

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**

**EVIDENCE OF LINDA ZELKA GRAMMER
ON BEHALF OF GE FREE NORTHLAND
& SOIL AND HEALTH ASSOCIATION OF NEW ZEALAND INC**

DATED: 3 June 2016

SUMMARY OF EVIDENCE

GE Free Northland (in food and environment) with about 400 members including Iwi members, environmental groups and primary producers, works constructively with all Northland Territorial Authorities, Iwi authorities and other organisations to maintain Northland's GE free status. It strongly promotes the rights of its members and all NZ consumers to avoid GE food. It strongly supports the initiatives of District Councils to include a precautionary approach and prohibition provisions for use of GMOs in their district plans.

The jurisdictional decision of the Environment Court in *Federated Farmers v Northland Regional Council*¹ is considered to extend to provision for GMOs in District Plans.

Reports commissioned by the Northland/Auckland Inter-Council Working Party have identified significant risks in trialling and release of GMOs. These are summarised in this statement and provide a strong resource management basis for the precautionary approach and district plan regulation of GMOs.

Issues have arisen concerning the regulation of GMOs that question the role of the Environmental Protection Authority ("EPA") under the Hazardous Substances and New Organisms Act ("HSNO Act") as a guardian of the environment. Local bodies acting under the 1991 Act ("RMA") are best placed to manage local GMO issues outside the scope of HSNO to achieve sustainable management of resources.

Communities have found the EPA to be unresponsive to community concerns with respect to GMO applications. There seems to be a site specific approach without taking wider district or regional concerns into account.

GE Free Northland strongly supports recent initiatives of Regional and District Councils to include provisions to regulate or prohibit outdoor trialling or release of GMOs.

GE Free Northland strongly supports PCs 18 and 131 and particularly the provision for bonds, without which GE free primary producers, including organic producers, would be at risk of serious financial consequences, if not the complete loss, of their enterprises, in the case of GMO contamination.

GE Free Northland points to the strong community support for the inclusion of the proposed GMO provisions under PCs 18 and 131. This strong community view is evidenced by the

¹ *Federated Farmers of New Zealand v Northland Regional Council* [2015] EnvC 89.

Colmar Brunton 2009 survey² and by the many strong supportive submissions made to the PCs. To take account of such strong community views and preferences through district plans is an important part of promoting sustainable management.

QUALIFICATIONS AND EXPERIENCE

1. My name is Linda Zelka Grammer. I am the Chairperson of GE Free Northland (in food & environment).
2. I am a member of Rural Women NZ, a primary producer since 1985, and participated with farming colleagues (as well as in my capacity as a committee member of GE Free Northland) in the Royal Commission into Genetic Modification 2000 ('RCGM") I provided testimony/ evidence to the RCGM panel about NZ Crown Research Institute "HortResearch", regarding their controversial and inadequately contained GE Tamarillo trial at Kerikeri.
3. I am fully aware of, and I understand, the compliance requirements to establish and maintain the integrity of a certified organic property or certified organic operation. I note that under the OANZ standards the use of GMOs are prohibited and even trace GE contamination not allowed.

SCOPE OF EVIDENCE

4. My evidence will address the following matters:
 - (a) GE Free Northland and its policy position
 - (b) Jurisdiction
 - (c) Risks from trialling and release of GMOs
 - (d) Examples of GMO regulation issues
 - (e) Communities find it difficult participating in EPA decision making
 - (f) Recent Regional and District GMO initiatives
 - (g) Scope of PCs 18 and 131
 - (h) The role of District Councils to reflect community views and preferences

² Volume 2: Supporting Documentation to the Section 32 Report, WDC/FNDC.

GE FREE NORTHLAND & ITS POLICY POSITION

5. GE Free Northland (in food & environment) is an Incorporated Society. It is a non Governmental Organisation with a committee/ elected officers and large membership³. The majority of our members are Northland ratepayers/residents but we also have members in the Auckland region.
6. We support key stakeholders in Whangarei and Far North District and wider Tai Tokerau who wish to retain their existing valuable GE free status (for environmental, economic, cultural, spiritual reasons) and our food sovereignty.
7. Our community group is mindful that a large percentage of GE crops are engineered to incorporate herbicides toxic to humans, wildlife, soils and waterways. We support the reduction of the use of herbicides and pesticides generally as well as in GE crops. Some GE crops however, like Bt corn, are engineered to contain an insecticide in every cell of the plant and there are corresponding risks of uncontrolled spread of these organisms. From a health and lifestyle point of view, we strongly oppose such GE inclusion of herbicides and pesticides
8. Our community group works constructively with all Northland territorial authorities, the Northland Regional Council, Tai Tokerau and Auckland mana whenua, Northland Conservation Board and various other organisations as well as Landcare groups, to protect our existing valuable GM free status, our biosecurity, unique biodiversity, Integrated Pest Management (IPM) and organic primary producers, our economy, and the public health, from the risks/ xadverse impacts of outdoor use of GMOs.
9. Although this is outside the scope of our local councils, we also support comprehensive GE labelling of all imported foodstuffs to protect "consumer right to know" and traceability. We are mindful of the fact that (at a very high technical level) highly qualified scientists, epidemiologists and other food safety experts continue to argue as to whether GE food is safe to eat.

³ Membership is about 400 but this includes a number of organisations such as Far North Organic Growers Tai Tokerau Organic Primary Producers Inc. Society so that many more than 400 persons are within the umbrella.

10. We do not find it credible that GE crops or plants (deemed so different from conventional varieties that they are patented) are "the same" as foodstuffs produced by conventional means.
11. We strongly support the right of our members and NZ consumers in general to avoid GE food. We strongly support NZ's organic primary producers and the organic standards (which prohibit any use of GMOs or GE contamination of organic products).
12. We support NZ's existing Zero Tolerance Policy for any GE content in imported seeds, including adventitious presence.
13. We support the precautionary and prohibitive GE policies of all Tai Tokerau Iwi authorities for their respective rohe. We support the innovative work of all the member councils of the Northland/ Auckland "Inter Council Working Party on GMO Risk Evaluation & Management Options" ("Working Party") (memberships includes every council from south Auckland to Cape Reinga), working to create an additional (much needed) tier of local protection against the risks of outdoor use of GMOs. We work to keep unwanted new organisms (GMOs and otherwise) out of Tai Tokerau and the Auckland region.
14. We applaud the efforts of various NZ councils to put in place a much-needed additional tier of local protection against the risk that the outdoor use of GMOs pose to their regions biosecurity, GE free primary producers, economy, environment, and food sovereignty.
15. GE Free Northland considers that this additional tier of management is very necessary given identified serious limitations in the HSNO Act. Such limitations have been identified by Local Government NZ, various NZ councils, mana whenua, and primary producer boards, and include a lack of strict liability on the part of GMO users for damage arising from any contamination that may occur and no mandatory requirement under the HSNO Act for the EPA to take a precautionary approach to outdoor GE applications.
16. Opposition to the outdoor use of GMOs is roundly opposed by a growing number of councils, communities, mana whenua, primary producer boards and other big agricultural players such as Beef and Lamb, Horticulture New Zealand, Dairy NZ, Zespri and Fonterra. This is not surprising given the potential serious risks involved, including:

- transgenic pollution;
 - loss of key markets; and
 - loss of premiums for existing non GM primary producers
17. Our community group represents its members (Maori and Pakeha alike) when making submissions and helps with gathering and disseminating information concerning GMOs to its members and the public through regular newsletters and its website.
18. Our members have asked GE free Northland to be involved in this process (the Whangarei District Council (“WDC”) and Far North District Council (“FNDC”) collaborative GMO Plan changes (WDC #131 & FNDC #18) on their behalf.

JURISDICTION

19. The Soil & Health Association (“Soil & Health”), along with GE Free Northland, supported the WDC, FNDC, Northland Regional Council (“NRC”), Tai Tokerau Iwi authorities and other interested parties, in a successful defence of the right of local authorities to manage the use of GMOs in their regions, after Federated Farmers sought a ruling that NRC had acted outside the law in taking this approach.
20. In May 2015, Principal Environment Court Judge Newhook found that there is jurisdiction under the RMA for regional councils to make planning decisions about the outdoor use of GMOs in their region⁴. In our view, this jurisdiction also applies to district plans. District Councils (like WDC, FNDC and Hastings District Council (“HDC”)) can thus include objectives, policies and rules about GMO release and use as part of district plan provisions to promote sustainable management of resources.
21. Notwithstanding the clear cut decision of the Environment Court, Federated Farmers have appealed this Environment Court decision. Meanwhile, I understand that until there is a High Court decision, the the Environment Court decision applies.

RISKS FROM TRIALLING AND RELEASE OF GMOS

22. Three major reports commissioned by the Working Party have identified a range of risks involved with the trialling and release of GMOs. Approaches to managing

⁴ *Federated Farmers of New Zealand v Northland Regional Council* [2015] EnvC 89.

those risks are also discussed in those reports. No doubt, the Panel is familiar with these reports and I will not refer to them in detail. However, it is important to bear in mind the wide scope of risks associated with GMO trials and release identified in those reports. I summarise these below.

Environmental risks

- GMOs becoming invasive and affecting non-target species including indigenous flora and fauna
- the development of herbicide or pesticide resistance creating 'super-weeds' or 'super-pests'
- long term effects on ecosystem functioning.

Socio-cultural risks

- effects on Maori cultural beliefs of whakapapa, mauri, tikanga
- ethical concerns about mixing genes from different species including human genes
- concerns about the long term safety of genetically engineered food.

Economic risks

- loss of income through contamination (or perceived contamination) of non-GMO food products
- negative effects on marketing and branding opportunities such as 'clean and green' or 'naturally Northland'
- costs associated with environmental damage such as clean-up costs for invasive weeds or pests.
- Linked to these risks are limited liability provisions under the HSNO Act.

EXAMPLES OF GMO REGULATION ISSUES

23. In April 2013, the EPA made a decision that two new techniques for plant breeding – Zinc Finger Nuclease (ZFN-1) and Transcription Activator-Like Effectors (TALEs) – did not produce GMOs under New Zealand law. On appeal,

this decision was quashed as summarised in the following from the Sustainability Council of NZ Media release of 22 May 2014⁵

The High Court quashed a decision by the Environmental Protection Authority (EPA) that would have allowed developers of genetically modified crops to bypass New Zealand's GM laws.

The Court found the EPA misinterpreted the law when it decided that GMOs from two new breeding techniques could go into New Zealand fields without any formal consultation or assessment of the impacts. The EPA was also criticised for failing to act cautiously in the face of uncertainty.

The case arose from an EPA decision last April that two new techniques for plant breeding – Zinc Finger Nuclease (ZFN-1) and Transcription Activator-Like Effectors (TALEs) – did not produce GMOs under New Zealand law.

24. This was not a routine approval for a minor field trial. This EPA decision incorrectly put new methods for making GMOs outside the scope of the HSNO Act. Fortunately, the High Court interpreted the law differently. From a lay point of view, the EPA decision was made without properly investigating the consequences.
25. The EPA decision placed New Zealand at risk of losing overnight its status as a GMO Free food producer without a public process to assess what would be lost.
26. Such failures raise serious questions about the role of the EPA under the HSNO Act as a guardian of the environment. This is part of the reason why the role of district councils under the RMA is so important – to ensure that aspects of environmental management beyond the scope of the HSNO Act are fully taken into account in managing GMO use.
27. I strongly support the role of local councils (District, Regional and Unitary authorities) to manage natural and physical, finite resource in a truly sustainable manner and safeguard the interests of their constituents and local communities when faced with uncertainty about environmental effects (including the significant risks of outdoor use of GMOs).

⁵ www.sustainabilitynz.org/high-court-prevents-developers-from-bypassing-gm-laws/

28. It is my personal experience that local authorities are the most appropriate bodies to address local concerns in decision-making. In our view, it is admirable how our local councils have acted on their duty of care to their constituents (farmers and other ratepayers) and their obligation to manage natural and physical resources in a truly sustainable manner.
29. These local government district plan initiatives have followed increased awareness of GMO issues after consistent lobbying with Local Government NZ and other local authorities (since at least 2003) It is important for these initiatives to continue.
30. Local mana whenua have the right to not only identify serious Issues of Significance to them (as Tai Tokerau Iwi authorities and hapu have done regarding GE/GMOs in the Northland new Regional Policy Statement) but to decide for themselves (in keeping with Te Tiriti o Waitangi) what policies they wish to put in place for their respective rohe.
31. We note that Te Runanga A Iwi o Te Ngapuhi called a hui on the GE/GMO issue in November 2012, at which unanimous agreement was reached to support robust local control, on top of what the HSNO Act requires, and to support strong precautionary and prohibitive GE policies in all their respective rohe (from the Bombay hills north to Reinga)

COMMUNITIES FIND IT DIFFICULT PARTICIPATING IN EPA DECISION MAKING

32. We have found the EPA to be generally unresponsive to legitimate concerns raised by community groups, independent scientists and local authorities responding to outdoor GE/GMO applications lodged under the HSNO Act.
33. In my experience ERMA and the EPA only concerns itself with site-specific effects of any proposal and consistently trivialises the concerns of highly qualified independent scientists (while bending over backwards to facilitate the success of would-be applicants for outdoor GE experiments).
34. ERMA /EPA has, in my experience, consistently used its wide discretion under HSNO to choose to not take a precautionary approach to risky GE applications.
35. It is similarly my experience that local authorities are the most appropriate bodies to address local concerns (about outdoor use of GMOs or other matters) in decision-making.

RECENT REGIONAL & DISTRICT GMO INITIATIVES

36. GE Free Northland is very supportive of the work of the Working Party and the specific WDC and FNDC District Plan changes, as they consider they reflect community concerns about how local District Councils should approach GMO activities within the region.
37. The WDC and FNDC collaborative GMO Plan changes complement the good work of Auckland Council (in the proposed Unitary Plan) and NRC (precautionary GE/GMO provisions in the Northland new Regional Policy Statement).
38. We also note, with strong support, other councils in NZ who have moved beyond "Symbolic GE free zones" to include polices and 'rules with teeth' or, in the case of the Hastings District Plan, outright bans on GMO use.
39. In May last year, backed by leading Hawke's Bay food producers and exporters, HDC became the first in New Zealand to secure the territory's GMO free food producer status under its District plan. Despite this initiative enjoying support from primary producers, the community and mana whenua, Federated Farmers have lodged an appeal to the Environment Court.

SCOPE OF PLAN CHANGES 18 & 131

40. Our members, local councils and mana whenua are aware that there is no provision under the HSNO Act for financial liability for GMO contamination resulting from the release of an approved GMO. This is a significant financial and enterprise risk for organic and GE free producers, should GMO contamination occur. Fortunately, under the RMA, requirements for bonds for remediation and to cover the costs of contamination, can be included in district plans. It is notable that a growing number of councils around NZ are moving to protect their primary producers and communities by introducing precautionary or prohibitive GE policies and bond requirements.
41. In our view, it is vitally important that there should be an additional layer of protection on a local level (on top of the requirements of the HSNO Act), should contamination damage from outdoor use of GMOs occur. This is a safeguard for organic and GE Free producers who would otherwise have no recompense for GMO contamination damage to, or even the total loss of, their enterprise.

42. We consider that the WDC and FNDC GMO Plan changes are highly sensible, especially in that they provide adaptive measures in the face of serious deficiencies in the HSNO Act and growing evidence of adverse impacts of GMOs overseas.
43. GE Free Northland's preference is to see an outright ban on the outdoor use of GMOs from south Auckland to Cape Reinga. We would support an enforceable "Regional Exclusion Zone", a concept first introduced by the RCGM in its 2001 Report and as put in place, for the duration of its District Plan, by HDC.
44. However, we strongly support the WDC GMO Plan change #131 and FNDC GMO Plan change #18.

THE ROLE OF DISTRICT COUNCILS TO REFLECT COMMUNITY VIEWS & PREFERENCES

45. In addition to the requirements of the RMA, one of the most important reasons for the FNDC and WDC to adopt a precautionary approach to GMOs in their district plans, is that this also represents community views and preferences.
46. Feed-back from our members has made us aware that many of them are primary producers and make their livelihood from farming, horticulture, forestry and beekeeping. They are very concerned about the risks posed to their businesses given past evidence of either human error in GMO activities or unforeseen/unintended adverse impacts of outdoor use of GMOs.
47. Our members particularly support District and Regional Councils as they address risks posed by GMOs on a regional and district level and develop mechanisms for mitigating those risks within their planning documents (integrated management).
48. In 2009, Colmar Brunton was commissioned by the Working Party to conduct a survey.⁶ Its purpose was to gauge the degree to which communities are willing to accept risks associated with the outdoor use of GMOs, and to test options for responding to these risks. There is currently no outdoor use of GM plants or animals in Auckland and Northland.
49. Two thirds or more of the residents polled want local or regional councils to have a role in regulating GMOs in their areas, either by setting local rules or by a change

⁶ Volume 2: Supporting Documentation to the Section 32 Report, WDC/FNDC.

of legislation at the national level. Support in the Auckland region averaged 68% and 74% in Northland (85% of Maori).

50. Around two thirds of the respondents also favoured regulation that would make users of GMOs legally responsible for any environmental or economic harm - either through local regulation or by way of changes to national legislation. (Auckland 64%, Northland 67%).
51. We consider that the WDC and FNDC GMO Plan change provides a long-term vision for the Northland community and will effectively address future GMO/GE experiment/ field trial applications to the EPA as well as prohibit any EPA approved outdoor GMO releases in our area.
52. Local authorities must be able to plan for those activities and prevent or mitigate their potential adverse impacts/ effects on other status quo activities and existing non GM primary producers.
53. GE Free Northland strongly support the Councils' stated intention to make consent holders for EPA approved outdoor use of GMOs financially responsible for any consequent contamination.

CONCLUSION

54. From the evidence I have provided, I reach the following conclusions:
 - a) GE Free Northland has a strong record of working with community groups and regional and district councils to promote a GE Free Northland and the rights of producers and the community to have their preferences recognised and protected under regional and district plans;
 - b) There is clear jurisdiction for the inclusion of GMO regulation proposed under PCs 18 and 131. Moreover, the identified environmental risks of outdoor GMO trialling and release fully justify the precautionary approach taken in the PCs. Not only are there potentially very significant environmental and cultural consequences, but the livelihood of GE free and organic producers could be devastated and access to overseas markets closed.
 - c) The scope of the PCs is justified and fully supported particularly the prohibition of outdoor release of GMOs and the provision for bonds to protect and compensate

Organic and GE free producers for any contamination damage that may occur from GMO use;

- d) The Colmar Brunton 2009 survey documents the extent of community concern and preferences for the FNDC and WDC to regulate GMOs under the District Plans. Taking community preferences into account in district plans is an important part of promoting the sustainable management of resources and is strongly endorsed by GE Free Northland.

55. We thank you for the opportunity to present, so that together we can achieve sound environmental, economic and public health outcomes.

Dated: 3 June 2016

Linda Zelka Grammer