

IN THE MATTER
of the Resource Management Act 1991

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

BEFORE the Whangarei and Far North District
Councils Joint Hearing Panel

Statement by Paul Waanders on behalf of the Whangarei and Far North District Councils

Dated 13 June 2016

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1. Heads of Arguments – Paul Waanders and Greg Wilson.
2. Graeme Mathias – Counsel for WDC on legal matters.
3. David Badham/Tammy Wooster – Section 42A Report.
4. Dr Kerry Grundy – background evidence (Attachment 11).
5. Prof Jack Heinemann – scientific evidence (Attachment 6).
6. Dr John Small –economic evidence (Attachment 7).

Introduction

1. Genetic modification refers to a set of techniques that alter the genetic makeup by adding, deleting or moving genes (within or between species) to provide new and different organisms.
2. A genetically modified organism (GMO) is an organism whose genetic material has been altered using genetic engineering techniques in a laboratory, along with other organisms derived from those GMOs.
3. A wide range of genetically modified products are being researched and developed for commercialisation. While GMOs commercialised to date are in general directed at reducing harvest losses by combating pests and weeds, research into future varieties is attempting to considerably widen the scope of genetically modified uses. This includes improved growth in plants, improved tolerance to environmental conditions and creating entirely new products and sectors of economic activity in agriculture, horticulture, plantation forestry, dairying, aquaculture and medicine.
4. Most genetic modification use in New Zealand is in contained environments, such as laboratories, and it is predominantly used as a tool for research. I am informed that at present there are no genetically modified crops grown commercially in New Zealand.
5. The Proposed Whangarei District Plan was notified in September 1998. The Ngatiwai Trust Board made submissions and *inter alia* requested that “any activity involving genetic engineering should be a prohibited activity”. The matter was eventually heard by the Environment Court in February 2003 and a decision was issued to strike the appeal out on the grounds that no section 32 analysis was submitted and no research was undertaken. Now 13 years later, the Proposed Plan Changes are submitted to this hearing.
6. Proposed Plan Change 131 and Proposed Plan Change 18 concerns provisions in the Whangarei District Plan and the Far North District Plan on the use of GMOs respectively.
7. Proposed Plan Changes 131 and 18 and the provisions in the Proposed Auckland Unitary Plan have been developed collaboratively over the past 10 years. During this time, the community has voiced concerns to Council on the risks of outdoor use of genetically modified organisms in a number of different forums, including a 7000 signature petition in 2001/2002, submissions on annual plans, Long Term Council Community Plans, Long Term Plans, district plans and a Colmar Brunton survey undertaken in 2009. Tangata whenua have also expressed ongoing concerns through iwi/hapu management plans and other media.
8. In response to these concerns an Inter-Council Working Party (“the Working Party”) on GMO risk evaluation and management options was formed in 2003. The Working Party is made up of the councils in the ‘northern region’ including Whangarei District Council, Far North District Council, Kaipara District Council, Auckland Council and Northland Regional Council.
9. Participating members of the Working Party determined that GMOs are a significant resource management issue in the northern region and that a precautionary approach to the outdoor use of GMOs is desired by the community. A plan change to include GMO provisions into the district and regional plans of the northern region’s local authorities was determined to be the most appropriate way to address concerns over the use of GMOs.

10. Councils are therefore proposing to insert provisions on the use of GMOs into the Whangarei District Plan and the Far North District Plan.
11. Evidence by Dr Kerry Grundy (Attachment 11) will highlight the process that the Working Party followed up to the point of adopting the provisions reflected in Proposed Whangarei District Council Plan Change 131 and Proposed Far North District Plan Change 18, as well as the Proposed Auckland Unitary Plan..

How are GMOs Currently Regulated in New Zealand?

12. At a national level the Hazardous Substances and New Organisms Act 1996 (HSNO Act) regulates research into and the release of all new (including genetically modified) organisms in New Zealand. The purpose of the HSNO Act (part 2, sec 4) is to:

protect the environment, and the health and safety of people and communities by preventing or managing the adverse effects of hazardous substances and new organisms.
13. The Environmental Protection Authority (the EPA) manages the application process for introducing the new organisms under the HSNO Act.
14. The HSNO Act does not preclude councils developing and implementing district plan provisions under the Resource Management Act 1991(RMA) that are aimed at managing risks associated with GMO land uses. Provisions in a district plan should not be incompatible with the HSNO provisions, but can apply a greater level of control than those imposed by the EPA under the HSNO Act.
15. The relationship between the provisions of the HSNO Act and that of the Resource Management Act with regards to GMO has been a matter decided by the Environment Court (Decision No. 2015 NZ EnvC 89) dated 12 May 2015 (Attachment 10), which is presently the subject of a High Court Action.
16. A statement from Whangarei District Council legal counsel Mr Graeme Mathias will assist in the legal aspects of this debate.
17. The Working Party has concluded that there are key gaps in the national regulation of GMOs, namely the absence of adequate liability provisions and applicant financial fitness requirements, the absence of a mandatory precautionary approach, and a lack of surety of outcome for local government and communities, amongst other things.
18. 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:
 - An assured, community determined level of risk at the local level with a strong precautionary approach to the risks from GMOs.
 - The avoidance of potential major financial exposure for constituents and councils from possible genetic modification contamination.
 - A strict liability regime, including bond and financial fitness rules, that provides for users of GMOs to pay the cost of any damages resulting from that usage.
 - Local and regional marketing and branding advantages.
 - Strong cultural concerns of Maori regarding GMOs.

The evidence from Dr Kerry Grundy will discuss these matters more fully.

19. The statement of evidence from Professor Jack Heinemann (Attachment 6) will assess scientific issues regarding GMOs and will also address some of the submissions on the matter. Professor Heinemann will support the precautionary approach and the way these provisions are incorporated in Proposed Plan Change 131 and Proposed Plan Change 18.
20. The statement of evidence from Dr John Small (Attachment 7) highlights the economic and financial matters of allowing or not allowing GMOs as well as the cost and benefit of the proposed measures compared to the risk or avoidance of risk.
21. Key characteristics of the Proposed Plan Changes are:
 - Reflects the preference of the community;
 - Follows a precautionary approach;
 - Deals with risk assessment;
 - Apportions liability; and
 - Addresses cultural concerns.

Proposed Plan Changes 131 and 18

22. Proposed Plan Changes 131 and 18 propose to insert a new chapter and to insert new definitions into the Whangarei District Council Operative District Plan and the Far North Operative District Plan.
23. The following summarises the proposed provisions for the Proposed Whangarei Plan Change which differ slightly from those in the Proposed Far North Plan Change due to formatting differences:
 - The creation of a district wide GMOs chapter to be inserted into the District Plan that includes:
 - A description of the purpose and expectations of the new GMO chapter, which is to manage the outdoor use of GMOs.
 - Eligibility rules that outline what GMO activities are covered and what GMO activities are not covered by the new provisions.
 - Notification criteria, which states that all applications for resource consent under the proposed GMO provisions must be publically notified.
 - Objectives specifying outcomes sought for the outdoor use of GMOs.
 - Policies specifying courses of action to achieve outcomes sought for the outdoor use of GMOs.
 - Information requirements for the applications for GMO field trials.
 - General development and performance standards outlining minimum controls without limiting the discretion reserved to Council.
 - Particular matters to be considered when determining the amount of bond required and a monitoring strategy for a GMO discretionary activity.
 - New definitions to be inserted into chapter 4, meaning of words in the District Plan.
24. The plan provisions relate only to outdoor uses of GMO – either releases to the environment or outdoor field trials. They do not include the use of GMOs in contained facilities, such as hospitals,

universities, or research institutions, nor to medicines or food products that do not contain viable GMOs.

25. The plan provisions are based upon a precautionary approach to the outdoor use of GMOs with the level of precaution related to the level of risk arising from the particular use in question. A precautionary approach, based upon the precautionary principle that has evolved globally, is an adaptive approach to risk management that requires decision makers to exercise caution, including the prohibition or postponement of an activity, when faced with uncertainty (including scientific uncertainty) and insufficient information, particularly in situations of high potential costs and irreversibility.

Section 32 Evaluation

26. When considering possible district/unitary plan provisions, the earlier research carried out by the Working Party (and included in Volume 2 of the section 32 report) was brought together and configured to meet the requirements of section 32 of the RMA.
27. Section 32, requirements for preparing and publishing evaluation reports, requires a local authority to undertake an evaluation of proposed provisions when formulating a planning document under the RMA. Essentially the evaluation is to determine whether the proposed objectives are the most appropriate to achieve the purpose of the Act – the sustainable management of natural and physical resources – as set out in section 5, Part II of the RMA, and whether the policies, rules or other methods are the most appropriate, efficient and effective for achieving the objectives. This may involve consideration of alternative methods to those proposed. The evaluation is also required to take into account the costs and benefits of the proposed provisions and the risk of acting or not acting if there is uncertain or insufficient information about the subject matter. The potential of economic growth and employment also needs to be assessed.
28. The Working Party has carried out a thorough evaluation of the necessity for regulation of GMOs at a district and/or regional level in concert with national regulation over an extended period of 10 years. The section 32 analysis and report shows that the provisions outlined in Proposed Plan Changes 131 and 18 do meet the purpose of the RMA and 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.
29. The section 32 report and its volume 2 supporting documents (Attachment 9) were made available and are on the Council's website as well as Legal Opinions from Dr Royden Somerville QC.

Joint Hearing Report

30. A section 42A Joint Hearing Report was prepared by David Badham on behalf of Whangarei District Council, and Tammy Wooster on behalf of Far North District Council.

31. The report deals with the assessment of the Proposed Plan Changes and the submissions received. Certain recommendations and proposed amendments to provisions are made by means of track changes.

Conclusion

32. Proposed Whangarei District Council Plan Change 131 and Proposed Far North District Council Plan Change 18 are to be heard and the section 42A report to be assessed with recommendations to the Whangarei and Far North District Councils.

A handwritten signature in black ink, appearing to read 'Paul Guustaaf Waanders', written in a cursive style.

Paul Guustaaf Waanders.