

EVIDENCE Kerry Grundy
TOPIC AMD PC131/PC18
SUB# 004
DATE 13/6/2016

BEFORE THE WHANGAREI AND FAR NORTH DISTRICT COUNCILS JOINT HEARINGS PANEL

IN THE MATTER of the Resource Management Act

AND

IN THE MATTER of Plan Change 131 and Plan Change 18 -
Genetically Modified Organisms.

AND

IN THE MATTER of the submissions and further submissions on
the above two plan changes

SUMMARY OF EVIDENCE BY DR KERRY JAMES GRUNDY

1 JUNE 2016

EVIDENCE
CONFIDENTIAL

1. My name is Kerry James Grundy. My qualifications and experience are outlined in my statement of primary evidence as is my agreement to comply with the Code of Conduct for Expert Witnesses.
2. I was asked by the Whangarei District Council and Far North District Council to provide background to the proposed GMO plan changes (PC131 and PC18) and an overview of the research undertaken by the Inter-council Working Party on GMO Risk Evaluation and Management Options upon which both plan changes are based. I present evidence in my capacity as Convener of the Inter-council Working Party.
3. In this summary of my statement of primary evidence I propose to give a brief overview of some of the main points covered in that evidence.
4. My primary evidence largely relates to the undertakings of the Inter-council Working Party, along with actions of member councils in implementing recommendations from the Working Party, to manage the risks from the outdoor use of genetically modified organisms (GMOs). Member councils on the Working Party are listed in my primary statement of evidence.
5. The intent of the primary evidence (amongst other things) was to assist the Hearings Panel in situating the GMO provisions in the proposed plan changes within a wider context of collaboration by councils in the Auckland/Northland region in investigating risks from outdoor use of GMOs, and options to manage those risks. This collaborative approach was adopted to achieve a robust response to those concerns, to ensure a consistent approach across the northern peninsula, and to maximize efficiency and cost sharing opportunities in the interests of ratepayers of the two regions.
6. As outlined in my statement of primary evidence, this collaborative effort resulted in a comprehensive programme of research, and resulting documentation, over an extended period of more than 12 years. As stated in my primary evidence, this programme of research and documentation has been one of the most comprehensive and rigorous of any investigations into a planning issue that I have been involved with in my professional career.
7. I would like to emphasize to the Panel that these collaborative investigations were a response to, and driven by, concerns expressed by the Northland and Auckland communities, including tangata whenua, about the risks from GMOs in the environment, over an extended period of time exceeding 14 years, with no sign of abatement. As stated in my primary evidence, in my experience as a council planner I have not witnessed an issue that has generated such widespread and on-going concerns from the community over such an extended period of time.
8. The comprehensive investigations undertaken by the Working Party confirmed that there are significant risks to local government and their communities from outdoor use of GMOs, including environmental, economic and socio-cultural risks. These risks are difficult to quantify through normal risk analysis given the uncertainty (including scientific uncertainty) and lack of information about those risks. There is a lack of scientific agreement on the long term effects of releasing GMOs into the environment and a lack of information on long term environmental consequences. There is

uncertainty and disagreement as to the short and long term economic benefits and costs from GMO crops and animals. And there are different cultural and community views as to the appropriateness of GM technology and GMOs.

9. In addition, the potential adverse effects of releasing GMOs into the environment could be significant – including possible major (and long term) harm. Moreover, these effects could be irreversible. Once released to the environment it is, in most instances, impossible to eradicate such organisms. They are, in effect, there for ever, whatever the consequences.
10. One of the risks from outdoor use of GMOs that greatly concerned communities in Northland and Auckland, particularly primary producers, is the lack of adequate liability provisions under the Hazardous Substances and New Organisms (HSNO) Act for potential harm caused by GMOs.
11. There is no liability under HSNO for damage arising as a result of an activity carried out in accordance with an approval from the EPA (Environmental Protection Agency). Common law actions are rarely an effective remedy so affected parties will tend to bear any losses arising from unexpected events and ineffective regulation of GMOs. While economic damage resulting from GM contamination will in the first instance fall on individual constituents, such damage can occur across wide groupings of producers and thus become a community concern. Councils may also be exposed to costs.
12. Further, there is no requirement under HSNO for applicants to prove financial fitness and no requirement for bonds to be posted in order to recover costs should damage occur. In consequence, parties who may cause damage but do not have sufficient resources to cover resulting costs are not held financially accountable.
13. This has resulted in continuing concerns from primary producers, both conventional and organic, that their livelihoods could be adversely impacted by harm to their farming practices from contamination of crops and/or loss of marketing advantage and price premia for products. They maintain that those who cause harm from trials or commercial use of outdoor GMOs should be held financially accountable in accordance with the “polluter pays” principle that is generally applied to negative externalities.
14. Given the above assessment of risks and benefits along with community preferences, a robust precautionary approach to the release of GMOs to the environment was found to be warranted. The Working Party recommended that a strong precautionary approach should be maintained until there is sufficient information available (including scientific information) on the long term environmental consequences of releasing GMOs into the environment; agreement amongst producers and the community on the short and long term economic benefits and costs from the commercial use of the technology; and increased acceptance of genetic modification by tangata whenua and the community in general.
15. The adaptive risk management approach that has been recommended by the Inter-council Working Party and adopted by member councils in Auckland and Northland, and included in the GMO provisions in the proposed plan changes, is deemed an appropriate response to GMO releases and field trials. Based upon a differing scale or risks, release of GMOs to the environment has been

categorised as a prohibited activity and outdoor field trials a discretionary activity with conditions attached for addressing possible harm and for monitoring purposes. This approach is adaptive by providing opportunity for a plan change to enable a change of activity status from prohibited to permitted or discretionary should new information confirm net benefits to the region from a particular GMO or class of GMOs.

16. The section 32 analysis and associated legal opinions from Dr Somerville QC show that the proposed plan provisions do meet the purpose of the RMA, are the most appropriate to achieve that purpose, that the benefits of the proposed provisions outweigh the costs, and the risks of not acting are greater than the risks of acting.
17. The proposed plan provisions are complementary to, and not duplicative of, the HSNO Act as the provisions are targeted to fill identified gaps in the national regulatory regime, (such as the lack of robust liability provisions and a mandatory precautionary approach), and set standards to ensure community determined outcomes are achieved. They also enable the on-going management of GMOs in an integrated manner as prescribed under the RMA after they have been approved for release or field trialling by the EPA under HSNO. This approach is in accord with the regulatory regime outlined in the recent decision *Federated Farmers v Northland Regional Council*, concisely summed up by Principle Environment Court Judge Newhook when he stated: "the RMA and HSNO offer significantly different functional approaches to the regulation of GMOs".
18. In this regard, based upon the extensive investigations undertaken by the Inter-council Working Party, the main benefits from, and support for, regulatory action by local authorities in addition to national regulation include, but are not limited to, the following:
 - (a) An assured, community determined level of risk at the local/regional level compared to lack of surety at the national level. The Northland/Auckland communities (as the ultimate risk bearers) have indicated that they want a strong precautionary approach to the risks from GMOs as opposed to HSNO's weaker requirement for the EPA to take into account the necessity for caution. This applies to all risks, including environmental, economic, social and cultural not just when there is scientific and technical uncertainty as prescribed under HSNO.
 - (b) The avoidance of potential major financial exposure for constituents and councils from possible GM contamination and/or eradication or control of unwanted GMOs, whilst retaining opportunities to benefit from GMOs in the future should such opportunities arise. This can be achieved at very low relative costs to councils compared to the potentially significant costs that councils and constituents could face.
 - (c) A strict liability regime, including bond and financial fitness rules, that provides (to the extent possible) for users of GMOs to pay the cost of any damages (environmental and economic) resulting from that usage (which HSNO does not impose). Linked to this is a duty of care to existing conventional and organic farmers that their social and economic well being will not be adversely affected by the introduction of GMOs, e.g. widespread contamination of non-GMO crops such as has occurred overseas.

- (d) Local and regional marketing and branding advantages, based at least in part on the GE Free status of the area, in order to seek price premia for agricultural production and underpin tourism activities. Northland/Auckland is not a region of large scale food commodity production nor does it have a future in large scale commodity production. Its future lies in quality products aimed at the top end of the market with associated premium prices. At present GM food products do not command a price premium – rather they can result in a reduction in price – in the global market.
- (e) A policy position that is representative of the strong cultural concerns of Maori regarding GMOs indicated in iwi and hapu resource management and environmental documents and in other forums, including submissions from Maori on Northland/Auckland planning documents and the results of the Colmar Brunton poll in 2009. Given the high proportion of Maori in the Northland/Auckland region, this is of greater significance than nationally.
- (f) A consistent regulatory regime across the whole (or most) of the Northland and Auckland regions so that cross boundary inconsistencies are reduced to a minimum. Whilst Kaipara District Council is not undertaking a similar plan change regulating GMOs as the other councils on the Working Party following its placement in statutory management, it was a supportive and active member of the Working Party prior to this and may well become one again following elections this year.
19. My statement of primary evidence includes a brief outline of the actions of other member councils on the Inter-council Working Party, particularly Auckland Council which has included GMO provisions in its Proposed Unitary Plan based upon the research undertaken by the Working Party and consistent with the provisions in proposed plan change 131 and 18. A brief update is also provided on the GMO provisions in the Proposed Northland Regional Policy Statement.
20. My statement of primary evidence also includes a short commentary on the GMO provisions in the Proposed Hastings District Plan which prohibit outdoor use of all GMOs in the Hastings District, the precautionary GMO provisions in the Bay of Plenty Regional Policy Statement and the GMO provisions in the Hauraki Gulf Islands Section of the Auckland City Plan.
21. Before concluding I would like to correct a misconception expressed in the legal submissions from Pastoral Genomics. In paragraphs 64-69 it is alleged that the councils' section 32 report is based on the work of myself and Professor Heinemann, specifically the draft section 32 report commissioned by the Inter-council Working Party. I can categorically state that neither myself nor Professor Heinemann contributed to the writing of the draft section 32 report. The draft section 32 report was produced by Mitchell Partnerships (a well known firm of planning consultants), Simon Terry Associates, and DueNorth Ltd, an Auckland planning consultancy. Further, prior to the publication of the central background report to the draft section 32 report (*Community Management of GMOs II*), an independent peer review was undertaken by an academic at Victoria University of Wellington.

