equitable relief in the High Court.

[7] In the circumstances, we do not encourage any application for costs but as a matter of formality we reserve the question of costs. If there is to be any application, it should be lodged within 15 working days of the issuing of this decision and any response lodged within a further ten working days.

Dated at Wellington this 9th day of September 2016

For the Court


C J Thompson
Environment Judge



APPENDIX A

CONDITIONS ON RESOURCE CONSENT APPLICATION LUC13/45868 PROPOSED DEMENTIA CARE HOME, 450 MOUNTAIN ROAD, LEPPERSTON, TARANAKI

Pursuant to section 108 of the Resource Management Act 1991, this consent is subject to the following conditions:

1. **Condition Precedent**

- 1.1 An engineering plan and specification for the road upgrade shall be submitted to and approved by the New Zealand Transport Agency prior to the commencement of activity. All work shall be constructed under the supervision of a suitably qualified person who shall certify that the work has been constructed to the Transit New Zealand Diagram E standard and in accordance with the approved plan and specification. A copy of this certification shall be provided to the Council's Planning Lead (or nominee).
- 1.2 An approved Traffic Management Plan shall be submitted to New Zealand Transport Agency prior to commencement of any works within the road reserve.

2. **Application Material/Plans**

- 2.1 The proposed activity shall be carried out in accordance with the plans and all information and technical supporting documents submitted as part of the application and attached to this consent, and further information letter (to the Council) prepared by GHD Ltd dated 14 August 2014 with technical supporting documents, being subject to modifications required by the Conditions set out below:
- Resource Consent Application & AEE entitled "*Avatar Glen Ltd Percy Sydney Care Home*" prepared by GHD Ltd and dated June 2013;
 - Plans prepared by Arden Peters Architects Ltd referenced "*Percy Sydney Care Home for Avatar Glen Ltd, 450 Mountain Road, Lepperton, Project No 2003, Date January 2014, Amended June 2014*" drawing index sheet references as follows:
 - *sk00(a) – Overall Site Plan* (dated Jan 2014);
 - *sk01(a) – Over View 3D Image* (dated 9-8-2014);
 - *sk02(a) – General 3D Images* (dated 9-8-2014);
 - *sk03c – Site Plan* (dated Jan 2014);
 - *sk04d – Site Plan* (dated 4-4-2012);
 - *sk05c – Site Plan* (dated Jan 2014);

- *sk06a – Site Cross Sections* (dated Jan 2014);
- *sk07a – Overall Floor Plan* (dated Jan 2014);
- *sk08a – Typical Pod Plan* (dated Jan 2014);
- *sk09 – Typical Bed Room Plan* (dated Jan 2014);
- *sk10a(-) – Typical Pod Elevations 1 and 2* (dated Jan 2014);
- *sk11a – Typical Pod Elevations 3 and 4* (dated Jan 2014);
- *sk12a – Typical Pod Sections A-A and B-B* (dated Jan 2014);
- *sk13a – Typical Pod Sections C-C & D-D* (dated Jan 2014);
- *sk14a – Administration Building Plan* (dated Jan 2014);
- *sk15(-) – Administration Building Elevations* (dated Jan 2014);
- *sk16a – Administration Building Cross Sections* (dated Jan 2014);
- *sk17 – Site Services Plan* (dated Jan 2014);
- *Job No. 2003 – Example of an Acceptable Acoustic Timber Fence* (dated 14-7-2014)
- Report entitled "*Resource Consent Percy Sydney 1460271-LUC13/45868, 450 Mountain Road, Lepperton, TSE Job No. 3965-014*" prepared by Tse Taranaki & Associates Ltd dated 27 May 2014 including drawing set sheets as follows:
 - *S3.01 – Road Access – Access Road Plan* (dated 27-5-2014);
 - *S3.02 – Existing House Access Road – Enlarged Long Section* (dated 13-8-2014);
 - *S3.03 – Cross Section – Existing/Proposed* (dated 13-8-2014);
 - *S3.04 – Bridge – Typical Cross Section* (dated 13-8-2014);
- Preliminary Plans (for information/not for construction) prepared by Beca Ltd referenced "*Percy Sydney Care Home Mountain Road, SH3A, Lepperton – Proposed Access & Parking Compliance with District Plan*" sheet references as follows:
 - *Sheet 1 Drawing No. 3852245-650-CE-011 – Plan - Car Parks* (dated 28-01-2014);
 - *Sheet 2 Drawing No. 3852245-650-CE-012 – Plan – Access Drive* (dated 28-01-2014);
- Letter (to the Council clarifying traffic generation) entitled "*Proposed Percy Sydney Dementia Unit*" prepared by RMY Legal, dated 17 September 2014;
- Report entitled "*Specialist Dementia Care Home 450 Mountain Road, Lepperton Assessment of Noise Effects Report No 9765*" prepared by Hegley Acoustic Consultants, dated October 2014;
- Landscape Plans prepared by Richard Bain Landscape Architects/Bluemarble referenced "*Percy Sydney Care Home Avatar Glen Ltd.*" as follows:
 - *Job/Drawing No. L.2802/01 – Landscape Plan* (dated 12-03-2015);
 - *Job/Drawing No. L.2802/02 – Landscape Plan Indicative Riparian Cross Section A-A* (dated 12-03-2015);
- Report entitled "*Obtrusive Light – Compliance Report; Percy Sydney Care Home – AS4282 Compliance 4/06/2015*", prepared by Thorn Lighting (NZ) Limited dated 4 June 2015;
- Plans prepared by Thorn Lighting (NZ) Limited referenced "*Percy Sydney Care Home – External Lighting Overview and Calc Results &*

Spill Lighting Info, Design Reference PRW3262, Rev # E, Date 4/06/2015" design sheets as follows:

- Page 1 – Exterior Lighting Overview (dated 04-06-2014);
- Page 2 – Main Carpark Birds Eye View (dated 04-06-2014);
- Page 3 – Typical POD External Security Lighting (dated 04-06-2014);
- Page 4 – Main Courtyard (dated 04-06-2014);
- Page 5 – Calculation Summary (dated 04-06-2014);
- Page 6 – Luminaire Schedule (dated 04-06-2014);
- Report entitled "Avatar Glen Ltd. Ecological Management Plan 450 Mountain Road, Lepperton, Taranaki" prepared by Kessels & Associates Ltd (trading as Kessels Ecology) 2015, dated 22 July 2015.

3. **Earthworks**

- 3.1 Sediment control measures shall be undertaken in accordance with an approved Silt and Mitigation Control Plan (SMCP), in order to avoid, remedy or mitigate adverse effects on the environment of silt generation and silt retention.
- 3.2 The consent holder shall submit a draft SMCP to the Council's Planning Lead (or nominee) for consideration and response. No earthworks shall be commenced on the site until the SMCP has been finalized and written approval of the final plan has been received by the consent holder from the Council's Planning Lead (or nominee).

4. **Construction Management**

- 4.1 Construction activities on the site shall be carried out in accordance with the provisions of an approved Construction Management Plan (CMP) so as to avoid, remedy or mitigate adverse effects on the environment of construction activities on the surrounding landowners and users and on the roading network. In particular, the CMP shall include details of measures to be undertaken to minimise the effects of construction of the access road on the operation of the Tawa Glen Café.
- 4.2 The consent holder shall submit a draft CMP to the Council's Planning Lead (or nominee) for consideration and response. Construction activities shall not be commenced on the site until the CMP has been finalized and written approval of the final plan has been received by the consent holder from the Council's Planning Lead (or nominee).
- 4.3 The CMP shall include specific details relating to the construction and management of all works associated with the development including the following, but not limited to:

- a. Construction timetable;
- b. Details of the site manager, including their contact details (phone, email address, postal address); a cellphone number for after-hours emergencies shall also be supplied;
- c. Dust control and management;
- d. Construction Noise Management Plan (CNMP) prepared by a suitably qualified acoustic consultant in accordance with Condition 6.2;
- e. Traffic control and management including any temporary road closures and/or other restrictions if required on the surrounding road network;
- f. Erosion and sediment control measures to be implemented and maintained;
- g. Communication measures to formally advise any workers involved in the construction of the care home facility of the potential spray risks from the Tamarillo Orchard at 448 Mountain Road, Lepperton, Taranaki (Tamarillo Orchard) and the need to take appropriate precautions when notified by the consent holder.

4.4 The consent holder shall ensure that all employees and/or contractors adhere to the approved CMP at all times throughout the entire construction period.

4.5 The consent holder shall ensure all parking, manoeuvring, loading and standing of construction vehicles associated with the development are contained within the site.

4.6 The consent holder shall ensure that residents adjoining the site are notified not less than 7 days before construction commences and provided with written notification of the telephone number of the consent holder's representative onsite to enable them to voice any concerns about construction noise and operations from site activity.

4.7 The consent holder shall establish a complaints management system to receive, record and respond to complaints in relation to construction of the care home facility. The record shall be made available to the Council on request.

5. Traffic and Parking

5.1 The vehicle access and parking areas shall be formed and sealed in accordance with the requirements of the Council's Land Subdivision and Subdivision Infrastructure Standard.

- 5.2 Directional signage throughout the carpark area, particularly directional arrows and exit signs, shall be submitted to and approved by the Council's Planning Lead (or nominee) prior to commencement of the care home facility activity.
- 5.3 Two 20kph signs shall be installed to ensure traffic speeds are kept to 20kph; one sign to be installed approximately 20 metres from the right of way access and entry point (off Mountain Road) on the southern side of the right of way (for vehicles entering the right of way off Mountain Road) and the second sign to be installed approximately 20 metres to the east of the Tawa Glen Café carpark on the northern side of the right of way (for vehicles exiting the right of way onto Mountain Road).
- 5.4 Car parking spaces shall be set aside for staff parking and marked accordingly.
- 5.5 A parking space for a medium service vehicle shall be provided in the staff parking area and manoeuvring for this vehicle shall be provided.
- 5.6 Any new and existing culverts along the length of the driveway shall be required to be certified to take a Class 1 traffic loading for safety reasons, except for any culverts that the new bridge traverses (the new bridge shall be designed and built and required to be certified to take a Class 1 traffic loading).
- 5.7 The right of way and driveway shall be sealed and provided with passing lanes.
- 5.8 A centre line shall be marked/painted along the length of the right of way.
- 5.9 An appropriate traffic "island" not more than 3 metres long shall be marked/painted between the right of way and the adjoining driveway to the neighbouring properties at 446 Mountain Road and 448 Mountain Road.
- 5.10 A control "give way" line shall be marked/painted between the centre line and traffic "island" referred to in Conditions 5.8 and 5.9.
- 5.11 The consent holder shall install a warning sign on the northern side of the site/right of way boundary approximately 20 metres from the right of way access and entry point (off Mountain Road) with the following wording "Warning! Vehicles entering drive on left" (or words to the same effect) to reduce the potential for traffic confusion, congestion or conflict with users of the adjoining driveway that accesses the neighbouring properties at 446 and 448 Mountain Road.
- 5.12 As part of the care home facility's Health and Safety Policy care home staff and delivery personnel shall be made aware of the adjoining driveway to the

neighbouring properties at 446 Mountain Road and 448 Mountain Road and the potential for traffic confusion, congestion or conflict with users of that driveway as they enter and exit from Mountain Road. These potential traffic safety effects shall be included in the care home facility's staff health and safety briefings and included on the care home facility's health and safety register.

- 5.13 The maximum Vehicle Equivalent Movement (VEM) over a 24 hour period shall not exceed 62VEM and the average VEM over a seven day period shall not exceed 58VEM.
- 5.14 Monitoring of vehicle movements shall be undertaken in accordance with the methodology and procedures (including those relating to the frequency and nature of reporting) set out in a Traffic Monitoring Plan (TMP).
The consent holder shall submit a draft TMP to the Council's Planning Lead (or nominee) for consideration and response.
The care home facility activity on the site shall not be commenced until the TMP has been finalized and written approval of the final plan has been received by the consent holder from the Council's Planning Lead (or nominee).
- 5.15 Traffic monitoring shall be undertaken by an independent and suitably qualified and experienced traffic engineer quarterly, for a period of not less than one week, for the first 12 months after the construction of each stage of the care home facility, and then at 2 yearly intervals, for a period of not less than one week; but shall be suspended during construction periods.
- 5.16 A copy of the traffic monitoring results shall be submitted to the Council's Team Leader Consents (or nominee) and to the owners of the property at 448 Mountain Road within two weeks of the monitoring occurring on each occasion under Condition 5.15.
- 5.17 After the completion of construction of the care home facility the consent holder shall at all times keep a register of the number of staff and visitors on site on a daily basis in order to establish and ensure ongoing compliance with Condition 5.13.
- 5.18 Prior to the commencement of the care home facility activity on site the consent holder shall prepare an Operational Traffic Management Plan (OTMP) for approval. The OTMP shall include specific details identifying how the traffic and parking conditions will be complied with including addressing such matters as to whether speed bumps need to be provided and measures

or strategies that can be undertaken by the consent holder (such as carpooling), if necessary, to ensure ongoing compliance with Condition 5.13.

- 5.19 The consent holder shall submit the draft OTMP to the Council's Planning Lead (or nominee) for consideration and response. The care home facility activity on the site shall not be commenced until the OTMP has been finalized and written approval of the final plan has been received by the consent holder from the Council's Planning Lead (or nominee). The consent holder must comply with the approved OTMP at all times.

6. **Noise**

- 6.1 Noise generated by construction work shall comply with the requirements of NZS 6803:1999 *Acoustics – Construction Noise*.

- 6.2 No less than 25 working days prior to the commencement of works on site the consent holder shall submit a Construction Noise Management Plan (CNMP), prepared by a suitably qualified and experienced acoustic consultant, to the Council's Team Leader Consents (or nominee) for approval. The CNMP shall include specific details relating to all procedures, mitigation and methodologies required to ensure compliance with the construction noise limits and requirements of NZS 6803:1999, including those matters set out in Section 8 and Annex E of NZS 6803:1999, and including the following, but not limited to:

- a. The hours and days of operation for construction activities;
- b. The extent, location and timing of noise producing construction activities during the construction period;
- c. Any specific measures necessary to avoid, remedy or mitigate adverse noise effects on dwellings;
- d. Noise complaint procedures;
- e. Procedures and processes for updating the CNMP.

- 6.3 The approved CNMP shall be implemented and maintained throughout the entire construction period.

- 6.4 All activities (except construction and demolition works) shall comply with the following:

7am to 10pm	L_{10} 50dBA;
10pm to 7am	L_{10} 45dBA; and
10pm to 7am	L_{max} 70dBA,

when measured within the notional boundary and in accordance with NZS 6802:1991 *Measurement of Sound* and assessed in accordance with NZS 6802:1991 *Assessment of Environmental Sound*.

- 6.5 A minimum height 1.8 metre solid acoustic fence shall be constructed from material with a minimum surface density of 9kg/m^2 with all gaps sealed. If butted timber is used then battens shall be fixed over the joints to prevent gaps forming as the timber dries out and shrinks.
- 6.6 The acoustic fence under Condition 6.5 shall be installed around the perimeter of the care home facility pods/buildings in the location described in and shown in the Hegley Acoustic Consultants Report described in Condition 2.1.
- 6.7 An acoustic/amenity fence shall also be installed in the location and of the type and dimensions described in and shown on Landscape Plan L.2802/01 in Condition 2.1.
- 6.8 All habitable rooms in the care home facility shall be ventilated in accordance with the requirements of section G4 of the Building Code to allow windows to be kept closed in the event that lawful rural activities, including the operation of agricultural vehicles, machinery or equipment, generate noise levels which are considered unreasonable or objectionable by the residents, staff and visitors.
- 6.9 All bedrooms in the care home facility shall be designed to achieve 30 dBA $L_{\text{Aeq}} (15 \text{ min})$ and an L_{max} of 55dB and all other living areas shall be designed to achieve 40 dBA $L_{\text{Aeq}} (15 \text{ min})$.
- 6.10 A design certificate shall be provided to Council from a suitably qualified and experienced acoustic consultant confirming the proposed construction(s) will achieve the required sound insulation to achieve 6.9.
- 6.10A Prior to the occupation of the care home, on site noise tests shall be undertaken by a suitably qualified acoustic consultant to confirm the sound insulation requirements in 6.9 have been achieved. Where the sound insulation provided does not achieve the requirements of condition 6.9, the non-complying bedroom or living area shall not be occupied or used until such time as compliance is achieved.
- 6.11 Noise management measures shall be undertaken in accordance with an approved Site Noise Management Plan (SNMP) so as to avoid, remedy or mitigate adverse effects on the environment of external noise on residents, visitors and staff of the care home facility and potential reverse sensitivity effects.
- 6.12 The consent holder shall submit a draft SNMP to the Council's Planning Lead (or nominee) for consideration and response.

The care home facility activity shall not be commenced on the site until the SNMP has been finalized and written approval of the final plan has been received by the consent holder from the Council's Planning Lead (or nominee).

- 6.13 The SNMP shall include specific details relating to noise management at the care home facility including the following, but not limited to:
- a. Limiting access for residents and visitors to outside areas exposed to higher noise levels from a frost fan when operating at the Tamarillo Orchard on the neighbouring property at 448 Mountain Road between 7am and 10pm, where those noise levels are considered objectionable and/or unreasonable by particular residents and visitors;
 - b. Provision of suitable outdoor areas for care home residents and visitors to use within the site that are screened from (out of sight of) the frost fan, and higher noise levels from it, when it is operating between 7am and 10pm;
 - c. Provision of suitable outdoor areas for care home residents and visitors to use within the site that are remote or protected from the Tamarillo Orchard, and within which noise levels are not unreasonable when gas guns or other birdscaring devices are in use at the Tamarillo Orchard;
 - d. Procedures to be put in place to minimise or avoid the exposure to noise from gas guns or other birdscaring devices by residents and visitors who are sensitive to such noise and who consider it to be objectionable and/or unreasonable;
 - e. Measures to keep residents and visitors who are sensitive to noise inside;
 - f. Arrangements to ensure that any residents who are sensitive to noise have the option of being allocated bedrooms located remote from the Tamarillo Orchard;
 - g. Arrangements to ensure that any staff who are sensitive to noise are not unreasonably exposed to noise levels they find objectionable and/or unreasonable; and
 - h. The nature of any interim arrangements pending completion of all the care home facility pods in relation to the matters set out under a – d above.

6.14 The consent holder shall ensure that all residents and visitors and staff to whom Condition 6.16 g. applies adhere to the approved SNMP at all times when the frost fan is operating between 7am and 10pm and/or the gas gun is operating at the Tamarillo Orchard. A copy of the approved SNMP shall be available at all times on the site.

7. **Landscaping**

7.1 Planting shall be undertaken in accordance with the Landscape Plans described in Condition 2.1.

7.2 In addition to the above:

(1) An additional row of a minimum Bag Size PB 5 evergreen shelter trees shall be planted at or near the southern fringe of the northern gardens on the site in a location that will not adversely affect or impact on future construction works. The trees shall be planted within the first planting season (autumn-spring) after the date of this consent.

(2) Individual tree plantings shall be undertaken along the northern boundary of the site (adjoining the boundary of the neighbouring Tamarillo Orchard property at 448 Mountain Road) to cover the existing gaps (in the shelter trees on that boundary) and those trees shall be planted along that boundary within the first planting season (autumn-spring) after the date of this consent.

7.3 A detailed Planting and Management Plan (PMP) prepared by a suitably qualified landscape architect, including an implementation and maintenance programme for a minimum period of five years, shall be submitted and approved by the Council's Planning Lead (or nominee) within six months of the date of this consent.

Subject to Condition 7.2, the planting plan shall provide for as much planting as possible to be undertaken within the first planting season after completion of Stage 1 of the development (involving the construction of Pods 1, 2 and 3).

7.4 The planting referred to in the above conditions shall be implemented and maintained in accordance with the approved PMP.

7.5 Once established the planting shall be maintained to Council's satisfaction on an on-going basis.

7.6 In the event of loss or destruction of vegetation for any reason, the vegetation shall be replaced and replanted in accordance with the PMP to the satisfaction of the Council's Planning Lead (or nominee).

8. **Bulk, Location and Design Controls**

8.1 All care home facility buildings shall be limited in terms of how the exterior surfaces (roof and walls) are finished and recessive shades (rather than tints) and colours with reflectivity values of between 0 and 40% shall be used, except for the highlighting of areas such as facing boards around windows and doors in respect of which colours with reflectivity values brighter than 40% may be used.

8.2 Fencing associated with stage 1 (care home facility pods/buildings 1-3) and stage 2 (care home facility pods/buildings 4-5) shall be a minimum of 1.8m high, have acoustic properties (be solid) around the perimeter of the care home facility pods/buildings, be visually recessive with reflectivity values of less than 15% and have a matt finish.

8.3 All external site boundary fences shall be 'rural style' and visually permeable (for example, post and wire/rail).

9. **Lighting**

9.1 Lighting shall not result in light overspill that exceeds 10 lux in both the horizontal and vertical planes as measured from rural receiving sites.

9.2 Outdoor lights shall be tilted downwards and shielded or be installed at ground level and screened with fencing.

9.3 Flood lighting shall not be used.

9.4 Carpark lighting shall be restricted to the use of dark bollard lights and directional luminaries on dark coloured poles. All luminaries shall have a reflectivity value of less than 15% which will achieve the lux levels at site boundaries.

10. **Site Safety Management**

10.1 Prior to the commencement of the care home facility activity on the site the consent holder shall supply adjacent property owners/occupiers with the care home unit manager's, or other key contact person's, contact details, including phone number(s), email address(es) and cell phone number(s), so that adjacent property owners/occupiers are able to contact the care home facility manager, or other key contact person, 24 hours per day 7 days per week (including by voice message answering services so that adjacent property owners/occupiers are able to leave a message if necessary and the

consent holder shall be responsible for ensuring that all such messages left are monitored and attended to where required).

- 10.2 When the owner/operator of the Tamarillo Orchard at 448 Mountain Road provides to the consent holder an annual spray plan (or notification thereof) in accordance with New Zealand Standard NZS 8409:2004 and Taranaki Regional Air Quality Plan (Rule 56) the consent holder shall request to receive notice from the Tamarillo Orchard owner/operator of individual spraying applications prior to spraying being carried out on each and every occasion that spraying is carried out; and the consent holder shall ensure that it has reliable mechanisms in place so that the Tamarillo Orchard owner/operator can provide that notice to the consent holder's care home unit manager, or other key contact person, 24 hours per day 7 days per week as contemplated under Condition 10.1.
- 10.3 Upon receiving notification of individual spraying applications prior to spraying being carried out under Condition 10.2 the consent holder shall;
- (i) Liaise with the Orchard Owner, subject to his or her willingness to participate, to ensure he or she is aware of when all residents and visitors are or will be inside before starting spraying;
 - (ii) Ensure that residents and visitors are kept indoors for the duration of the spraying at the Tamarillo Orchard, except when Condition 10.3(iv) applies;
 - (iii) Prohibit entry by all persons on site to the site gardens as shown on the site plans referred to in Condition 2.1 both during, and for up to 24 hours after, spraying;
 - (iv) Advise staff and visitors of the need to take appropriate precautions about being outside the care home facility buildings during, or soon after, the spraying operations and of the need to minimize any time spent outside; and
 - (v) Closely control visitor movements both during, and up to 48 hours after, spraying to minimise the risk of anybody inadvertently wandering into the grounds of the Tamarillo Orchard (especially children and pets).
- 10.4 Risk and hazard management measures shall be undertaken in accordance with an approved Site Hazards and Risks Management Plan (SHRMP) so as to avoid, remedy or mitigate any potential adverse effects relating to spray drift to persons on the care home facility site and potential reverse sensitivity effects.

- 10.5 The SHRMP shall include specific details relating to spray drift management at the care home facility including the following, but not limited to:
- a. Reliable mechanisms to be in place to ensure care home facility management is aware of each and every occasion when spraying will occur and when it stops;
 - b. Communication measures to formally advise all contractors, invitees, staff, occupiers, residents and visitors on site of the potential spray risks from the Tamarillo Orchard at 448 Mountain Road and the need to take appropriate precautions when notified by the consent holder or care home facility manager or appointed delegate(s);
 - c. Precautions that will be taken on each and every occasion when spraying occurs and what needs to be done in response to notice of spraying to keep residents, staff and visitors safe during and after each spray event;
 - d. Practical and reliable measures to ensure condition 10.3 is complied with;
 - e. Safe work/residency method statements and health and safety policies identifying the hazards, risks and controls required (to manage those hazards and risks); and how those controls will be given effect to including processes to, for example, close windows and doors, bring people and washing inside and undertaking activities that are inside or offsite during spraying;
 - f. Formal care home specific complaints procedures and policies extending to complaints (if any) about the activities of neighbours that contractors, invitees, staff, occupiers, residents and visitors must use in respect of any complaints that must be directed to the consent holder or the care home facility manager; and mechanisms to disclose such internal policies and procedures to contractors, invitees, staff, occupiers, residents and visitors and to require their compliance with them;
 - g. Procedures that the consent holder and/or care home manager shall adhere to to effectively manage complaints (if any);
 - h. Disclosure/notification and acknowledgement of the terms of the SHRMP and in particular in relation to the conditions regarding spray drift, by residents, staff and/or representatives of the residents; and
 - i. Interim measures required, in addition to or instead of those outlined above, pending completion of all the care home facility pods.

- 10.6 The consent holder shall submit a draft SHRMP to the Council's Planning Lead (or nominee) for consideration and response.

The care home facility activity shall not be commenced on the site until the draft SHRMP has been finalized and written confirmation has been received by the consent holder from the Council's Planning Lead (or Nominee) that the plan meets the requirements set out in Condition 10.5.

- 10.7 The consent holder shall ensure that all contractors, invitees, staff, occupiers, residents and visitors adhere to the approved SHRMP at all times when on the site. A copy of the approved SHRMP shall be available at all times on the site.

- 10.8 The consent holder shall, prior to any residents or occupants taking up residency or occupancy at the care home facility, include a statement(s) or clause(s) in any Admission Agreements and Disclosure Statements to be disclosed to residents or occupants and/or their representatives that the property is located adjacent to a productive rural area and Tamarillo Orchard where agricultural and horticultural management practices such as agrichemical spraying, operation of farm and horticulture machinery, the operation of frost fans, bird scarers/gas guns and other similar activities may occur; and shall also disclose the SNMP referred to under Condition 6.10, the SHRMP referred to under Condition 10.4 and the covenant referred to under Condition 10.7 (and terms and conditions thereof). The provisions of this Condition 10.6 shall also apply to all care home facility employees/staff and employment contracts (*mutatis mutandis*).

- 10.9 If requested, and consented to, in writing by the owner of the Tamarillo Orchard land at 448 Mountain Road at any time after the commencement of construction activity on the care home site the consent holder shall register a covenant, in the form set out in Annexure "A" to these Consent Conditions, against the titles of the consent holder's and Tamarillo Orchard land owner's properties at 450 Mountain Road and 448 Mountain Road respectively.

- 10.10 Potable water shall be sourced from a new potable water bore.

- 10.11 For further protection from Tamarillo Orchard activities at 448 Mountain Road, prior to the commencement of works on site the vegetative buffer area shown on Landscape Plan L.2802/01 in Condition 2.1 shall be fenced off and access thereto shall be generally prohibited, and considered to be a total exclusion zone, to contractors, invitees, staff, occupiers, residents and visitors at the site. That vegetative buffer area exclusion zone shall only be

accessible periodically for general development and works, fencing, planting and/or maintenance purposes by approved/designated staff and/or contractors with the prior approval of the consent holder or care home manager. A sign in a prominent location on the southern boundary of that vegetative buffer area shall be installed which shall state "*No Unauthorised Entry*".

- 10.12 The obligations on the consent holder created by the Conditions in this Consent in respect of the Tamarillo Orchard activities on the neighbouring property at 448 Mountain Road shall cease to exist if and when the neighbouring property at 448 Mountain Road is no longer used for Tamarillo Orchard activities.

11. Review of Conditions of Consent

- 11.1 The Council may review the Conditions of this Consent in accordance with Section 128 of the Resource Management Act 1991 in order to address any adverse effect on the environment, that was not foreseen at the time of granting this Consent, which has arisen from the exercise of the consent. Such effect may include (but not be limited to) noise or light overspill in excess of District Plan requirements, adverse effects from spray drift or adverse effects from vehicle movements. The first such review (if necessary) shall occur on the six month anniversary of the establishment of the care home facility activity, and on two yearly intervals thereafter; or upon receipt of a justified complaint.

12. Monitoring

- 12.1 The consent holder shall pay the Council's costs of any monitoring that may be necessary to ensure compliance of the use with the conditions specified.

Advice Notes:

1. *Approval of this consent is not a pre-approval for future subdivision or development on the site including the utility shed that has been identified as a future facilities building which may result in additional vehicle movements or other rules that may no longer be met. Any further applications will be assessed on a case by case basis in accordance with section 104 of the Resource Management Act 1991.*
2. *Further geotech foundation verification should be carried out to the peat level after the site has been leveled to demonstrate the modified ground is adequate for the proposed structures.*

3. *Development contributions levied under the Local Government Act 2002 are payable in relation to this application. The consent holder will be advised of the development contributions payable separately from the Council's resource consent division.*

APPENDIX B

1. COVENANTS

1.1 The Grantor (Avatar Glen Limited) together with its transferees, assignees and successors covenants with the Grantee (B & S Weston) that:

1.1.1 The Grantor will allow the Grantee to carry on the Grantee's Tamarillo Orchard Activities and/or any other Orchard Activities or permitted Rural Activities which generate effects of the same character, intensity and scale as those generated by the Tamarillo Orchard at the date of this Covenant ("Grantee's Activities") on the Grantee's Land at 448 Mountain Road, Lepperton, Taranaki ("Grantee's Land") without interference or restraint from the Grantor;

1.1.2 The Grantor acknowledges and accepts that the Grantee's Activities include agrichemical spraying and the operation of noise emitting agricultural machinery, including a frost fan and bird scaring device, which may generate adverse or objectionable effects on the Grantor's property;

1.1.3 The Grantor will not in any way prevent or inhibit the Grantee from carrying out the Grantee's Activities on the Grantee's Land at the same scale and intensity as carried out at the date of this covenant;

1.1.4 The Grantor will not, bring any proceedings for damages against the Grantee in respect of the Grantee's Activities;

1.1.5 The Grantor will make no complaint or submission or requisition relating to the effects of the Grantee's Activities to the Council or otherwise; and

1.1.6 The Grantor will not (directly or indirectly) make, lodge, be any party to, finance, or contribute to the costs of, any submission, application, proceeding or appeal (under the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the Grantee's Activities on the Grantee's Land, provided the Grantee's Activities are being conducted lawfully and/or in accordance with existing use rights as defined in section 10 of the Resource Management Act 1991.

- 1.2 The Grantor will disclose the terms of this covenant to all occupiers and residents and their representatives (if any) of any future care home facility that may be developed on the Grantor's Land at 450 Mountain Road, Lepperton, Taranaki (Grantor's Land) and ensure that this covenant is disclosed to all occupiers and residents and their representatives (if any) of any future care home facility prior to them taking up occupancy or residency at the care home facility. The Grantor together with its transferees, assignees and successors agrees to observe and perform all the stipulations and restrictions contained in the Covenant Instrument at all times.
- 1.3 The covenants on the part of the Grantor are to continue to apply in perpetuity and shall run forever in favour of the Grantee/Grantee's Land until the earlier of:
 - 1.3.1 the Grantee surrenders the same in writing; or
 - 1.3.2 the dominant tenement is no longer used for the Tamarillo Orchard as described in the Environment Court in Decision No (2016) NZEnvC 126 and/or any other Orchard Activities or permitted rural activities which generate effects of the same character, intensity and scale as those generated by the Tamarillo Orchard at the date of this Covenant; or
 - 1.3.3 the servient tenement is no longer used for the care home facility that is the subject of the consent granted by the Environment Court in Decision No (2016) NZEnvC 126.
- 1.4 No delay or failure by the Grantee to enforce the performance of the Grantor's covenants, and in no indulgence given, will waive or prejudice the Grantee's rights to enforce any provisions in this instrument.
- 1.5 The covenants in this instrument shall run with the Land and will be deemed an interest in the Land for the purposes of the Land Transfer Act 1952. They will bind all transferees, assignees, successors in title and owners of any estate or interest in the Grantor's Land.

2. REMEDIES

- 2.1 If the Grantor does not comply with its covenants and conditions in this instrument, the Grantee is entitled to bring an action for damages, specific performance of, and/or injunctive relief in respect of, the relevant covenant breached.

2.2 The Grantor and Grantee agree that production of a copy of this Covenant to the Environment Court or any appropriate authority will be a complete defence to any complaint in relation to the Grantee's activities by the Grantor or its occupiers invitees, employees, lessees, provided that the activities to which the complaint relates are being lawfully carried out in accordance with the relevant provisions of any applicable statute, regulation, district or regional plan and/or a resource consent or existing use rights, and if so, such complaint will be deemed to be withdrawn.

3. DISPUTES

3.1 If any dispute arises between the Grantee and the Grantor concerning the rights and obligations created by this Covenant, the parties will:

3.1.1 Enter into negotiations in good faith to resolve the dispute;

3.1.2 If the dispute is not resolved within one month of the date on which the parties begin negotiations, submit the dispute to mediation, with an agreed mediator, or, failing agreement, a mediator appointed by LEADR NZ (or of LEADR NZ has ceased to exist its successor or an equivalent body);

3.1.3 If the dispute is not resolved within one month of the date on which the parties begin the mediation, submit the dispute to the arbitration of an independent arbitrator appointed directly by the parties;

3.1.4 If the parties cannot agree on that appointment within fourteen (14) days then the arbitration shall be carried out by an independent arbitrator appointed by the President of the New Zealand Law Society; and

3.1.5 Such arbitration will be determined in accordance with the Arbitration Act 1996.

3.2 Nothing in clause 3.1 shall prevent either party from applying to the High Court for urgent equitable relief in respect of any matter under this Covenant.