

IN THE MATTER of the Resource Management Act 1991
AND

IN THE MATTER of Proposed Plan Change 18 of the Far North
District Plan

AND

IN THE MATTER of Proposed Plan Change 131 of the Whangarei
District Plan

**JOINT HEARING OF SUBMISSIONS BY COMMISSIONERS OF THE FAR NORTH
AND WHANGAREI DISTRICT COUNCILS**

**SUBMISSIONS OF POLICY ADVISOR FOR
SOIL & HEALTH ASSOCIATION OF NEW ZEALAND INCORPORATED
AND 14 OTHER SUBMITTERS**

13 June 2016

EVIDENCE Soil & Health Assn
TOPIC AMO PC131/PC18
SUB# 008
DATE 13/6/2016

MAY IT PLEASE THE PANEL -

INTRODUCTION

1. The Soil & Health Association of NZ Inc. (**Soil & Health** or **Association**) is the industry association for organic food producers and farmers in New Zealand. It has approximately 3000 members.
2. Soil & Health supports the Far North District Council's and Whangarei District Council's (**Councils'**) provisions for Genetically Modified Organisms (**GMO**) under Plan Change 18 of the Far North District Plan (**PC 18**) and Plan Change 131 to the Whangarei District Plan (**PC 131**).
3. The Association was party to both Environment Court proceedings concerning GMOs, where it supported provision for GMOs under regional policy statements.¹ The Association was also party to the High Court proceeding on GMOs in Whangarei in February, to which we are still awaiting the decision of. Soil & Health coordinated s 274 parties with a similar interest to present joint cases in those proceedings. It has likewise reached agreement with a number of submitters to present a joint case at this hearing.
4. I therefore also appear on behalf of 14 other submitters, who support provision for GMOs under the District Plans. The submitters can broadly be identified as including:
 - (a) organic producers and farmers;
 - (b) tangata whenua; and
 - (c) the community.
5. Soil & Health and the other submitters (**Submitters**) share concerns about the potential risks posed by a release of GMOs into the environment. They agree with the view that the science is unproven and the risk of biological

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New Zealand Forest Institute Limited v The Bay of Plenty Regional Council [2013] NZEnvC 298 (EC); and *Federated Farmers of New Zealand v Northland Regional Council* [2015] NZEnvC 159 (EC).

and ecosystem harm is too great not to include precautionary provisions for GMOs under the District Plans.

6. Equally important, the Submitters say that the risk to their “social, economic, and cultural wellbeing” remains live, even if the Panel considers that GMOs pose no biological or ecosystem risk.
7. This is because GMO contamination could have significant adverse effects on:
 - (a) the economic markets, and way of life, for both organic and non-GMO food producers;² and
 - (b) the mauri and tikanga of tangata whenua.³

SOIL & HEALTH'S EVIDENCE

8. The Submitters are calling evidence from witnesses in the following order:
 - (a) Ms Marion Thomson, co-chair of Soil & Health, on the Association goals, work and desire for a precautionary approach to be taken to GMOs;
 - (b) Ms Linda Zelka Grammar, Chairperson of GE Free Northland and community representative, on why local Councils' are best placed to manage local GMO issues, the risks posed by GMO trialling and release and why GE Free Northland supports a precautionary approach and prohibition provisions for the use of GMOs.
 - (c) Mr Donald Nordeng, CEO of BioGro New Zealand, on certification of organic and non-GMO farming and the risk posed to producers by GMO contamination;
 - (d) Mr Marty Robinson, an organic grower and owner of Kerikeri Organic, on the effects GMO contamination could have on his

² Evidence of V Warren at paragraphs [19] to [23], 24 May 2016; evidence of D Nordeng at paragraph [29], 30 May 2016; evidence of C Morrison at paragraphs [14] to [17], dated 14 August 2015; and evidence of M Robinson paragraphs [15] to [18], 30 May 2016.

³ Evidence of Dr B Pittman at paragraphs [14] to [25], dated 24 August 2015.

business and the wider environment and community if it were to occur within the Northland region.

- (e) Mr Vern Warren, a planning expert, on the: (a) potential risks posed by GMO use; (b) regional significance of potential GMO effects;⁴ and (c) appropriateness of adopting a precautionary approach to managing potential GMO effects within regional and district planning documents under the Resource Management Act (**RMA**).⁵
 - (f) Dr Benjamin Pittman, a cultural expert, on why Maori culture and tradition requires a precautionary approach to GMO use; and
9. Please note that Dr Benjamin Pittman is unable to attend the hearing today so will be presenting his submission tomorrow.
10. The Submitters' witnesses understand that the Panel has read their evidence and that they have been allocated roughly 10-15 minutes to address their key points.

SCIENTIFIC EVIDENCE

11. Various opponent submitters have produced evidence suggesting that GMOs pose no unique biological or ecosystem risks. That evidence would only be of assistance in understanding GMO activities to the extent that there would be consensus between the experts. Beyond that, the evidence only serves to illustrate a lack of scientific consensus as to the risks posed by GMOs. Lack of consensus, in itself, suggests that there is imperfect information and uncertainty that justifies a precautionary approach.

⁴ Evidence of V Warren at paragraph [24 - 25], 24 May 2016;

⁵ Evidence of V Warren at paragraphs [37] to [43], 30 May 2016;

12. Prof. Jack Heinemann, the Councils' scientific expert, succinctly supports this view stating *"that there is no scientific consensus on the safety of GMOs released into the environment, reversibility of potential adverse effects, potential benefits or even ability to assess risks of some kinds of GMOs"*.⁶
13. Scientific witnesses for submitters opposing a precautionary approach contest there is a lack of scientific consensus. However, one those witnesses, while well qualified, is employed by an organisation with an interest in GMO field trials and general release: Dr Dunbier chairs the board of Pastoral Genomics Limited, a biotech research and development company;⁷
14. The views of the biotech industry are important when considering the degree to which GMOs should be controlled through planning documents. However, it is important that industry views are not conflated with independent scientific evidence. This is a matter that the Panel should reflect upon when considering the weight to be given to the aforementioned witness's scientific evidence.

⁶ Evidence of Prof. J Heinemann at paragraph [47], dated 12 May 2016.

⁷ <http://www.pastoralgenomics.com/outcomes/>

PLANNING EVIDENCE & THE ROLE OF THE RMA IN REGULATION GMO USE

15. Comprehensive expert planning evidence has been provided to the Panel, which supports the District Plans' GMO provisions with minor amendments.⁸
16. Dr Mark Bellingham provides the only expert planning evidence for the submitters in opposition to the District Plans' GMO provisions. His evidence, prepared for Federated Farmers, is quite brief but is irrelevant as it only addresses the Proposed Auckland Unitary Plan (**PAUP**). At no point in his evidence does he address PC18 or PC131. It should therefore, be totally disregarded.
17. In case the Commissioners decide that Dr Bellingham's evidence is relevant we note that it can be summarised as:
 - (a) opposing provision for a precautionary approach to GMOs, and rules to prohibit outdoor release of GMOs and makes outdoor trials a discretionary activity as this is addressed under the Hazardous Substances and New Organisms Act 1996 (**HSNO**); and
 - (b) recommending that GMO field trials and release are provided for as or controlled activities.⁹
18. All this, notwithstanding that in his summary of evidence, Dr Bellinham acknowledges the decision of the Environment Court about jurisdiction.
19. Despite Dr Bellingham's opposition to a precautionary approach, it is worth noting that he supports the proposed Auckland Unitary Plan's objectives and policies.¹⁰ PC18 and PC131, of course, make well supported provisions for a precautionary approach to GMO use.
20. Dr Bellingham supports his recommendation of controlled activity status by suggesting (by implication) that the HSNO approval process for GMO field trials and general release would satisfy the purpose of the RMA.¹¹ That evidence is inconsistent with the Environment Court's decision, in *Federated*

⁸ Evidence of V Warren at paragraph [66], 24 May 2016; and evidence of Dr K Grundy at paragraph [90], dated 13 August 2015.

⁹ Evidence of Dr M Bellingham at paragraphs [14] to [23], dated 25 August 2015.

¹⁰ Evidence of Dr M Bellingham at paragraph [3], dated 25 August 2015.

¹¹ Evidence of Dr M Bellingham at paragraphs [15], [16] and [21], dated 25 August 2015.

Farmers v Northland Regional Council, that “the RMA and HSNO offer significantly different functional approaches to the regulation of GMOs”.¹²

21. HSNO is limited to regulating the introduction of new organisms (including GMOs) to New Zealand. HSNO “does not regulate the potential adverse effects of GMOs beyond approving them for release”, and does not provide for integrated management.¹³
22. The RMA, on the other hand, enables authorities to provide for the use and protection of resources “in a fully integrated fashion, taking into account regional needs for spatial management that might differ around the country for many reasons”.¹⁴
23. Dr Bellingham acknowledges the Environment Court’s decision in his summary of evidence but does not go on to address this decision in the body of his evidence., There is no explanation of why he has reached a different view to that of the Environment Court. This omission is notable, not least, because:
 - (a) Federated Farmers was the appellant in those proceedings; and
 - (b) legal counsel for Federated Farmers makes extensive reference to the decision in his pre-circulated submissions.
24. Federated Farmers appealed the Environment Court’s decision. This appeal was heard in the High Court of Whangarei on 9 and 10 February 2016. The decision of the High Court is yet to be released therefore the Environment Court’s decision is the current law. Dr Bellingham’s evidence would have been better served if he had acknowledged this fact.

¹² [2015] NZEnvC 159 (EC), at paragraph [49].

¹³ [2015] NZEnvC 159 (EC), at paragraph [45].

¹⁴ [2015] NZEnvC 159 (EC), at paragraph [49].

SOCIAL, ECONOMIC AND CULTURAL EVIDENCE

25. There may be significant benefits to be derived from GMO activities if the risks can be managed. This is acknowledged in the evidence presented for the Submitters.¹⁵ Those potential benefits do not, however, offset the need for a precautionary approach where there is a risk of significant adverse effects on the environment.
26. Much of the opponent submitters' evidence in these proceedings concern GMO risk (or the lack of it) to biophysical and ecosystem values. Social, economic and cultural concerns appear to be disregarded as unwarranted because of the perceived lack of biophysical risk.
27. It is clear from the definition of environment under s 2 of the RMA that social cultural and economic values form part of the environment and are matters that require consideration in their own right. Regions and districts are made up of a rich tapestry of people and communities with different views as to what constitutes wellbeing. The RMA does not pick winners and losers. It seeks to ensure that different views of wellbeing can be planned for in an integrated way that avoids spatial conflict and adverse effects of existing activities that enable peoples wellbeing.
28. This approach is neatly summarised in *Blakely Pacific Ltd v Western Bay of Plenty District Council*, where the Environment Court held:

[T]he phrase people and communities [recognises] that there may be different groups within New Zealand who may have different views and emphasis ... It is not correct that Section 5 of the Act is to enable landowners/developers only.

¹⁵ Evidence of V Warren at paragraph [18] dated 24 May 2016.

29. The Submitters evidence raises concerns about potential adverse impacts of GMO activities on the ability of the organic sector, tangata whenua and the community to provide for their social, economic and cultural well-being. In particular, it shows that:
- (a) GMO contamination of organic and non-GMO food producers risks:
 - (a) loss of organic and GMO free certification;
 - (b) reputational damage;
 - (c) loss markets and premiums paid for GMO free produce;
 - and (d) loss of livelihood;
 - (b) GMO contamination risks damaging cultural values such as mauri and tikanga; and
 - (c) GMO contamination risks compromising the cultural views and lifestyle decisions of people and communities at a local level concerning what constitutes their wellbeing.¹⁶

CONCLUSION

30. The Submitters support a precautionary approach to GMOs under the District Plans. This is because:
- (a) There is no scientific consensus as to the potential affects GMOs might have on the biophysical environment. This uncertainty as to biophysical harm justifies a precautionary approach.
 - (b) The Submitters' evidence shows that, irrespective of the biological threat, GMO contamination risks significant adverse effects on social, economic and cultural values.

¹⁶ *Blakeley Pacific Ltd v Western Bay of Plenty District Council* [2011] NZEnvC 354 (EC), at paragraphs [189] and [190]. "[T]he phrase people and communities [recognises] that there may be different groups within New Zealand who may have different views and emphasis ... It is not correct that Section 5 of the Act is to enable landowners/developers only."

31. It is an appropriate planning response in this context to:
 - (a) control GMO field trials through the requirement for discretionary consent; and
 - (b) prohibit the general release of GMOs until such time as there is certainty as to how the risks of general release can be managed.
32. The District Plans approach is precautionary. It does not prevent GMO activities from taking place. Rather it adopts an adaptive management approach whereby the activity is enabled on a small scale to determine potential affects prior to making provision for policies and rules that would enable GMO use to take place on a much larger scale.
33. In this context the District Plans reach an appropriate balance between providing for the wellbeing of existing social, economic and cultural values that are sensitive the GMO development, and the wellbeing of the biotech industry which is keen to encourage innovation and take advantage of emerging markets.

Dated 13th June 2016

M J Davis
Policy Advisor for Soil & Health Association
of New Zealand Inc. & 14 Others