

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an Application to

GORE DISTRICT COUNCIL

by

**POWER FARMING HOLDINGS
LIMITED**

Council Reference: LU2022/164

**DECISION OF COMMISSIONER WENDY BAKER APPOINTED BY
GORE DISTRICT COUNCIL PURSUANT TO SECTION 34A OF THE
RESOURCE MANAGEMENT ACT 1991**

The Hearing and Appearances

Hearing Date: 27 September 2022 in Gore

Hearing Closed: 21 October 2022

Appearances for the Applicant: Mr Chapman, Counsel
Ms McMillan, planner
Mr Prendegast, applicant

Appearances for the Council: Ms Skuse, planner
Mr McRobie, Parks & Reserves Manager
Ms Crazy Wolf, hearings administrator

Appearances for Submitters: Mr Fraser Falconer
Ms Shirley Falconer

Abbreviations:

The following abbreviations are used in this decision:

Assessment of Environmental Effects	'AEE'
Power Farming Holdings Limited	'the Applicant'
Gore District Council	'the Council'
Resource Management Act 1991	'RMA'
The Gore District Plan	'the District Plan'

The land subject to this application is referred to as 'the Site'.

INTRODUCTION

1. This decision is made on behalf of the Gore District Council ('the Council') by Independent Hearings Commissioner Wendy Baker, appointed and acting under sections 34 and 34A of the Resource Management Act 1991 ('the RMA') to hear and determine the application by Power Farming Limited ("the Applicant").
2. I satisfied myself that I am not subject to any conflicts of interest and am able to objectively and fairly reach a view on the proposal's merits and treat all parties evenly.
3. No objections were otherwise received relating to the persons involved in the hearing on behalf of either the Council, the Applicant or any of the submitters.
4. The Hearing raised no problematic procedural or administrative issues, other than one late submission. The Applicant confirmed that it was not opposed to the late submission being accepted and in my view the late submission was not problematic or unreasonably late, and its acceptance would not result in an unreasonable delay or disadvantage to any other person involved in the application. I accepted the late submission made by TRL Properties and Transport Repairs Limited under s.37 and 37A of the RMA.

THE PROPOSAL

5. The proposal is described in detail within the Applicant's AEE and summarised by the Council's s.42A planner Ms Skuse at section 2 of her s.42A report¹. A more detailed landscape plan² was provided at the hearing by the Applicant. I provide the following synopsis, edited from Ms. Skuse's report and supplemented by Ms McMillan's evidence³:
 - (i) Operate a sales and service business selling farm machinery and parts and providing repair service in an on-site workshop.
 - (ii) The development will include office space, workshop, sales display areas (indoor and out), washdown bay and staff utilities.
 - (iii) The main building has a footprint of 60.35m x 23m and a maximum height of 7.72m.

¹ Skuse, s42A, 5 September 2022

² Power Farming – New Showroom & Workshop – Gore, Prelim Landscaping Plan, Aesthetics, 9 September 2022

³ McMillan, Brief of Evidence 27 September 2022

- (iv) One existing shed will remain on site slightly shortened with an area of 237.9m². The total building coverage is proposed to be 1,818m².
- (v) Approximate earthworks required will comprise 5,200m³.
- (vi) Hours of operation will be Monday to Friday 7.30am to 5.30pm and Saturdays 7.30am to 12 noon. Closed on Sundays and Public Holidays.
- (vii) Two Araucaria Araucana (Monkey-puzzle) trees listed as significant in the District Plan (ref T32) are to be removed
- (viii) Landscaping is proposed in accordance with a including a Red Oak in the northwestern corner which is to be protected by a legal instrument.
- (ix) Signage visible from SH1

6. No changes were made to the application during the hearing.

THE SITE

- 7. The Site is described within the Applicant's AEE⁴ prepared by Bonisch Consultants and having undertaken a site visit, I confirm my agreement with that description.
- 8. In summary the Site is generally square, located on the corner of Charlton Lane and Falconer Road. With Charlton Lane being an access or slip-road alongside State Highway 1 (SH1). The main access is from Charlton Lane, with additional access in the northwestern corner to the cul de sac turning head of Aparima Street. There are various buildings, gardens and plantings on the site all of which appear to have fallen into disuse. I understand that the site is currently not occupied. The site is undulating with minor topography only.
- 9. Key to these proceedings there are two large Monkey-puzzle trees (male and female) located either side of the access from Charlton Lane in front of the main building which I understand was previously used as a lodge.

⁴ Job No 7625 Power Farming Holdings Limited, Land Development, Charlton, Gore Bonisch Consultants, 5 April 2022

MATTERS CONSIDERED

10. In reaching this decision I have considered:
 - a. The application, its AEE and all its supporting documents;
 - b. The public submissions made on the application;
 - c. The Council Officer's s.42A report, with supporting reports attached to the s.42A report;
 - d. The information received from Bonisch Consultants dated 27 July 2022 post notification from the applicant
 - e. The pre-circulated evidence from the Applicant;
 - f. The information given to me at the Hearing including the responses given to my questions;
 - g. The Applicant's oral right of reply;
 - h. My observations from my site visit, limited to the extent that they framed questions I put to Hearing participants before me;
 - i. The relevant provisions of the Gore District Plan; and
 - j. The relevant provisions of the RMA, most notably Part 2, and sections 104 and 104B.
 - k. The Applicant's response to my minute including comment by Mr Hill of Paper Street Tree.
 - l. The Council's response to my minute.

NOTIFICATION AND SUBMISSIONS

11. The application was publicly notified on 6 July 2022 and the period for submissions closed on 3 August 2022. Within that period, ten submissions were received. Nine of these were opposed to the proposal, and one sought that consent be granted.
12. An eleventh submission was received on late from TRL Properties Ltd and Transport Repairs Ltd. This was in support of the application. As noted earlier, this submission was

accepted during the Hearing on 27 September 2022.

13. I have read each submission and I refer to section 4 of Ms. Skuse's s42A report which sets out a summary of each submission and the relief sought.

WRITTEN APPROVALS OBTAINED

14. No persons have provided their written approval to the application.

SUMMARY OF EVIDENCE HEARD

15. Pre-circulated expert evidence was received from the Applicant's Planner Ms MacMillan and a s42A report from the Council's Planner Ms Skuse prior to the hearing. The Applicant presented legal submissions at the hearing. Following the presentation of the legal submissions, the witnesses confirmed their evidence as circulated and answered questions from the Commission.
16. The section below is a summary only of the evidence I heard and I refer to the Council's full public records of all materials presented.

For the Applicant

17. **Mr Chapman**, counsel, spoke to his legal submissions.
18. Mr Chapman presented oral closing submissions. He reasserted his reliance on the Paperstreettree report by Mr Ritchie Hill which was included in the application. I questioned Mr Chapman on the significant monetary difference between Option 2 and the amount offered in lieu of Option 3. He stressed that the Options⁵ contained in the recommendations of this report should be seen as just that "options" and that the applicant had chosen to follow Option 3. In his submission Option 2 and Option 3 are equal.
19. On my request, Mr Chapman provided a copy of the "JJ" resource consent decision⁶ which was granted on 18 March 2022 for a similar activity to the subject application on the

⁵ Hill, Paperstreettree, Arboricultural Assessment, 40 Charlton Lane, Gore, Southland, date 28.10.21

⁶ SC 2022.145 & LU 2022.146, A MacKay and K Calder, 18 March 2022, re-issue 30 March 2022

adjacent site across Falconer Road. Mr Chapman submitted that this case was relevant as it demonstrated that the use was not unusual in the vicinity.

20. **Ms McMillan**, planner, read her evidence in full. Notably in her description of the surrounding land uses she directed me to the same “JJ” resource consent that Mr Chapman had. Ms McMillan opined that the effects generated by the commercial / industrial nature of the activity proposed were generally anticipated in the zone⁷. She considered that the signage is well set back and is typical of the surrounding signage. In terms of tree removal she referred to the arborist’s report submitted with the AEE⁸.
21. The Applicant did not call evidence from Mr Hill, the author of the Paperstreettree report and therefore Mr Hill was not available to respond to questions relating to his report. I can therefore only take his report as read. This presented problems and in my minute of I sought further information from Mr Hill.
22. Relying on the Paperstreettree report, Ms McMillan addressed the three options recommended in it at paragraph 6.8. She dismissed Option 1 on the basis that the removal of the trees is necessary to allow for the activity proposed. She dismissed Option 2 as too expensive making the development unfeasible. She then states that the applicant chose Option 3.
23. In paragraph 35 of her evidence she sets out how this is to take shape. Option 3 of the Paperstreettree report reads:

“Plant or transplant four large grade long-lived species, which can reach a minimum height of 20m on the site. Expert guidance should be sought to ensure appropriate species selection, placement, planting preparation and aftercare takes place”

The applicant is proposing to plant and protect one large grade Red Oak on the site and making a donation of \$18,000 to the Council to allow the Council to plant the other three trees in a location of its choosing (or use the money for alternative plantings).

24. Ms McMillan advised that she understood that the Council will use the funds to plant 70 trees along the State Highway. Ms McMillan has assessed that these 70 trees will provide significant benefits to amenity. She considers that the positive effects on amenity will

⁷ McMillan, Brief of Evidence 27 September 2022, para 21

⁸ Hill, Paperstreettree, Arboricultural Assessment, 40 Charlton Lane, Gore, Southland, date 28.10.21

exceed the negative effects on amenity resulting from the loss of the two Monkey-puzzle trees.

25. Ms McMillan confirmed in questioning that the heritage value of the lost trees is unable to be mitigated, however she considers that in time the proposed Red Oak on site will provide heritage value. She also considers that the positive amenity effects serve to compensate for the adverse effects on heritage.
26. Ms McMillan maintained the position she had expressed in their pre-circulated evidence and agreed with the Council officers that consent should be granted.
27. **Mr Prendegast** explained that Power Farming had a standard building layout which could not be reoriented or remodelled to fit the site without significantly compromising the functionality of the business.
28. **Mr Hill** was not called by the Applicant. However, in my minute of 30 September I sought answers from him regarding the options set out at paragraph 6.8 of his report. He advised all options were equal.

For Submitters

29. **Mr Falconer** read written submissions. He recounted that the two Monkey-puzzle trees were planted by his Great Grandparents in 1914. In his view a cash offer of \$18,000 is insufficient to compensate for the loss of the trees from a carbon, rarity or visual point of view. Mr Falconer pointed out that the Applicant's evidence erroneously refers to Waiiau Street where it appears Aparima Street is intended. Mr Falconer seeks that the trees be retained for future generations to enjoy.
30. **Ms Falconer** read written submissions. She directed me to the Gore District Plan, the Regional Plan, the NZ Notable Tree Listing and the NZ Institute of Horticulture. Ms Falconer stressed the uniqueness of this pair of male and female Monkey Puzzle trees side by side.
31. Ms Falconer set out the rarity of the tree species including extensive referencing to its protection internationally including a Red Light Listing indicating danger of extinction. She also referred me to the Convention on International Trade in Endangered Species of Flora and Fauna (CITES) under which she considered the trees if felled could not be passed to woodworkers for their projects.

32. Ms Falconer raised concerns with Mr McRobie's correspondence with the Applicant which appears to agree to a sum of \$18,000 for the value of replacement planting. She considers the value of the trees is much higher.
33. Finally Ms Falconer suggests alternative uses for the site. She seeks that the trees be retained.

Council officers

34. **Ms. Skuse** has prepared a report under s42A. She recommends that resource consent is granted as⁹:
 - The proposed built form and resultant land use will have no more than minor adverse effects on the environment.
 - The adverse effect of the loss of the notable qualities of the trees (heritage, health, rarity) will be more than minor and cannot be mitigated. The proposed mitigation package will however amount to an offset or compensation in line with s104(ab).
 - While the proposal is contrary to the Gore District Plan objective and policy relating to the protection of significant trees; the proposal is consistent with objectives and policies in terms of the resulting land uses compatibility with the area and maintenance of amenity.
 - The proposal is consistent with the Southland Regional Policy Statement and National Policy Statement for Urban Development 2020.
 - The Gore District Plan is a first generation plan and lacks sufficient policy coverage to determine what environmental outcomes are anticipated by the plan. The proposal achieves the overarching principles of the RMA by promoting sustainable management and ongoing efficient use of the land.
35. **Mr McRobie** provided a statement appended to Ms Skuse's s42A report. This statement did not address the removal of the Monkey Puzzle trees. Rather it focussed on the

⁹ Skuse, s42A, 5 September 2022, page 1 Recommendation

mitigation proposed and the various options concluding that the Council preferred the monetary value of three large grade trees being \$18,000. He confirmed that the Council intended to use these funds to plant approximately seventy 35l-45l grade specimen trees in an open area on the eastern side of the Gore Mataura Highway.

36. Mr McRobie advised orally that in his experience exotic trees did not survive well in the Gore environment and he thought it possible that the monkey puzzle trees would not have a long life. I disregard this statement as this is outside the scope of Mr McRobie's pre-circulated evidence.
37. The hearing was adjourned. On 30 September 2022 I issued a minute seeking information from the Applicant regarding the options in the Paper Street Tree report. This was received in full on 21 October.
38. The Commission determined it had sufficient information to make a decision and the hearing was closed on 21 October 2022.

STATUTORY AND PLANNING FRAMEWORK

39. There was agreement between Ms. McMillan and Ms Skuse as to the planning framework that applied to the proposal.

District Plan

40. The site is zoned Industrial in the Gore District Plan and requires a discretionary resource consent for the following reasons.
 - A discretionary activity consent pursuant to Rule 4.2.4(1) as the proposal is for a commercial activity which is not listed as a permitted activity in this zone.
 - A discretionary activity under Rule 4.12.3 for the removal of two significant trees with reference T32
 - A discretionary activity under Rule 4.10(2)(a)(i) as signage will be visible from the State Highway.

Regional Plans

41. Both Planning experts agree the Southland Regional Policy Statement 2017 is relevant to the proposal.

National Environmental Standards

42. Neither Planning expert considered the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health of relevance.

National Policy Statements

43. Both Planning Experts identified the National Policy Statement on Urban Development 2020 as of some relevance.

Resource Management Act

44. As a discretionary activity the proposal is to be considered in terms of s.104 of the RMA. S.104B of the RMA grants the Commission full discretion to then grant or refuse consent, or grant consent subject to conditions. Conditions of consent are subject to ss.108 and 108A of the RMA. S.113 is also relevant in as much as it sets out requirements that the Commission's decision must meet.
45. S.104 of the RMA is subject to Part 2 of the RMA, although whether or not that requires a formal consideration of an application directly against Part 2 is a case-by-case matter. The Commission will address Part 2 of the RMA later.

PRINCIPAL ISSUE IN CONTENTION

46. The principal issue in contention at this hearing was the removal of the two significant Monkey Puzzle trees.
47. I observe that there does appear to be an inherent tension in a site being zoned for industrial uses and the identification of two large trees centrally within said site. On questioning Ms Skuse confirmed that the draft of the proposed plan which is currently

being consulted on, includes both these elements. This brings into question the relevance of Ms Skuse's contention that 'given its age [*the Gore District Plan*] does not provide complete coverage in its policy direction. It does not recognise the importance of the agriculture industry and providing adequate land for activities which support the industry, for the prosperity of Gore'¹⁰. I accept that the draft proposed plan may include amended policy wording which will assist.

48. I generally accept the submissions of Mr Falconer and Ms Falconer which reassert the values of these trees. I concur that heritage values associated with these trees is irreplaceable. Both Ms McMillan¹¹ and Ms Skuse¹² also recognise this reality and both state that these effects cannot be mitigated. They both assert that the planting of 70 specimen trees will however provide compensation under s104(ab).
49. The matter of compensation is one of comparing the proverbial apples and pears and caselaw in this area is sparse to non-existent and no party provided any useful guidance in this space. I accept that there are significant benefits to planting 70 trees of around 2-3m high along an open stretch of State Highway. I understand that the \$18,000 will fund the purchase and planting of the trees but not their maintenance.
50. I agree with Ms Falconer's submission that the dollar amount of funding seems a paltry contribution given the loss of significant heritage. It is in this context that I sought further input from Mr Hill. His response was helpful in so far as he advised that all options were equal. However, he simply relied upon the Council to determine how much funding was required to undertake the required planting (compensation). Council have determined this to be \$18,000 as set out in the statement of Mr McRobie. I have little option but to accept this evidence regardless of my opinion that it is woefully insufficient to achieve the long term compensation it is intended to create.
51. I therefore put the dollar amount aside and consider the compensation of 70 trees planted at a grade of around 2-3m high along the State Highway. Seventy trees is a considerable number to compensate the two notable trees lost. These trees are to be located along a busy State Highway and will provide considerable amenity gain for the public. It is in my opinion the heritage values of the Monkey puzzle trees is largely compensated for by the plantings proposed.

¹⁰ Skuse, s42A, 5 September 2022, paragraph 10.3

¹¹ , paragraph 37

¹² Skuse, s42A, 5 September 2022,

Objectives and Policies

52. There was no conflict between the parties in respect of the majority of the objectives and policies in the Gore District Plan. I concur that the proposal is consistent with the majority of them. The only matters in contention are Objective 3.3(6) and Policy 3.4(9) which read:

Objective 3.3(6) – Retain heritage and amenity values associated with significant trees

Policy 3.4(9) – Identify and protect trees with significant heritage or amenity values.

53. All parties consider the proposal is contrary to this Objective and Policy and I concur. These are both prescriptive provisions and neither provides a pathway to remove heritage trees which are of high value as is the case here.
54. I can reach no other conclusion than that the proposal is contrary to these provisions

SECTION 104 FINDINGS

Section 104(1)(a)

55. In terms of s.104(1)(a) of the Act, and for the reasons above, the proposal will have:
- (a) Minimal adverse effects in terms of activity and development.
 - (b) Adverse effects on heritage values in terms of the monkey puzzle trees.
 - (c) Compensatory effects in terms of the proposed off site planting of 70 trees along the State Highway.
 - (d) Positive effects for the local agricultural community and for Power Farming Holdings Limited.

Section 104(1)(b)

56. In terms of s.104(1)(b) of the Act, and for the reasons above, the proposal will:

- (a) Not raise issues relevant to the regional plan.
- (b) Be acceptable in terms of the Gore District Plan other than in respect of the Plan's provisions relating to significant trees.

Section 104(1)(c)

- 57. The only particularly relevant other matter in my opinion is the copy of the decision provided to me at my request by Mr Chapman, Council references SC2022.145 & LU 2022.146. This decision was portrayed by all parties as a similar activity on the adjacent site. The key difference seems to me to be the zoning; that site is zoned Rural.
- 58. This decision was granted on 18 March 2022. The fact that it was granted non-notified implies that such activity has a viable consenting pathway in the Rural zone. This undermines the arguments put to me regarding the subject site being one of the only sites with a suitable zoning (Industrial) for this activity. The decisions SC2022.145 and LU22.146 suggest otherwise.

Part 2

- 59. In this instance, concerns have been raised that the policy framework of the Gore District Plan is not satisfactory to address Part 2 of the Act as it relates to environments such as the Site. For this reason it is only correct that a full and separate appraisal of the application against Part 2 is undertaken.
- 60. In relation to s6, Ms Skuse considers the reference to historic heritage at 6(f) does not include trees. This is probably an oversimplification of the definition. I consider that these trees do have some historic heritage value. The story told by Mr Falconer clearly indicates that there is a tale behind them. However, it appears to me that their historic heritage value is subsidiary to their value as outstanding examples of their species. I do not consider that s6 affords the protection of these trees the status of 'national importance'.
- 61. There are no other matters of national importance relevant to this proposal.

62. In relation to s7 the parties concur that clauses (b), (c) and (f) are of relevance. I agree. I consider that amenity values are maintained by the replacement trees, I consider the use of industrial zoned land for the purposes intended is efficient and I agree that the quality of the environment is generally maintained.
63. However, I also consider that felling two notable trees which are relatively unique in New Zealand is not an efficient use of that unique resource. In addition I consider clause (i) is of relevance which requires regard to be had to the effects of climate change. The planting of 70 new specimen trees will eventually result in the proposal assisting in combatting climate change.
64. No Treaty matters have been drawn to my attention (s8).
65. Overall I consider that either the proposed use, or maintaining the notable trees could meet Part 2. Both represent sustainable management as set out in s5. The proposal is further supported by s5 in that it allows the applicant to provide for their economic wellbeing.

SECTION 104B DETERMINATION

66. On the basis of all of the above, I find that on overall balance the proposal is sufficiently aligned to the outcomes sought within the Plan and the RMA that the promotion of sustainable management would be served by the GRANTING of the consent.
67. My reasons for this decision are, in overall summary, that the RMA provides for the use and development of natural and physical resources, but also when appropriate their protection or conservation. To achieve the purpose of the Act, either option is justified. Both the use as proposed and the retention of the trees achieve the purpose of the Act. The proposal is contrary to key provisions of the Gore District Plan in respect of trees, but consistent with the remainder.

68. Neither the RMA, nor the Plan provide sufficient guidance to assist in determining which aspects should be afforded more weight. In relation to the resource of land, this links back to section 9 of the RMA. Section 9 reserves the property rights of land owners to carry out (generally) any activities they choose. In the circumstances it seems to me that they are fairly equally balanced and I consider that the positive effects of the applicant being able to use their land as they wish is the most supported by Part 2 of the RMA.
69. The application by Power Farming Holdings Limited to establish and operate a commercial/industrial business is GRANTED subject to the conditions appended to this decision.



Wendy Baker

Hearings Commissioner

15 November 2022

Conditions of Consent

1. The activity shall be undertaken in accordance with the application and further information as submitted along with the following plans:
 - 'Site Plan' Aesthetics Architecture 25 October 2021
 - 'Floor Plan' Aesthetics Architecture 30 March 2022
 - 'Elevations' Aesthetics Architecture 30 March 2022
 - 'Pylon Signage'

Tree Removal

2. Prior to the removal of the two monkey puzzle trees the Applicant shall pay \$18,000 + GST, as the monetary equivalent of three 1000L heritage trees, to the Council Parks and Recreation department. Council shall plant seventy 35-45 litre trees within the next available planting season after receipt of the funds. The trees shall be identified with coloured stakes.
3. Prior to the removal of the two monkey puzzle trees the Applicant shall provide to the Council two seedlings germinated from the seeds collected from the two monkey puzzle trees to be removed. These seedlings shall be planted on Council reserve with an appropriate plaque to be funded by the consent holder with a description of the history and significance of the trees. At the Council's sole discretion these seedlings can be made available to Fraser Falconer, the grandson of the landowner who planted the trees or to any other submitter or party. (*volunteered condition*)

Construction

4. Demolition of existing buildings shall be completed within 90 working days of its commencement.
5. Hours of operation for earthworks, shall be: Monday to Friday (inclusive): 7.30am to 5.30pm.
Saturdays: 7.30am to 12.00pm
Sundays and Public Holidays: No Activity
6. The consent holder shall install measures to control and/or mitigate any dust, silt run-off and sedimentation from earthworks. These measures shall be implemented prior to the commencement of any earthworks on site and shall remain in place for the duration of the project, until all exposed areas of earth are permanently stabilised.
7. The Consent Holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the Consent Holder shall take immediate action, at his/her expense, to clean the roads.
8. All earthworks and construction shall be carried out in accordance with the recommendations of the report provided by GeoSolve: "Geotechnical Report; 40 Charlton Lane, Ref 210780, April 2022". Specifically:
 - a. Permanent, dry cut batters in alluvium should be formed at 2:1 (H:V) if cuts are less than 2m. Specific design will be required for larger cuts.

- b. All temporary slopes for retaining wall and building platform construction should be battered at 1.5:1 (H:V) provided these are within alluvial silt or alluvial gravel and under the supervision of a geotechnical practitioner. Adequate working space at the toe of cuts should be provided.
 - c. All unsuitable materials identified in foundation excavations, particularly topsoil, uncontrolled fill and those softened by exposure to water, should be undercut and replaced with engineered fill during construction.
 - d. Any fill that is utilised as bearing for foundations should be placed and compacted in accordance with NZS 4431:1989 and certification provided to that effect.
 - e. A geotechnical practitioner should inspect all excavations and additionally any seepage, spring flow or under-runners that may be encountered during construction.
 - f. Any retaining walls should be designed by a chartered professional engineer adopting the geotechnical parameters outlined in Table 6.1 of the Geotechnical Report.
 - g. Foundations should be designed to bear on stiff alluvial silt or on alluvial gravel. Bearing capacity is provided in Section 6.7 of the Geotechnical Report. A geotechnical practitioner should inspect and test all foundation excavations prior to placement of reinforcing and concrete.
8. In the event of any discovery of material suspected to be evidence of pre-1900 human activity, taonga/treasured artefacts or human remains/kōiwi in a 'place', the following applies;
- a. Work must cease immediately at that place and within 20 metres around the site.
 - b. All machinery must be shut down, the area must be secured, and the Heritage New Zealand Pouhere Taonga Regional Archaeologist and the Consent Authority must be notified.
 - c. The Site Manager shall secure the affected area and immediately notify the Heritage New Zealand Pouhere Taonga ("HNZPT") Archaeologist, Queenstown District Council and Otago Regional Council. HNZPT will advise if further assessment by a suitably qualified archaeologist and/or an archaeological authority application is required from the Consent Holder.
 - d. If the material is of Maori origin, in addition to the requirements above, the Site Manager shall immediately notify the Hokonui Rūnanga and Te Ao Marama and ensure site access to enable appropriate cultural procedures and tikanga to be undertaken, subject to meeting statutory requirements (Heritage New Zealand Pouhere Taonga Act 2014, Protected Objects Act 1975). In this instance, Hokonui Rūnanga and Te Ao Marama and the HNZPT Archaeologist will jointly advise if further assessment by a suitably qualified archaeologist and/or an archaeological authority is required from the Consent Holder.
 - e. Any works within an affected area shall not resume until Aukaha, and Te Ao Marama and HNZPT (and NZ Police in the case of human remains (kōiwi)) authorise work to continue.
9. If human remains (kōiwi) are uncovered, in addition to the conditions above, the Site Manager shall immediately advise the NZ Police. The affected area must be treated with the utmost discretion and respect. Remains are not to be moved until such time as Aukaha and Te Ao Marama, HNZPT and NZ Police have responded and agreed that they can be moved.

Landscaping

- 10. The landscape plan referenced in condition 1 shall be planted in the next available planting season following construction and prior to operation of the industrial and commercial business. The landscaping shall thereafter be maintained in perpetuity. If any plant or tree should die or become diseased it shall be replaced within the next available planting season.

Easement in Gross

11. Prior to the removal of the monkey puzzle trees the consent holder shall register an easement in gross or other such encumbrance as is considered suitable by the Council agreeing to the following:
 - a. Within 12 months of the grant of consent the consent holder will plant in the north west corner of the stie, at an appropriate distance from the legal boundary, a red oak (*Quercus Rubra*) tree of a size equivalent to 1,000 litres.
 - b. The tree shall be maintained by the consent holder in perpetuity. The consent holder shall not permit any activity on the site which may adversely affect the health of the tree, including its root system
 - c. If at any time the tree should die or become diseased, the consent holder shall replace the tree within the next available planting season
(volunteered condition)