

Richard Gardner -
EVIDENCE Federated Farmers
TOPIC GMO PC131/PC18
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Submitter FNDC PC18-301 and WDC PC131-188

Proposed Plan Change 18 (FNDC) and
Proposed Plan Change 131 (WDC)

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Genetically Modified Organisms

Opening Representations

A. INTRODUCTION.

1. Thank you for the opportunity to address the Hearings Panel.
2. My name is Richard Gardner and I am a Senior Policy Advisor with Federated Farmers.
3. Federated Farmers is in total disagreement with the Councils as to their response regarding the use of GMOs.

B. SUMMARY OF REPRESENTATIONS.

4. These representations briefly set out Federated Farmers' policy regarding GMOs, which in short is about preserving farmers' ability to access modern technology. We then discuss the reasons why the provisions relating to the use of GMOs should be removed from the Plan Changes.
5. Federated Farmers' primary position is that there is no provision in the RMA under which planning provisions can be made which regulate the use of GMOs. Thus all provisions related to GMOs should be removed from the Plan Changes. Federated Farmers considers that central government has sole responsibility for the management and control of GMOs in New Zealand, and that there is therefore no role for local government in their management.
6. Both the jurisdictional issue of whether GMOs can be regulated in local authority planning provisions, and the broad issue of whether GMOs should be regulated in local authority planning provisions are before the Courts. Federated Farmers respectfully suggests that the outcome of the Court proceedings on these issues will be largely, if not completely, determinative of the proceedings that are before the Hearing Panel regarding the GMO

provisions in the Plan Changes. Nevertheless, despite their relevance, we spend little time discussing those matters. The relevant arguments are set out in summary form in the Federated Farmers evidence.

7. Instead, the focus is on the matters that are more specifically relevant to the Plan Changes. On that basis alone, Federated Farmers considers that there is no justification for the Council to include provisions regulating GMOs in the Plan Changes.

C. FEDERATED FARMERS' POLICY REGARDING GMOs.

8. Federated Farmers' policy on GMOs was adopted in 1998. We support the principle and application of gene technology within agriculture, provided appropriate controls exist. We think the appropriate level to exercise that control is at central government level, under the HSNO Act. We recognise and support the regulatory frameworks established at central government level to scientifically assess and manage any risks to the health and safety of people and the environment from the application of gene technology. Federated Farmers' policy recognises that gene technology has the potential to provide benefits to New Zealand producers. Federated Farmers approach to GMO technology is not an "open slather" approach.
9. Federated Farmers policy on gene technology is set out in full in Attachment 1.

D. ALL PROVISIONS RELATING TO GMOs SHOULD BE REMOVED FROM THE PLAN CHANGES.

10. Federated Farmers' case proceeds on the basis that it can best assist the Hearing Panel by focussing on the matters that are specifically relevant to the Council's proposals regarding the regulation of GMOs in the Far North and Whangarei. In this context, Federated Farmers submission is that the process by which the Council has come to include provisions regulating GMOs in the Plan Changes is, on its own, sufficiently deficient to justify the Hearing Panel removing those provisions from the Plan Changes.
11. On the basis of the material that is specifically relevant to the Far North and Whangarei and the Plan Changes, it is submitted that the provisions that the Councils have included in the Plan Changes cannot be justified on several grounds, in particular that the provisions are not supported by the science. The Council has also largely ignored and disregarded the existence of central government processes regulating the use of GMOs.

12. Turning to the provisions in the Plan Changes themselves, there is no relevant issue of regional significance in the Proposed Northland Regional Policy Statement that the GMO provisions address. Yet both plan changes claim to identify issues at district level, with the Far North District Council claiming that “The outdoor use of GMOs can adversely affect the environment, economy, and social and cultural resources and values, and significant costs can result from the release of a GMO”,¹ and the Whangarei District Council claiming, without pointing to any particular issue in its District Plan, that “The sustainable management of the natural and physical resources of the district with respect to the outdoor use of GMOs, a significant resource management issue identified by the community”.² Clearly the Regional Council and the District Council’s can’t all be correct.
13. Such discussion on GMOs as there is unbalanced in that it fails to reflect the benefits GMOs could bring. There is a great deal of scientific evidence against placing controls on GMOs over and above those prescribed by the EPA. I discuss some of the benefits of GMOs in Section E of my evidence.
14. It is submitted that the Councils have misapplied the “precautionary approach”. How the precautionary approach to the use of GMOs is to be applied is a matter which will have been determined by the EPA under the HSNO Act and it is readily apparent that, in the case of GMOs, the EPA must apply the precautionary approach to its decision making. That much is also made clear by the Cartagena Protocol, as it relates to the use of any new biotechnology, to which New Zealand is a signatory.
15. The Councils have overlooked that the RMA is enabling legislation. If, indeed, the RMA does have a role in the regulation of GMOs then, once the use of a GMO is approved by the EPA, the role of the RMA is to enable the use of GMOs, and enable their use in a way that is the most appropriate. It is submitted that, if there are to be provisions in the Plan Changes regulating GMOs, then the most stringent they could reasonably be would be as controlled activity rules. There are a number of pointers to the rules actually being better cast as permitted activity rules.
16. Mr Mathias touched on the matter of the RMA being enabling in his submissions. He said that the *Coromandel Watchdog* case identified that the use of a prohibited activity status for an activity is permissible when the effects of the activity are not known or clearly understood. As I said earlier, in the case of an application to a local authority for the release of a GMO, the effects will be well known and understood, because the EPA will have already told all of New Zealand what the effects of the GMO will be, and the local authority will be in no position to gainsay that.

¹ Issue 19.1.1.

² In Objective GMO.2.1.2.

17. The Councils' concerns about liability are misguided and mistaken. There is no "gap" in the HSNO legislation regarding the inability to apply strict liability on consent holders, the liability regime that is set up in the general law, as modified by the HSNO legislation, is the liability regime that is appropriate to the management of GMOs in New Zealand.
18. The Councils rely on somewhat dated data from a Colmar Brunton poll in support of their case. Nevertheless, despite the gloss put on the data in some of the Councils' evidence, it seems that, whichever way the results of the poll are looked at, a large proportion of respondents to the poll were generally satisfied with the current central regime for managing the use of GMOs, and of those that were not satisfied, their concerns could be met only by legislative change, rather than by regulation at local government level.
19. Federated Farmers has had the opportunity to consider the Councils' legal submissions.³ Counsel for the Council record,⁴ correctly, that the Environment Court decision they rely on in their discussion of "jurisdiction/relationship of GMOs with HSNO"⁵ is under appeal to the High Court. Counsel refer specifically to paragraphs [49] and [51] of the decision in advancing their propositions regarding the relationship between HSNO and the RMA and reaching their conclusions that HSNO addresses the scientific considerations with the RMA bringing into play wider considerations under the umbrella of sustainable management of resources.
20. Federated Farmers has two concerns about this. Firstly, the matters relied on are matters that are specifically under appeal in the High Court, as being substantive matters on which the Environment Court came to conclusions, where it had specifically directed previously that its consideration was to be confined to jurisdictional matters. The second concern is that all of the matters discussed by the Court in the two passages relied on by Counsel are matters that are within the purview of the HSNO legislation, as is discussed at length in Federated Farmers' submitter evidence and legal submissions.

E. CONCLUSIONS.

21. Federated Farmers commends its submission points and further submission points in respect of the GMOs topic to the Hearings Panel.

³ Opening Legal Submissions on behalf of Auckland Council Topic 024 – Genetically Modified Organisms

⁴ Ibid, at 4.2.12.

⁵ Ibid, at 4.2.

Federated Farmers Gene Technology Policy

Federated Farmers has a keen interest in the policies affecting biotechnology in New Zealand. We have submitted to the Royal Commission on Genetic Modification and the subsequent Public Discussion Paper on Improving the Operation of the HSNO Act for New Organisms.

We have submitted on all applications of GM technology relevant to our members (including PPL transgenic sheep, field testing of GM cattle in containment, round-up ready wheat, developing transgenic cattle in containment and field testing of glyphosate-resistant onions)

The Federation made a detailed submission to the Education and Science Committee on the New Organisms and other Matters Bill in June 2003. Overall the 'NOOM' Bill reflected our policy positions on the issues involved - allowing the introduction and use of new organisms, while managing the risks within a cautionary framework.

Our general policy on gene technology was adopted at our National Conference in July 1998 and is detailed below. The process for developing this policy involved seeking the views of farmers around New Zealand.

FFNZ Policy is:

Humans have been practising genetic modification for centuries. We have sought to improve the characteristics and yields of plants and animals by selection and breeding. Modern advances in gene technology have taken this further by providing new ways of improving plants and animals. Many of these results could be achieved by traditional breeding methods, but gene technology is a faster and more specific method of achieving a desired modification. Gene technology has the potential to benefit New Zealand producers, providing appropriate controls exist to ensure the safety of human health and the environment.

- Federated Farmers supports the principle and application of gene technology within agriculture, providing appropriate controls exist. Gene technology involves altering the genetic material of organisms to introduce desirable characteristics.
- Federated Farmers recognises that this technology can provide benefits to New Zealand producers. These benefits include the potential for: higher yields, precisely determined product attributes, higher quality and safer food, more sustainable environmental management practices, improved input efficiencies, better understanding of plant and animal functions, improved animal disease and plant pest management tools.
- Federated Farmers endorses individual farmer's rights to determine what technologies are used in their production system.
- Federated Farmers recognises and supports the regulatory frameworks established to scientifically assess and manage any risks to the health and safety of people and the environment from the application of gene technology.
- Federated Farmers recognises the consumer's right to acquire information relating to the products they are purchasing. Federated Farmers encourages active risk communication by regulatory bodies and the supply of information by marketers to ensure consumer confidence.
- Federated Farmers recognises that gene technology involves significant issues of intellectual property. Federated Farmers is concerned that New Zealand has access to the benefits of this intellectual property.
- Federated Farmers will comment on any individual case of gene technology when considered appropriate.