Proposed Plan Change 18 (FNDC) and Proposed Plan Change 131 (WDC) – Genetically Modified Organisms

Section 42A – Joint Hearing Report

AUTHORS

WDC
David Badham
Senior Planner
Barker & Associates

FNDC
Tammy Wooster
Senior Policy Planner
Strategic Planning & Policy

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1.0 Introduction

1. This report has been prepared in accordance with section 42A of the Resource Management Act 1991 ("**RMA**") and forms the Joint Hearing Report for the Far North District Council Proposed Plan Change 18 ("**PC18**") and Whangarei District Council Proposed Plan Change 131 ("**PC131**") – Genetically Modified Organisms ('**GMO'**). This report provides consideration of the proposed provisions, recommendations in relation to submissions and, where appropriate, the report cross-references the Section 32 Evaluation, further expert evidence, analysis of any background material and legislative discussions.

2. This report has been prepared by two authors, David Badham and Tammy Wooster. "We" and "our" is used throughout the report where there is consensus of both authors in terms of opinion and recommendations.

3. A Statement of Qualifications and Experience for each author is provided in **Attachment 1**. Both authors have read and agree to comply with the Code of Conduct for expert witnesses as set out in the Environment Court Consolidated Practice Note 2014. We have also read and are familiar with the Resource Management Law Association / New Zealand Planning Institute "Role of Expert Planning Witnesses" paper. The opinions expressed in this evidence, are based on our qualifications and experience, and are within our area of expertise. If we rely on the evidence or opinions of another, our evidence will acknowledge that. We have no vested interest in the outcome of PC18 and PC131.

2.0 Background

4. PC18 and PC131 have been developed collaboratively over the past 10 years. In 2003 local authorities in the Northland / Auckland region formed an Inter-Council Working Party on GMO Risk Evaluation and Management Options ('**The Working Party**') in response to significant community concerns regarding the outdoor use of GMOs. As part of its investigations the Working Party commissioned a number of reports to investigate the risks and benefits of GMOs, along with a comprehensive survey by Colmar Brunton to gauge public support for local or regional management of GMOs, which resulted in the creation of the Section 32 Evaluation Report and draft plan provisions.

5. A comprehensive description of the background of the work commissioned by the Working Party is provided in section 1.2 of the Section 32 Evaluation [**Appendix A**] and further in the Statement of Evidence by Dr Kerry Grundy [**Attachment 11]**. We do not deem it necessary to duplicate this and rely on the existing statement in the Section 32 Evaluation and Dr Grundy to provide a comprehensive description of the background of the plan change for the Commissioners and submitters on behalf of each Council.

3.0 Purpose of Report

6. This report considers submissions received in relation to PC18 and PC131. It has been prepared in accordance with Section 42A of the RMA to assist the Commissioners with deliberations on submissions and further submissions in respect of the plan changes.

7. The report includes recommendations to the Commissioners to accept, accept in part or decline individual submissions. Where appropriate, it also includes recommended changes to the plan change provisions.

8. When making its decision, Council is required under Clause 10 of the First Schedule of the RMA to give reasons for allowing or not allowing any submissions (grouped by subject matter or individually). The decisions of the Council may also include consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions.

9. Collectively there were 589 submissions and 120 further submissions to these plan changes. The Whangarei District Council ("**WDC**") received 284 submissions and 65 further submissions. The Far North District Council ("**FNDC**") received 305 submissions and 55 further submissions. The submissions are discussed further in the report. Please refer to **Appendix B** for submissions and further submissions and to **Attachments 4 & 5** for a summary of submissions.

4.0 Structure of the Report

10. The report has been structured to provide an assessment of the submissions and further submissions received by the Councils, arriving at a recommendation to the Hearing Commissioners.

11. Submissions have been grouped thematically. Submissions generally fell into one of the following categories;

    A Support – Entire Plan Change as Written

    B Support in Part – Specific Amendments

    C Support in Part – Prohibited Activity Status

    D Oppose – Entire Plan Change

    E Oppose in Part - Specific Amendments

12. While we have acknowledged all submitters in the Index of Submissions and Further Submissions [**Attachment 12**], due to the similarity of relief sought and reasons given along with the volume of submissions, responses have not been written for each individual submission. Responses have been written for individual submissions that raise matters that differ from other submissions within the same thematic group or that request specific amendments to the plan change provisions.

13. While we have acknowledged all further submissions in the Index of Submissions and Further Submissions [**Attachment 12**], responses have not been written for any further submission for the following reasons. The further submissions generally:

    - Sought to emphasise the content of the corresponding original submission;
    - Did not present new or additional evidence.
    - Stated either support or opposition to the original submissions of other submitters.

14. The proposed text of the plan changes is provided as **Attachment 2 & 3** to this report.

15. Any recommended changes to PC18 and PC131 as notified are co-ordinated and attached to this report [see **Attachment 8 & 9**]. Where required, recommendations are supported by evaluation in terms of Section 32 of the RMA. Any recommended additions to PC18 and PC131 are shown as underlined and deletions as strike-through. Any out of scope changes are also highlighted in yellow.

16. This report is supported by the following statements of evidence:

- Statement of Evidence by Professor Jack Heinemann – University of Canterbury [**Attachment 6**]
- Statement of Evidence by Dr John Small – Covec New Zealand [**Attachment 7**]
- Statement of Evidence by Dr Kerry Grundy – Whangarei District Council [**Attachment 11**]

17. The assessment of submissions follows the following format:

- Topics raised in the submissions.
- Brief outline of relief sought in relevant submissions.
- Discussion regarding relief sought.
- Any changes recommended.

5.0 Description of the Plan Changes

18. The wording of PC18 and PC131 are generic and provide the same approach, albeit some variation in structure to allow for formatting differences in the WDC and FNDC district plans. The plan provisions are based upon, and are in substance the same, as those outlined in the document "Draft Proposed Plan Change to the District/Unitary Plan" produced by the Inter-council Working Party (with formatting differences). The GMO provisions in the Proposed Auckland Unitary Plan are also the same but extend into the Coastal Marine Area. The Draft Proposed Plan Change to the District/Unitary Plan is included as part of the Section 32 Evaluation. The plan provisions for both PC18 and PC131 are described in further detail below.

Far North District Council PC18

19. PC18 proposes to insert a new chapter (Chapter 19) and new definitions in the Far North District Council Operative District Plan. PC18 proposes a precautionary approach to the outdoor use of GMOs in order to address cultural concerns, protect marketing advantages, and ensure accountability of GM operators. The proposed plan change text that was notified is included in **Attachment 2** and is summarised as follows:

- 19.1 Issues – states that the outdoor use of GMO's can adversely affect the environment, economy, and social and cultural values.
- 19.2 Environmental Outcomes Expected – States the four expected outcomes for the plan change.

- 19.3 Objectives – states two objectives regarding the outdoor use of GMOs. The first objective refers to the precautionary principle as a response to risk and uncertainty. The second refers to sustainable management of GMOs as a significant resource management issue identified by the community.
- 19.4 Policies – states six policies that prescribe how resource consents shall be processed, monitored and reviewed.
- 19.5 Methods of Implementation – states the regulatory methods and other methods to implement the policies..
- 19.6 Rules:
    - 19.6.1.1 States the permitted activities (specified indoor uses and research).
    - 19.6.2 States the criteria for discretionary activities (outdoor field trials), the details that must be provided with a resource consent application for a field trial, bond requirements and monitoring costs.
    - 19.6.3 States the prohibited activities (outdoor releases).
- 19.7 Notification – states that all applications for resource consent for GMO field trials must be publicly notified.
- 19.8 Assessment Criteria – states five assessment criteria to be used when assessing applications for consent.
- PC18 also proposes changes to Chapter 3 – Definitions, to include definitions for the following terms;
    - Genetically Modified Organism Field Trials (Tests)
    - Genetically Modified Organism (GMOs)
    - Genetically Modified Organism Release

Whangarei District Council PC131

20. PC131 proposes to insert a new chapter and new definitions in the Whangarei District Council Operative District Plan. PC131 proposes a precautionary approach to the outdoor use of GMOs. The proposed plan change text that was notified is included in **Attachment 3** and is summarised as follows:

- GMO.1.1 Description and Expectations – provides a description of the purpose and expectations of the GMO chapter which is to manage the outdoor use of GMOs.
- GMO.1.2 Eligibility Rules – outline what GMO activities are covered and what GMO activities are not covered by the new provisions. Under these provisions the following activity statuses apply:
    - Research within contained laboratories, medical applications involving the manufacture and use of non-viable GM products and Veterinary Vaccines using GMOs are considered permitted activities.

- Field Trials of GMOs (where the proponents of such activities have prior approval of the EPA) are discretionary activities.
- Food related and non food related GMO releases are prohibited activities.
- Other GMO activities not listed as a discretionary activity or listed as a prohibited activity are permitted activities.

- GMO.1.3 Notification – specifies that all applications for resource consent must be publicly notified.
- GMO.2.1 Objectives – provides objectives which specify outcomes sought for the outdoor use of GMOs.
- GMO.2.2 Policies – specifies courses of action to achieve the objectives for the GMO chapter.
- GMO.2.3 Information requirements – details the specific information requirements for applications for GMO field trials which include:
  - Evidence of approval from the EPA
  - Details of proposed containment measures
  - Details of species, characteristics and lifecycle, to which the GMO activities will relate
  - Research on adverse effects to the environment and economy and easures to be taken to avoid, remedy or mitigate such effects
  - Evidence of research undertaken that characterises and tests the GMO
  - Management plan outlining on-going research and monitoring
  - Details of area where the activity will be confined
  - Contingency and risk management plans and measures.
- GMO.2.4 General Development & Performance Standards – outline minimum controls without limiting the discretion reserved to Council. This includes matters such as bonds, monitoring costs, site design, construction and management, transport, monitoring and reporting.
- GMO.2.5 Particular Matters – provides particular matters to be considered when determining the amount of bond required and the content of a monitoring strategy for a GMO as a discretionary activity.
- PC131 also proposes consequential changes to the Chapter 4 – Meaning of Words section of the District Plan to include definitions for the following terms:
  - Field Trials (tests)
  - Genetically Modified Organism and GMO
  - Release
  - Environmental Protection Authority and EPA
  - Hazardous Substances and New Organisms Act and HSNO

6.0 Statutory Considerations

21. The Councils have completed an evaluation of PC18 and PC131 with regard to Part 2 of the RMA which includes:

- The purpose of the Act as contained in Section 5;
- Section 6 - Matters of National Importance that are required to be recognised and provided for;
- Section 7 - Other Matters that require particular regard in achieving the purpose of the Act; and
- Section 8 - Treaty of Waitangi.

22. The Councils have also considered Section 31 of the RMA which sets out the functions of territorial authorities in giving effect to the purpose of the RMA.

Section 32 Evaluation

23. The Councils have completed an evaluation of PC18 and PC131 in accordance with section 32 of the RMA **[Appendix A]**. Section 32(1) states that an evaluation must:

a. examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and

b. examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—

i. identifying other reasonably practicable options for achieving the objectives; and

ii. assessing the efficiency and effectiveness of the provisions in achieving the objectives; and

iii. summarising the reasons for deciding on the provisions; and

c. contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

24. An assessment under subsection s32(1)(b)(ii) must—

a. identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—

i. economic growth that are anticipated to be provided or reduced; and

ii. employment that are anticipated to be provided or reduced; and

b. if practicable, quantify the benefits and costs referred to in paragraph (a); and

c. assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

25. Evaluation in terms of Section 32 is ongoing, and must be undertaken to confirm the appropriateness of PC18 and PC131. The Section 32 Evaluation for PC18 and PC131 was completed prior to notification **[Appendix A]**.

26. We had no involvement in the preparation of the Section 32 Evaluation for PC18 or PC131. Nonetheless, we have reviewed the Section 32 Evaluation and supporting material referenced within it.

27. We consider that the Section 32 Evaluation is comprehensive and demonstrates careful consideration to the preparation of the proposed PC18 and PC131 provisions. The Section 32 Evaluation was reassessed after RMA amendments in 2014 and it was determined that it meet the new criteria.

28. In our opinion, the Section 32 Evaluation demonstrates that the proposed objectives are the most appropriate to achieve the purpose of the RMA and that the proposed provisions are the most efficient and effective means of achieving the objectives.

Proposed Northland Regional Policy Statement

29. We have considered the operative Regional Policy Statement for Northland (**"operative RPS**"). The operative RPS does not contain provisions relating to GMOs. However, following hearings on a proposed Regional Policy Statement ("**proposed RPS**") as part of a review the Hearings Commissioners recommended provisions be included prescribing a precautionary approach to GMOs in the environment. These provisions were accepted by the NRC but subsequently appealed to the Environment Court. A preliminary hearing concerning jurisdiction took place in 2015 and a decision supporting jurisdiction to manage GMOs under the RMA was delivered by the Court in May 2015 [**Attachment 10]**.Federated Farmers appealed this decision on points of law. A hearing in the High Court has taken place and a decision is pending. The Environment Court is still to hear the appeal on the substantive matters arising from the proposed provisions..

30. In changing its district plan Council shall, pursuant to S.74(2)(a)(i) of the RMA, "have regard" to any proposed regional policy statement.

31. The proposed RPS Policy 6.1.2 directed Councils to take a precautionary approach towards the effects of introducing genetically modified organisms (see text box below). We have had regard to these provisions in relation to the proposed plan changes and have sought legal advice on the matter. Based on our consideration of the relevant provisions and the legal advice provided to us, we are of the opinion that the provisions in the PRPS do not prevent the plan changes proceeding and that in any event, the proposed RPS provisions should be attributed little weight as they are still subject of an appeal.

6.1.2 Policy - Precautionary approach
Adopt a precautionary approach towards the effects of climate change and introducing genetically modified plant organisms to the environment where they are scientifically uncertain, unknown, or little understood, but potentially significantly adverse.

Explanation:
Climate change and the introduction of genetically modified plant organisms to the environment have a greater potential for significant but scientifically uncertain adverse effects than other natural processes and activities.
Taking a precautionary approach means that where there are threats of significant or irreversible adverse effects, and there is scientific uncertainty as to the extent of those effects, decision-makers shall assume the threat of significant or irreversible effects is a reality. The response should be in proportion to the degree of significance and irreversibility of the threat and the degree of scientific uncertainty.

6.1.5 Method – Statutory plans and strategies
The regional and district councils should apply Policy 6.1.2, when reviewing their plans or considering options for plan changes and assessing resource consent applications, but should not include plan provisions or resource consent conditions that attempt to address liability for harm.

Explanation: Method 6.1.5 implements Policy 6.1.2. The method discourages councils from attempting to change the liability regime for potential harm from genetically modified plant organisms because there is no strong basis for regional or local liability.

Iwi and Hapu Management Plans

32. Section 74(2A) of the RMA requires territorial authorities to take into account any relevant planning document recognised by an iwi authority to the extent that its content has a bearing on the resource management issues of the district.

33. Iwi and Hapu management Plans were referenced in the Section 32 Report see section 2.4.2 [**Appendix A**]. However, the Section 32 Report did not provide a list of all of the relevant iwi / hapu management plans for the Far North and Whangarei Districts, and additional iwi / hapu management plans have been formally recognised by the Councils since the section 32 was completed. For completeness, a list of the formally recognised iwi / hapu management plans for each Council is provided below.

34. There are seven recognised Iwi / Hapu Management Plans in the Far North District:

- Ngati Kuta ki Te Rawhiti Hapu Management Plan
- Ngati Rehia Enviromental Management Plan 2007
- Te Iwi o Ngatiwai Iwi Environmental Policy Document
- Nga tikanga o te taiao o Ngati Hine
- Nga ture mo te taiao o Te Roroa.
- Te U kai Po Te U Kai Po Iwi Environmental Management Plan o Nga Iwi o Whaingaroa
- Te Kahukura a Ngati Korokoro, Ngati Wharara me Te Pouka

35. There are four recognised Iwi / Hapu Management Plans in the Whangarei District[1]:

- Ngatiwai – “Te Iwi o Ngatiwai: Iwi Environmental Policy Document 2007”

[1] It is noted that some iwi / hapu management plans transcend the Council boundaries and are recognised by both WDC and FNDC.

- Ngati Hine – “Ngati Hine Iwi Environmental Management Plan 2008”
- Patuharakeke – “Patuharakeke Hapu Environmental Management Plan 2014”
- Ngati Hau – “Hapu Environmental Management Plan 2016”

36. These documents generally oppose the release of GMOs to the environment and advocate a precautionary approach to GMOs. Some advocate local management of GMOs. Having reviewed each document and taking into account the provisions, we consider that the proposed provisions of PC18 and PC131 are consistent with, and in some respects will help achieve the outcomes sought in these documents.

7.0 Consideration of Submissions

37. Table 1 and 2 below outlines a chronology of events relevant to the proceedings of PC18 and PC131.

Table 1 – Chronology of Events – PC18

Event	Date
Date of public notification of plan change for submissions	15 July 2014
Closing date for submissions	9 September 2014
Date of public notification for further submissions	19 November 2014 June 2015
Closing date for further submissions	17 December 2014 (20 working days) and 23 July 2015 (to address four additional submissions previously omitted in error
Hearing dates	14 – 17 June 2016

38. A total of 305 submissions and 55 further submissions were received for PC18. A second summary of submissions was notified in June 2015 to address four submissions which had been erroneously excluded from the first summary. Seven further submissions were received in response to the second summary (see **Appendix B** for content of submissions and further submissions).

39. Pursuant to section 37 of the RMA, FNDC resolved to double the submission period from 20 working days to 40 working days and the further submission period from 10 working days to 20 working days. However to rectify an administration error that resulted in four original submissions not being included in the summary of decisions requested, both submission periods were extended again to facilitate a second further submission period.

Table 2 – Chronology of Events – PC131

Event	Date
Date of public notification of plan change for submissions	15 July 2014
Closing date for submissions	9 September 2014
Date of public notification for further submissions	18 November 2014

Closing date for further submissions	16 December 2014
Hearing dates	14 – 17 June 2016

40. A total of 284 submissions and 65 further submissions were received for PC131.

41. Pursuant to section 37 of the RMA, WDC resolved to double the submission period from 20 working days to 40 working days and the further submission period from 10 working days to 20 working days.

A. Support - Entire Plan Change as Written

Submission Information

42. PC18 received 59 submissions supporting the plan change as written. This group of submitters did not give detailed reasons for their submission. Where provided, reasons for supporting the plan change as written included;

    - To allow local conditions to be considered.
    - To allow the concerns of Tangata Whenua to be considered. This reason was generally sited in submissions from Te Runanga O Te Rarawa, Te Runanga A Iwi O Ngapuhi, Nga Kaitiaki O Nga Wai Maori, Ngati Wai Trust Board and from Kororareka Marae. The Kororeka Marae submission stated that a variety of species traditionally used by Maori should be protected from commercial patenting. Patuharakeke Te Iwi Trust Board Inc supported the plan changes but also sought a prohibited activity status for outdoor GE experiments or field trials (see Topic C).
    - Biosecurity and the protection of primary production.
    - Health and safety of people and environment.

43. PC131 received 47 submissions supporting the plan change as written. Many submitters in this group also submitted on PC18. The content of the submissions was very similar to submissions supporting PC18.

Discussion

44. We acknowledge and generally support the submissions supporting the direction of the proposed plan change provisions. However, changes to the notified plan change wording have been recommended in response to submissions requesting amendments.

Recommendation

45. Notwithstanding any changes outlined elsewhere in this report, we recommend the Commissioners **accept** the submissions supporting PC18 and PC131 as written.

B. Support in Part – Specific Amendment

Submission Information

46. PC18 received seven submissions generally supporting the plan change but requested amendments to specific provisions. Reasons for the submission included:

    - Clarification of ambiguous wording.
    - Strengthening specified provisions.
    - Requiring all resource consent applications to be notified.
    - Requirement to obtain Tangata Whenua approval for all GMO consents.
    - Enabling additional consent conditions as required by local circumstances.

47. PC131 received five submissions generally supporting the plan change but requested amendments to specific provisions. The reasons for the submissions were similar to the reasons given for the PC18 submission.

Discussion

48. Laura Wilson (PC18-109);

- PC18-109/1 stated that provision 19.6.2.2 Bond Requirements lacked specificity as to the size and duration of the bond.
- PC18-109/2 stated that provision 19.6.2.3 Monitoring Costs should be amended to remove the term “may” and reworded to require all consented activities to be monitored.
- PC18-109/3 stated that evidence of the prevention of cross contamination should be a required before resource consent can be granted.
- PC18-109/4 stated that the approval of Tangata Whenua should be included in the assessment criteria.

49. We do not support submission points PC18-109/1, 109/2 and 109/3. With regard to PC18-109/1, proposed provision 19.6.2.2 Bond Requirements gives Council considerable scope in the matters it can consider when setting bond requirements. As all applications under provision 19.6.2 will be publicly notified, potentially affected parties will have the ability to comment on the bond requirements. We do not support submission point PC18-109/2 as the decision whether to monitor should remain at Councils discretion. With regard to PC18-109/3, proposed provision 19.8 Assessment Criteria includes provisions for preventing the migration of GMOs (cross contamination).

50. We support in part PC18-109/4. PC18 Provision 19.2.1 states that an expected environmental outcome is:

> “Manage risk and avoid adverse effects on people, communities, **tangata whenua**, the economy and the environment associated with the outdoor use of GMOs” [Our Emphasis added in Bold]

51. The risks and effects of concern to tangata whenua are not referred to elsewhere in the policy “cascade” of PC18 or PC131. Accordingly, we recommend the amendment of policy 19.4.3 (PC18) and policy GMO.2.2.3 (PC131) to ensure that tangata whenua values are appropriately addressed in the processing of applications for GMO field trials.

52. Similar submissions were made to the GMO hearings on the Proposed Auckland Unitary Plan and similar wording changes were recommended to be made to the same policy in that plan. The recommended changes to PC18 and PC131 will ensure a consistent policy response across the Northland and Auckland regions.

Recommendation

53. We recommend the Commissioners:

- **Decline** PC-18-109/1, 109/2 and 109/3

- **Accept** in part PC18-109/4 and recommend the following wording for PC18 and PC131:

PC18 – Policy 19.4.3 "To ensure that a resource consent granted for the outdoor field trialling of a GMO is subject to conditions that serve to avoid, as far as can reasonably be achieved, risk to the environment**,** the mauri of flora and fauna, and the relationship of mana whenua with flora and fauna**,** from the use, storage, cultivation, harvesting, processing or transportation of a GMO. PC131 – Policy GMO.2.2.3 ""To ensure that a resource consent granted for the outdoor field trialling of a GMO is subject to conditions that serve to avoid, as far as can reasonably be achieved, risk to the environment**,** the mauri of flora and fauna, and the relationship of mana whenua with flora and fauna**,** from the use, storage, cultivation, harvesting, processing or transportation of a GMO."

Discussion

54. Anna Wilson (PC18-110) stated that provision 19.6.2.2 Bond Requirements did not adequately define risk management.

55. We do not support submission number PC18-110. In our view, proposed provision 19.6.2.2 Bond Requirements gives Council considerable scope in the matters it can consider when setting bond requirements.

Recommendation

56. We recommend that the Commissioners **decline** the relief sought.

Discussion

57. Catherine Murupaenga-Ikenn (PC18-159), sought the following relief:

- PC18-159/1 stated wording of the Context should be amended to include the underlined; "Once released into the environment, most GMOs would be very difficult, if not impossible, to eradicate even if the funding were available for this".
- PC18-159/2 stated wording of Context should be amended to include the underlined; "Given a council's social, cultural, environmental and financial duties of care for itself and that of its constituents, there is a ready justification..."
- PC18-159/3 stated that 19.2.1 Environmental Outcomes Expected should be amended to insert the following outcome: "Implement a precautionary approach regarding GMO outdoor use management whereby decision-making begins from the premise of minimising (and if possible preventing) GMO outdoor use in the district; and. approvals may only be made in the most compelling social, cultural, environmental and economic circumstances.
- PC18-159/4 stated that provision 19.2.3 should be amended as follows: "Ensure GMO operators: pay for the full costs related to the monitoring of GMO activities; and pay maximum recoverable costs for any migration of GMOs beyond specified areas, including unintentional GM contamination. Also, that provision 19.2.4 be amended as follows:

"Ensure GMO operators pay performance bonds which will be used as compensation in the event that the activity under their operation results in any adverse effects".

- PC18-159/5 requested clarification of the term “adaptive responses” in Objective 19.3.1.
- PC18-159/6 stated that a grammatical error in provision 19.3.2 should be amended as underlined: “The sustainable management of the natural and physical resources of the district, with respect to the outdoor use of GMOs, is a significant resource management issue identified by the community".
- PC18-159/8 stated that provision 19.4.2 Policies should be amended as follows: "to ensure that a resource consent granted for the outdoor field trialling of a GMO is subject to conditions that ensures that the consent holder is financially accountable for paying (to the extent possible) for any adverse effects associated with the activity, including clean up costs and remediation, including via the use of bonds.
- PC18-159/11 stated that a typo should be corrected in provision 19.5.1 Methods “trails” should by trials.
- PC18-159/12 stated that provision 19.5.2 is inconsistent i.e. why allow for trials if releases are prohibited.
- PC18-159/13 stated that provision 19.6.2 should be amended. Specific wording was not provided.
- PC18-159/14 related to correcting a typing error in provision 19.6.2 Discretionary Activities. “When considering a discretionary activity application, Council will have regard to the assessment criteria set out under Section 19.7 19.8.

58. We have carefully considered each submission point and, where amendments have been requested, provide the following responses:

- PC18-159/1, we do not support this request as we consider it unnecesary.
- PC18-159/2, we do not support the inclusion of social, cultural, environmental and financial duties of care into plan change context. However, we do support an amendment to correct a typing error in provision 19.5.1.
- PC18-159/3, we do not support this request. The Context as written in PC18 specifies a precautionary approach.
- PC18-159/4, we do not support this request because the term financially accountable is consistent with the wording of the WDC and Auckland Council Proposed Auckland Unitary Plan provisions and is discussed within the joint Section 32 Evaluation.
- PC18-159/5, we do not support this request. The term adaptive response is discussed in the joint Section 32 Evaluation and there is no additional value in having it defined in the District Plan.
- PC18-159/6, we do not support the change to the objective in 19.3.2. In our opinion, this is unnecessary and in addition has the effect of changing the objective to read like an issue

rather than an objective. The objective as currently worded, is grammatically correct when read as an objective. It is not stating an issue. It is stating an objective and it was intended to read this way.

- PC18-159/8, we do not support this request as the provisions as worded adequately address this matter.
- PC18-159/11, we support this change and recommend that the typo is corrected below.
- PC18/159/12, we do not support the submission point stating that Provision 19.5.2 is inconsistent. Field trials have a restricted spatial scale and are subject to conditions. Therefore, the level of risk is reduced relative to outdoor releases. If a trial is considered unsuccessful it may not proceed to outdoor release. Outdoor releases would be prohibited for the lifetime of the District Plan (10 years) or until a private plan change was approved. Therefore, a GMO that was trialled within the 10 year lifetime of this plan may eventually be eligible for release. This matter is addressed in the last paragraph of Chapter 19 – Commentary. The question has also been addressed at length in the Section 32 Evaluation and in the evidence from Professor Heinemann [**Attachment 6**].
- PC18-159/13, we do not support any change to provision 19.6.2 as we consider that the provision appropriately worded.
- PC18-159/14, we do not support this change as it is unnecessary.

Recommendation

59. We recommend that the Commissioners:

- **accept** the relief sought regarding the amendment to provision 19.5.1[2], and that the PC18 text be amended as below.
- **decline** other relief sought.

> PC18 – Method 19.5.1:
>
> "Rules in the plan to control GMO ~~Field Trials~~ field trials, some GM veterinarian vaccines and to prohibit the release of GMOs in the Far North".

Discussion

60. Leonard Dissanayake (PC18-196), sought the following relief:

- PC18-196/1 sought to amend provision 19.6.2.2 Bond Requirements as follows; "*The applicant for the resource consent ~~to~~ shall provide a performance bond (akin to a bank guarantee) in respect of the performance of any one or more conditions of the consent,…during or after the expiry of the consent*". PC18-196/1 also sought to place clauses (a) to (f) of provision 19.6.2.2 within provision 19.8 Assessment Criteria.

[2] The change to add "some GM Veterniarian vaccines" is recommended later on in paragraph 102. The change has been replicated in this text box for consistency.

- PC18-196/2 sought to amend provision 19.6.2.3 Monitoring Costs as follows; "*A GMO discretionary activity ~~may~~ shall require monitoring during and beyond the duration of consent. Monitoring is to be carried out….to the relevant regulatory authority. Applications for a GMO discretionary activity shall include a monitoring strategy*". Also that provision 19.6.2.3 Monitoring Costs be amended to place clause (a) to (e) within provision 19.8 Assessment Criteria.

- PC18-196/3 sought to amend provision 19.8 Assessment Criteria as follows; "*In addition to these matters, the Council shall also apply the relevant assessment matters set out below. (a) The extent to which site design conditions should ensure GMO sites are designed and managed in a manner that avoids or minimises risk of adverse effects from activities carried out on the site, ~~this shall include~~ including provisions to prevent the migration of GMOs beyond the area designated for the activity (b) The ability to ensure the transportation of GMOs is carried out in a manner that minimises the risk of adverse effects by preventing the escape of GMOs from the transporting vehicles, ~~Appropriate procedures~~ and to what extent appropriate procedures ~~must be~~ are in place to ensure that any vehicle visiting the site is thoroughly cleaned and checked prior to leaving the site to avoid unintentional GMO transportation (c) ~~Reporting requirements by the consent holder will be stipulated in the consent conditions~~ (d) ~~Where necessary~~ Whether more stringent measures than those required under the provisions of the HSNO Act may be imposed to manage potential risk. Whether a review clause (pursuant to Section 128 of the Act) may be included in any conditions, where deemed necessary, to address any future changes in technology, and the scope of environmental, economic and cultural effects. (e) Whether ~~T~~the duration of any consent is aligned with EPA approval terms*".

61. We do not support submission points PC18-196/1 and 196/2. The inclusion of bond requirements and monitoring requirements within provision 19.6.2 ensures that applications that do not meet these requirements have a non-complying activity status. The provisions as written are consistent with the wording of PC131 and the joint Section 32 Evaluation.

62. We do not support submission point PC18-196/3. We consider that the assessment criteria is worded appropriately and that the changes requested are unnecessary.

Recommendation

63. We recommend that the Commissioners **decline** the relief sought.

Discussion

64. Fiona Davidson (PC18-274 and PC131-215) submitted that a new policy be inserted to make it explicit that an approved EPA application for a specific GMO is a prerequisite to applying for resource consent from WDC/FNDC for a GMO outdoor field trial.

65. In our view, provision GMO. 2.3 Information Requirements already states that an EPA approval is required. Provision 19.6.2.1 of the PC18 text already states that outdoor field trials must have prior EPA approval.

Recommendation

66. We recommend that the Commissioners **decline** the relief sought.

Discussion

67. Ross Forbes (PC18 – 284) sought the following relief;

- The insertion of a Statement of Principle (wording not provided).
- The insertion of Policy 19.4.7 to state; "*Where there are threats of serious or irreversible damage with genetically modified organisms lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation and that this shall mean (a) taking strong action to avoid the possibility of serious or irreversible environmental harm when scientific knowledge is incomplete or inconclusive; (b) placing the burden of proof on those who argue that a proposed activity will not cause significant harm; (c) making the responsible parties liable for environmental harm; and (d) ensuring that decision making addresses the cumulative long-term and indirect consequences of deploying genetically modified organisms".*

68. We consider that the matters raised in submission PC18-284 are adequately addressed within the proposed plan change text.

Recommendation

69. We recommend that the Commissioners **decline** the relief sought.

Discussion

70. Soil and Health Association of New Zealand (PC18-193) sought the following relief;

- PC18-193/2 amend provision 19.2.2 to add the following "Integrated management of effects on the environment including an integrated approach to all GMO proposals in relation to the effects of those activities on natural and physical resources".
- PC18-193/3 add the following new policies: a) To ensure that the location of a proposed GMO activity does not have potential to adversely affect existing or potential organic farming activities including market recognition and public perception of an area as GMO free, b) To ensure that potential adverse effects on areas of significant ecological value and/or sensitivity are avoided
- PC18-193/4 add the following clause to 19.6.2.1 (d): This research is to include (but not be limited to) identification of the location and vulnerability of existing and potential organic farming activities and areas potentially significant for the development of organic farming which lie within the geographical range of potential harmful effects from the proposed GMO activity.

71. We consider that the proposed amendment to provision 19.2.2, 19.6.2.1(d) and proposed policies are unnecessary. All applications for GMO field trials will be publicly notified and organic farmers or agencies representing significant or sensitive areas will be able to make submissions.

Recommendation

72. We recommend that the Commissioners **decline** the relief sought.

Discussion

73. John Clarke (PC131-10), sought the following relief:

- That the provisions of the plan should explicitly state that it is the responsibility of consent holders to pay for costs associated with cleaning up GM contamination and to compensate parties affected by contamination.
- Clarification of the terms “risk avoidance” and “to the extent possible”.

74. We consider that the matters raised in submission PC131-10 are adequately addressed within the proposed plan change text.

Recommendation

75. We recommend that the Commissioners **decline** the relief sought.

Discussion

76. Arla Kerr and Coleen Prendergast (PC131 -284), stated that the "adaptive risk management approach in this section (GMO2.2.6 Adaptive Approach) is not proposing anything beyond what already exists in relation to plan changes. If reference to the possibility of future plan changes is deemed necessary, express reference to the precautionary approach should be included in this part”.

77. We acknowledge the submitters statement that provision already exists for reviewing the effectiveness of plan provisions. However, the management of GMOs differs from other environmental issues. As stated in the expert evidence of Professor Heinemann [**Attachment 6**], the relative infancy and complexity of GMO technology means that the effects of its use are not well understood compared to conventional land use. Policy GMO.2.2.6 Adaptive Approaches expressly acknowledges this difference and the consequent need for active monitoring and review. The precautionary principle is acknowledged in Policy GMO 2.2.1.

Recommendation

78. We recommend that the Commissioners **decline** the relief sought.

Discussion

79. Helen Marsh (PC131 – 32) sought the following relief: “Include provisions that all applications for resource consent for the outdoor use of GMOs must be publicly notified. Include a statement that a precautionary approach does not allow the outdoor use of any GMOs. Include a statement that no outdoor use of GMOs will be allowed in the Northland Region.”

80. Provision GMO.1.3 Notification already states that “all applications for resource consent must be publicly notified”. Provision GMO.1.2.6 already states that GMO releases are prohibited activities. As such, we consider that no change is necessary.

81. The submission has highlighted an issue with the PC18 text. The current wording of PC18 provision 19.7 Notification could be misinterpreted and applied only to Discretionary Activities. In our opinion, that is clearly not the intention of the provision. For clarity, it is our opinion that this wording should be amended to be consistent with PC131. However, as the submission from Ms Marsh only relates to PC131 this would be an out of scope change.

Recommendation

82. We recommend that the Commissioners **decline** the relief sought. However, we recommend the following out of scope change to the PC18 text:

PC18 19.7 – Notification "*all applications for resource consent ~~under rule 19.6.2~~ must be publicly notified*".

Discussion

83. Ueli Sasagi (PC131-162) stated that the wording of the following policies was indirect and imprecise and would not give action to the objectives:

- "To prohibit the general release of GMO and assess all outdoor field trialling of GMO as a discretionary activity as a precautionary approach."
- "To impose conditions on all resource consents granted for the outdoor field trialling of GMO requiring consent holders to be financially accountable (to the extent possible) for any adverse effects associated with the activity, including clean-up costs and remediation, including via the use of bonds."
- "To impose conditions of resource consents granted for all outdoor field trialling of GMO for avoiding, as far as can reasonably be achieved, risk to the environment from the use, storage, cultivation, harvesting processing or transportation of GMO."
- "To impose conditions on resource consents granted for all outdoor field trialling GMO requiring monitoring costs are met by the consent holder."

84. The submitter did not provide alternative wording for the policies and objectives. We do not support submission PC131-162 as we consider that the policies and objectives as written are appropriate and consistent with the Section 32 Evaluation.

Recommendation

85. We recommend that the Commissioners **decline** the relief sought.

Discussion

86. Carine Allen (PC131-248) generally supported, although highlights that the policies are not worded strongly enough and should start with for instance, "To impose conditions…" We do not support this request. In our view the proposed wording of the policies is strong and directive in terms of achieving the proposed objectives.

Recommendation

87. We recommend that the Commissioners **decline** the relief sought.

C. Support in Part – Prohibited Activity Status

Submission Information

88. PC18 received 198 submissions that supported the plan change in part but sought prohibited activity status for all outdoor GMO field trials. Many PC18 submitters also submitted on PC 131. PC131 received 213 submissions also seeking prohibited activity status for field trials.

89. Many of the submissions seeking prohibited activity status were identical form submissions. Reasons for requesting a prohibited activity status include;

- Lack of certainty about the potential adverse effects of GMOs on economic, environmental, cultural and social values.
- Potential for GMO's to contaminate plants and animals on adjacent land.
- Liability for costs of cleaning up GMO contamination.
- Economic effects of losing GE Free and/or organic status.
- To protect Matauranga Maori and the sanctity of Taonga.
- To protect conventional and organic production systems.
- To allow decisions regarding the sustainable management of Northland occur at a local level.

Discussion

90. We do not support the request for a prohibited activity status for field trials. In our view, it is important that the GMO provisions do not totally foreclose potential opportunities for the outdoor use of GMOs in the future, should new evidence demonstrate that a particular GMO is safe and significantly beneficial. Field trials are an important component in obtaining that evidence and a prohibited activity status unduly restricts them. We consider that a discretionary activity status is appropriate for field trials. In our opinion, a discretionary activity status provides flexibility for field trials to occur where they can be proven to be safe and beneficial, while also providing scope for many of the concerns raised in the submissions, to be appropriately considered and addressed on a case by case basis.

91. Scientific advice was sought from Professor Heinemann on the appropriate activity status for field trials. His advice is included as Appendix 1 to his Statement of Evidence [see **Attachment 6**]. He recommends that, subject to a number of conditions, discretionary status is appropriate for field trials. Similar advice was provided to the hearings on the Proposed Auckland Unitary Plan and field trials remain discretionary activities in that plan. To maintain regulatory consistency across the Auckland and Northland regions it is preferable that field trials remain as discretionary activities.

92. Jenny Mather (PC18-153) and Carl Mather (PC18-154) sought prohibited status for the indoor use of GMOs. We do not support this request as it is not consistent with Councils' risk management approach as described in the Section 32 Evaluation.

93. Mary Frances Wilson (PC18-155) sought restriction to the right of appeal under s.72(2) of the RMA. We do not support this request as it is ultra vires and cannot be granted.

Recommendation.

94. We recommend that the Commissioners **decline** the relief sought.

Discussion

95. Organics Aotearoa New Zealand (PC18-294 and PC131-244) sought to make the use of GE vaccines a prohibited activity. Provision 19.6.1.1(b) of PC18 states that the use of "veterinary vaccines using GMOs" is a permitted activity. Likewise, GMO.1.2.3 in PC131 states that "veterinary vaccines using GMOs are permitted activities."

96. In considering a response to this submission, we have sought scientific advice from Professor Heinemann [see Appendix 2 of Professor Heinemann's evidence in **Attachment 6**].

97. The first issue that Professor Heinemann identified is that "veterinary vaccine" is not defined in either plan change provisions and has proposed a definition for "veterinary vaccine" along with "genetically modified veterinary vaccine" and "viable genetically modified veterinary vaccine".

98. Professor Heinemann considers that the request to prohibit the use of veterinary vaccines is not warranted, as they have demonstrated benefit to human and animal health. He has however, concluded that caution is needed in the administration of "viable genetically modified vetenary vaccines." As such, Professor Heinemann has recommended that the provisions be amended to allow non-viable genetically modified veterinary vaccines and viable genetically modified veterinary vaccines administered as a specific dose supervised by a veterinarian to be permitted activities. Concurrently, he has recommended that the use of viable GM vaccines not supervised by a veterinarian, be made a discretionary activity as this would allow case by case decision making.

99. This distinction is based on the relative risks posed by different veterinary vaccines and their delivery mechanism. Non-viable GM veterinary vaccines tend not to persist in the environment, appear to be low risk, and are difficult to monitor, making control through the district plan less appropriate. Viable GM veterinarian vaccines can have higher risks if their administration is not supervised or controlled by a veterinarian. An example is a GM veterinarian vaccine distributed by way or edible food products or edible plants which cannot be controlled by a veterinarian and present higher risks to the environment and to the health and safety of people. In this circumstance the councils will have the discretion to require controls or decline an application. At the same time, councils will be able to respond quickly if there are compelling reasons for its use to benefit human or animal health and welfare.

100. In response to the submission, and taking into account the expert advice of Professor Heinemann, we consider that changes are needed to clarify the provisions of both PC18 and

PC131 with regard to the use of GM veterinary vaccines. Our proposed wording is provided below under the recommendation heading and is highlighted in the track changes version of the provisions [**Attachment 8 & 9**]. The proposed wording generally follows the recommendations of Professor Heinemann, but has been adapted to match the structure of each district plan.

101. Overall, we consider the amended wording is appropriate because:

- It represents a reasonable response to the scientific uncertainty expressed by Professor Heinemann for the release of genetically modified veterinary vaccines in the environment.
- Professor Heinemann's evidence has shown that the benefits of vaccine use to human and animal health have been clearly demonstrated and there can be serious consequences from not vaccinating animals against some diseases.
- It is consistent with a precautionary approach based on the assessment of risk and evidence from Professor Heinemann.
- It will ensure regional consistency as Auckland Council has proposed a similar change to the Proposed Auckland Unitary Plan GMO provisions.

Recommendation

102. We recommend that the Commissioners **decline** the relief sought and recommend that the following changes[3] are made to the wording of PC18 and PC131:

> PC18 – Policy 19.4.3:
>
> "To adopt a precautionary approach by prohibiting the general release of a GMO, and by making outdoor field trialling of a GMO and the use of viable GM veterinary vaccines not supervised by a veterinarian a discretionary activity."
>
> PC18 – Method 19.5.1:
>
> "Rules in the plan to control GMO ~~Field Trials~~ field trials, some GM veterinarian vaccines and to prohibit the release of GMOs in the Far North".
>
> PC18 – Method 19.5.1 Commentary:
>
> - "Outdoor field trialling of a GMO (where the proponents of such activities have prior approval of the EPA) shall be a discretionary activity~~.~~, as will certain uses of GM veterinary vaccines."
>
> PC18 – 19.6.1.1 Indoor use and research involving genetically modified organisms
>
> "(b) ~~Veterinary Vaccines using GMOs~~ The use of non-viable genetically modified veterinary vaccines and viable genetically modified veterinary vaccines with a specific delivery dose supervised by a veterinarian; and"
>
> PC18 – 19.6.2 Discretionary Activities

[3] The change to take capitals of "field trials" in provision 19.5.1 was recommended in paragraph 59. The change has been replicated in this text box for consistency.

"19.6.2.4 Viable Genetically Modified Veterinary Vaccines

The use of viable genetically modified veterinary vaccines not supervised by a veterinarian shall be a discretionary activity."

PC131 – GMO.1.1 Description and Expectations

Some activities, such as research within contained facilities, some veterinary vaccines and certain medical applications are permitted activities.

PC131 – GMO.1.2 Eligibility Rules:

"3. ~~Veterinary Vaccines using GMOs~~ The use of non-viable genetically modified veterinary vaccines and viable genetically modified veterinary vaccines with a specific delivery dose supervised by a veterinarian are permitted activities.

4. The use of viable genetically modified veterinary vaccines not supervised by a veterinarian are discretionary activities."

PC131 – GMO.2.2 Policies 1. Precautionary Principle:

To adopt a precautionary approach by prohibiting Release of a GMO, and by making Field Trials of a GMO and the use of viable GM veterinarian vaccines not supervised by a veterinarian a discretionary activity.

PC18 and PC131 – Insert the following definitions:

"Veterinary Vaccine: A biological compound controlled by the Agricultural Compounds and Veterinary Medicines Act that is used to produce or artificially increase immunity to a particular disease and has been tested and approved as safe to use by a process similar to that conducted for approval and use of medical vaccines.

Genetically Modified Veterinary Vaccine: A veterinary vaccine that is a genetically modified organism as defined in this Plan.

Viable Genetically Modified Veterinary Vaccine: A genetically modified veterinary vaccine that could survive or replicate in the environment or be transmitted from the inoculated recipient".

D. Oppose – Entire Plan Change

Submission Information

103. PC18 received a total of eight submissions opposing the proposed provisions in their entirety and seeking that it be withdrawn. PC131 received six submissions opposing the entirety of PC131 and generally seek that it be withdrawn. In some cases, opposing submitters provided the same submissions to both FNDC (PC18) and WDC (PC131).

104. The Ministry for the Environment ("**MfE**") (PC18-195 and PC131-26) request the withdrawal of the PC18 and PC131 GMO provisions. Reasons for MfE opposition include:

- The proposed provisions create a regulatory framework that is more restrictive than the national framework which is managed by the Environmental Protection Agency ("**EPA**") under Hazardous Substances and New Organisms Act 1996 ("**HSNO**").
- The EPA may impose controls on an approval to require monitoring.
- HSNO provides a clear process for public, including local authority, input into decision making.
- The EPA has the necessary technical expertise to consider GMO applications.
- The precautionary principle is already an integral part of the EPA's decision making process.
- HSNO has appropriate liability provisions.
- A bond requirement effectively amounts to prohibition.
- MPI is the expert enforcement agency for GMOs under HSNO.
- The proposed provisions do not meet the requirements of section 32 of the RMA.

105. Hancock Forestry Management New Zealand ("**HFM**") (PC18-270 and PC131-228) opposes PC18 and PC131 in their entirety and request that they be withdrawn. HFM give the same reasons as outlined in the New Zealand Forest Research Institute Limited (PC18-302 and PC131-217) and Agram (PC18-245) submissions. In addition, the HFM submission highlights their understanding that GMOs are currently being considered in RMA reforms and that Council should await the outcome of the reforms.

106. The New Zealand Forest Research Institute Limited ("**Scion**") (PC18-302 and PC131-217) request that the proposed plan changes be withdrawn. Reasons for Scion's opposition include:

- New Zealand's regulation of GMOs is already onerous and duplication or addition is unnecessary.
- Council does not have power under the RMA to regulate GMOs.
- The process under HSNO provides adequate management of risk.
- The legal opinion of Roydon Somerville is incorrect and contradicted by other legal opinions.
- In practice the GMO provisions will result in an absolute ban.
- Proper section 32 evaluation has not been undertaken for the plan change.
- The plan change has not properly considered the potential benefits of GMOs.
- PC131 removes the ability to prevent extinction of taonga species and denies the ability of mana whenua to exercise kaitiakitanga.
- Liability provisions in PC131 are unnecessary given common law and provisions in HSNO.
- The text of plan change contains numerous factual errors regarding matters such as scientific uncertainty.

107. Federated Farmers of New Zealand ("**Federated Farmers**") (PC18-301 and PC131-188) requests that the proposed plan changes are withdrawn and that the entire section 32 evaluation be disregarded and further evaluation of the entire plan change be undertaken, as is provided for in section 32AA of the RMA. Reasons for Federated Farmers opposition include:

- Federated Farmers is dissatisfied with the work that Council has put into the preparation of the Plan Changes, in particular the level of consultation with stakeholders such as Federated Farmers.
- Central government and more specifically the EPA, has sole responsibility for the management and control of GMOs in New Zealand and local government has no jurisdiction in their management.
- The section 32 evaluation has not been properly prepared with regard to the relevant requirements of section 32 of the RMA.
- The material referenced in the plan change is outdated and does not reflect the current state of knowledge, particularly scientific knowledge about GMOs.
- There is no mention of the possible benefits that might be bought by the use of GMOs.
- GMOs are not an issue of regional significance.
- Federated Farmers also attached to its submissions on PC131 and PC18 a commissioned review of the scientific conclusions underpinning the generic section 32 report produced by the Inter-council Working Party (2013) which forms the basis of the section 32 reports for PC18 and PC131. The review was carried out by two scientists from the Royal Society of New Zealand. Professor Heinemann has responded to this review at length in his evidence [pages 21-30 **Attachment 6**].

108. Pastoral Genomics (PC18-14) opposes PC18 in its entirety and seeks that the plan change be withdrawn. Reasons for Pastoral Genomics opposition include:

- Managing the effects of GMOS is governed by HSNO and there is no jurisdiction under the RMA to impose controls in the district plan on GMOs.
- The EPA has the specific risk assessment, legal, policy and scientific expertise to consider GMO applications, whereas local authorities do not.
- The management of GMOs through one agency follows international trends.
- HSNO has punitive provisions if the Act is breached.
- The proposed provisions represent unnecessary duplication.
- The proposed provisions do not address actual or potential effects on the environment.
- The proposed provisions do not address a real risk of adverse effects, but rather a perceived risk or fear.
- The scientific basis for the proposed provisions is flawed and unjustified in that the section 32 is: not supported by international scientific consensus; fails to consider relevant evidence and scientific literature; fails to consider relevant technologies and accepted practices; based on

incorrect assumptions and outdated information; does not take account of the different forms of GM technology and; is misleading.

- The decision to subject GMOs to greater levels of scrutiny than other plant improvement techniques is illogical.
- The section 32 comments regarding community views are not supported by independent surveys and should be treated with caution.
- Statements regarding effects on marketing and branding are not supported.
- The section 32 fails to adequately acknowledge the benefits / positive effects associated with the use of GMOs.
- The proposed provisions ignore the potential cost to science and innovation from unnecessary additional controls.
- Non participation of farming and scientific community in research related to GMOs is inconsistent with RMA principles.
- There are practical difficulties associated with the provisions.
- The proposed provisions do not give effect to the Regional Policy Statement.
- The proposed provisions are contrary to Part 2 of the RMA including section 7(b) regarding the efficient use and development of natural and physical resources.
- The submission makes further specific statements to the various individual provisions of PC18, all of them opposed for the general reasons outlined above, and generally argue that HSNO addresses these matters, that it is not efficient to duplicate requirements under the RMA, it is not the most appropriate way to achieve the purpose of the RMA, and that HSNO already provides liability to pay damages.

109. The Northland Province of Federated Farmers submission (PC18-136) is generally similar to the Federated Farmers of New Zealand submission (PC18-301 and PC131-188) and seeks the withdrawal of PC18 in its entirety. Reasons for Northland Province of Federated Farmers opposition include:

- Agriculture is a significant land use within the Far North and the management of GMOs has the potential to cause both significant positive and adverse effects for farmers.
- The proposed provisions are based on a flawed section 32 analysis.
- Marketing claims are not supported by evidence.
- The proposed provisions are not justified under the RMA.
- Farmers should have the right to choose approved technologies.
- Northland farmers will have to forgo the benefits of using this technology.

110. Agcarm (PC18-245) submits that FNDC should not include the management GMOs in the district plan and requests the withdrawal of the proposed provisions. Reasons for Agcarm's opposition include:

- There is no need for stricter regulation of GM technology. It is already too strict as there have been no approvals for commercial release since the introduction of HSNO (with the exception of a horse flu vaccine).

- New Zealand has one of the strictest regimes for GMOs in the world. More regulation is unjustified.
- GMOs are one solution to increasing food supply.
- Farmers should have the right to use products that have been approved by the EPA and are therefore safe.

111. New Zealand Biotech (2003) Inc ("**NZBIO**") (PC18-303) opposes PC18 in its entirety and seeks that the plan change be withdrawn. Reasons for NZBIO opposition include:

- The proposed provisions will likely limit economic growth of the district while providing no substantial benefits.
- The proposed provisions will likely limit the ability to respond to climate change.
- The proposed provisions are based on a report which contains a number of misconceptions.
- The proposed provisions are going to involve the Council in considerable expense to ratepayers to replicate functions provided by central government
- The proposed provisions are likely to open the council to significant potential legal liability in replicating these functions.

112. Catherine Merger's (PC131-2) states that the management of GMOs is the function of the EPA under the HSNO and that the RMA makes no specific mention of GMOs. Therefore, the Councils have no authority to include GMO provisions and Ms Merger requests the PC131 provisions should be withdrawn.

113. The Forest Owners Association's (PC131-232) requests that the PC131 provisions be withdrawn as they wish to preserve the ability to produce genetically engineered solutions as long as they meet existing legislative requirements. They give the same reasons as the Scion (PC18-302 and PC131-217) submission.

114. There are a number of reoccurring themes in the above submissions in opposition. These are discussed further under the following headings.

Jurisdiction

Discussion

115. Submitters in opposition raised concern that there is no jurisdiction for local authorities to manage and control GMOs in New Zealand. These submissions generally argue the sole responsibility lies with central government and more specifically the EPA under HSNO.

116. Jurisdiction to regulate GMOs under the RMA was recently subject to an appeal to the Environment Court Appeal in Federated Farmers of New Zealand v Northland Regional Council [2015] NZRMA 217 [see copy of decision in **Attachment 10**]. In that decision, Principal Environment Court Judge L J Newhook determined that there is power under the RMA for regional councils to make provision to control the use of GMOs through regional policy statements and plans.

117. The Decision is currently subject to an appeal to the High Court by Federated Farmers based on points of law. We acknowledge the appeal to the High Court, but rely on the Environment Court decision as the current legal position on jurisdiction.

118. We do not revisit the matter of jurisdiction in this report. This is addressed by Councils' legal representative Graeme Mathias who has prepared a statement to address this and other legal matters. We rely on that assessment for addressing matters of jurisdiction in submissions.

119. Overall, based on the Environment Court Decision we consider that the Councils do have jurisdiction to manage and control GMOs within their respective district plans.

Recommendation

120. We recommend that the Commissioners **decline** submission points seeking that PC18 and PC131 be withdrawn on the basis of jurisdiction.

Duplication with Hazardous Substances and New Organisms Act 1996

Discussion

121. Related to the matter of jurisdiction, are more general submissions regarding the role of the RMA and HSNO in the management of GMOs. In summary, submissions in opposition generally submit that:

- Central government has sole responsibility to regulate GMOs through the EPA under HSNO.
- It is more efficient and effective to manage GMOs at the national level.
- It is not appropriate to have duplication or more restrictive regulation at the local level under the RMA as the HSNO provides for satisfactory management of GMOs.

122. The focus of our evidence in this report is on the provisions of PC18 and PC131 in terms of achieving the relevant requirements of the RMA. We have not provided a detailed analysis of the HSNO provisions. The provisions of HSNO are set out in the Federated Farmers decision by Judge Newhook [**Attachment 10**] and are discussed further in the legal submissions of Mr Mathias.

123. The decision of the Environment Court provides a very clear exposition of how the HSNO and RMA complement each other, rather than duplicate functions. The Court found that HSNO and the RMA have different purposes and roles in relation to GMOs. HSNO's purpose and role is to assess new organisms (including GMOs) for approval (or not) for introduction into New Zealand. Once released in New Zealand, they are no longer considered new organisms and HSNO has no further role. The RMA, on the other hand, is a comprehensive statute that regulates the use of all natural and physical resources in an integrated manner over time so as to achieve the sustainable management of those resources. Natural and physical resources, as defined in the RMA, encompasses GMOs. Such a function includes regional and district considerations and responses. The Environment Court decision elaborates on these matters and rather than repeat them here, the Commissioners are directed to the decision itself in **Attachment 10**.

124. In our view, the PC18 and PC131 provisions prepared under the RMA are not in conflict with HSNO. Rather, we consider that the PC18 and PC131 provisions are complementary, and in some cases, additional to the controls on GMOs that can be applied by the EPA under HSNO. In our opinion, the PC18 and PC131 provisions represent an appropriate response, given the level of scientific uncertainty highlighted by Professor Heinemann, the economic analysis of Dr Small and the level of concern expressed by the community.

Recommendation

125. We recommend that the Commissioners **decline** submission points seeking that PC18 and PC131 be withdrawn on the basis of duplication with HSNO.

Integrity of the Section 32 Evaluation

Discussion

126. Submissions in opposition raise specific concerns as to the adequacy of the Section 32 Evaluation prepared in support of PC18 and PC131. In summary, submissions in opposition generally argue that:

- The Section 32 Evaluation does not meet the necessary requirements of section 32 of the RMA.
- The scientific conclusions underpinning the Section 32 Evaluation are outdated and wrong.
- The Section 32 Evaluation overstates the economic risks of GMOs and understates the potential benefits of GMOs.

127. We disagree with the criticisms levelled at the Section 32 Evaluation. As noted previously in section 6.0 of this report, we consider that the Section 32 Evaluation prepared for PC18 and PC131 is comprehensive and demonstrates careful consideration of the preparation of the proposed PC18 and PC131 provisions. In our opinion, the Section 32 Evaluation demonstrates that the proposed objectives are the most appropriate to achieve the purpose of the RMA and that the proposed provisions are the most efficient and effective means of achieving the objectives.

128. The specific criticisms levelled at the scientific basis of the section 32 Evaluation Report are outside of our area of expertise. Accordingly, we rely on the expert evidence of Professor Heinemann to address these specific submission points [**Attachment 6**]. We are satisfied that Professor Heinemann has demonstrated that there is scientific uncertainty regarding the use of GMOs, and as such there are scientific grounds to exercise precaution, as proposed by the Councils in the PC18 and PC131 provisions.

129. The opposing submissions criticise the position in the section 32 regarding the economic risks of GMOs. This is addressed in the expert evidence of Dr Small [**Attachment 7**]. We rely on Dr Small's evidence with regard to the potential economic costs and benefits of the proposal. Dr Small concludes that there is a benefit from taking a precautionary approach to the release of GMOs and that the potential costs are modest.

Recommendation

130. We recommend that the Commissioners **decline** submission points seeking that PC18 and PC131 be withdrawn on the basis of the integrity of the Section 32 Evaluation.

Precautionary Approach and Prohibited Activity Status

Discussion

131. Some submissions in opposition have questioned the application of the precautionary approach that underpins PC18 and PC131, and in particular the use of the prohibited activity status for outdoor release of food-related and non-food-related GMOs. In summary, submissions in opposition generally argue that:

- It limits the ability of farmers and scientists to research and utilise new GMO technologies.
- In practice, the GMO provisions will result in an absolute ban.
- The precautionary principle is already imbedded in HSNO and the role of the EPA.

132. The Councils have adopted a precautionary approach, with adaptive responses in order to manage the potential risks associated with the outdoor use of GMOs. The precautionary approach is typically applied in instances where there is potential that a particular activity would, or could, have significant adverse effects but those effects cannot be fully assessed as there is inadequate information or understanding of those effects.

133. In this instance, the evidence of Professor Heinemann has concluded that there is scientific uncertainty as to the effects of outdoor releases of GMOs. We rely on Professor Heinemann's evidence in this regard, and consider that there are scientific grounds to exercise precaution.

134. Dr Small has provided economic evidence concluding that there is benefit in not having outdoor release of GMOs and that the potential costs of this course of action are modest. We rely on Dr Small's evidence in this regard.

135. We consider that, while the proposed provisions are precautionary and do significantly restrict the ability to use GMOs, they do not totally foreclose potential opportunities for the outdoor use of GMOs in the future. Should field trials or new research demonstrate that particular GMOs are safe and significantly beneficial, the private plan change process is available to change the GMO provisions. Moreover, district plans are also reviewed every 10 years pursuant to section 79 of the RMA. Any new research or evidence could be considered then and a judgement made as to whether the proposed PC18 and PC131 provisions are still necessary.

136. The adaptive precautionary approach to managing risks from outdoor use of GMOs is supported by the Section 32 Evaluation. Both Volume 1 and Volume 2 of the Evaluation comprehensively outline the rationale and justification for adopting such an approach to risk management. The legal opinions from Dr Somerville QC, which are included in the Section 32 Evaluation, also support such an approach. As has already been stated previously, we accept the findings of the Section 32 Evaluation.

137. The use of the prohibited activity status as part of the adaptive precautionary approach to risk management is also supported by the Section 32 Evaluation and Dr Somerville's legal opinions.

In particular, in his 18 January 2013 opinion he refers to the Coromandel Watchdog of Hauraki Inc v Ministry of Economic Development decision from the Court of Appeal (CA285/05 2007). This decision is attached as **Attachment 13**. This decision examined the appropriate use of the prohibited activity status in planning documents. One of the circumstances deemed appropriate by the Court for such use, was when a planning authority has insufficient information about an activity and wishes to take a precautionary approach, even though it doesn't rule out the possibility of that activity permitted in future when further information becomes available. Another circumstance deemed appropriate by the Court, was where it is necessary to allow expression of social or cultural outcomes or expectations. Mr Mathias will address this further in his legal submissions.

138. Overall in our view, the precautionary approach adopted by the Councils in PC18 and PC131 is appropriate. More specifically we consider that the prohibited activity status for outdoor releases of GMOs is justified on the basis of the evidence provided by Professor Heinemann and Dr Small, the decision of the Court of Appeal, and for the reasons generally outlined in the Section 32 Evaluation.

Recommendation

139. We recommend that the Commissioners **decline** submission points seeking that PC18 and PC131 be withdrawn on the basis of the inadequacy of the precautionary approach and/or the inappropriate use of prohibited activity status.

Costs and Benefits of GMOs

Discussion

140. Some submissions in opposition claim that the proposed plan change and section 32 analysis does not give enough weight to the benefits of GMOs and overstate the costs or potential risks of GMOs.

141. The Section 32 Evaluation (Vols 1 and 2) provides analysis of the potential benefits of GMOs. The Annex – Supplementary Section 32 Evaluation – produced in response to the 2013 amendment to section 32 supplements the main report's assessment of costs and benefits. In terms of economic benefits and costs, this is further supplemented by the evidence of Dr Small [**Attachment 7**].

142. Having reviewed the Section 32 Evaluation in light of the submissions received regarding this matter together with the Section 32 Evaluation and the expert evidence of Dr Small, we consider that appropriate weighting has been given to the potential benefits of GMOs.

143. However, should the use of a GMO or class of GMOs prove in the future to provide regional benefits and the risks are deemed by the community to be acceptable, a plan change can be initiated by Councils (or by anyone else) to allow such use(s). The benefits can then be captured by the region without significant risks and uncertain benefits as is the case now.

144. Overall, we agree with the conclusion drawn in the original Section 32 Report that, while there are a range of potential benefits through the outdoor use of GMOs, these are outweighed by the

potential environmental, economic and social-cultural risks that are uncertain and that could be substantial and irreversible.

Recommendation

145. We recommend that the Commissioners **decline** submission points seeking that PC18 and PC131 be withdrawn on the basis of the inadequate consideration of the benefits of GMOs.

Oppose Entire Plan Change - Overall Recommendation

146. We recommend that the Commissioners **decline** submissions requesting the withdrawal of the PC18 and PC131 provisions.

E. Oppose in Part – Specific Amendments

Submission Information

147. The submission from Professor Peter Shepherd (PC18-194) specifically opposes provision 19.6.2 of PC18, and seeks that the rules are modified to allow GMOs which have already proven to be safe overseas, to bypass the field trials process. The reasons for Professor Shepherd's opposition include:

- GMOs are now used in crops planted in millions of hectares in over 25 countries. In that time no adverse effects have been reported.
- The studies used by FNDC are now outdated and do not properly address the economic benefits of GM crops.
- It is unfair for farmers to have to repeat expensive field trials to prove again what is already known.

148. Professor Shepherd similarly opposes provision 19.6.3 of PC18 and seeks that 19.6.3.1 is modified to make it possible and affordable for approval to use GMOs that have been proven safe and beneficial in extensive overseas experience. The reasons for Professor Shepherd's opposition include:

- GMO crops have been widespread for around 20 years and there is now extensive evidence that a number of the GM technologies are safe.
- The types of crops proposed for Northland would not be able to transfer genes to weeds or major export crops because of species barriers.
- There is no evidence that a GM free status will allow growers to achieve a price premium that outweigh the benefits of not having GM crops in the district.
- It is time for the Council to recognise the scientific evidence that is available and take a sensible and pragmatic approach.

Discussion

149. Provision 19.6.2 provides that outdoor field trialling of a GMO (where the proponents of such activities have prior approval of the EPA) shall require consent as a discretionary activity with various information, bond and monitoring cost requirements.

150. Provision 19.6.3.1 provides that outdoor releases of food-related and non-food-related GMOs not otherwise provided for are prohibited activities.

151. Professor Heinemann has demonstrated that there is scientific uncertainty in terms of the risks, benefits and safety of GMOs. Professor Heinemann also addresses the specifics of Professor Shepherd's submission in his evidence statement. Dr Small has highlighted that there is an economic benefit in controlling the release of GMOs as proposed in the PC18 and PC131 provisions and that the costs of the proposed provisions are moderate in scale.

152. Taking into account the expert evidence and the comprehensive analysis undertaken in the Section 32 Report, we consider that the application of a discretionary activity status for outdoor field trialling pursuant to 19.6.2 and a prohibited activity status for outdoor releases pursuant to 19.6.3.1, is appropriate under the wider precautionary and adaptive approach that underpins PC18 and PC131.

153. Overall, we consider that these provisions along with the complete package of proposed GMO provisions in PC18 and PC131 are the most appropriate way to achieve the purpose of the RMA.

Recommendation

154. We recommend that the Commissioners **decline** the relief sought.

8.0 Conclusions and Recommendations

155. After carefully considering the arguments raised in relation to each topic, we recommend that Plan Change 131 and PC18 be amended to the extent detailed in the preceding sections of this report and as illustrated in **Attachments 8 & 9.** We further recommend that those submissions and further submissions that request the recommended changes be accepted in whole or in part, and that all other submissions be declined.

AUTHORS

David Badham
Senior Planner
Barker & Associates

Tammy Wooster
Senior Policy Planner
Strategic Planning & Policy,
Far North District Council

ATTACHMENT 1 - Statement of Experience and Qualifications

David Badham

My name is David Badham. I am a Senior Planner at Barker and Associates. I hold a Bachelor of Planning with Honours (1st Class) from the University of Auckland. I am a Full Member of the New Zealand Planning Institute.

I have been employed in various resource management positions in local government and private companies since graduating in 2010. My predominant experience has been in statutory policy and resource consent planning in the Whangarei and Auckland regions, with additional experience working as an Environmental Adviser in Queensland, Australia and as an Iwi Liaison / Resource Management officer for Ngāti Whātua Ōrākei in Auckland. My experience includes, processing and reporting on resource consent applications, district plan formulation and policy advice for the Whangarei District Council, preparation of Assessment of Environmental Effects, monitoring and compliance of consent conditions in operational mining environments and providing planning advice for iwi organisations.

I confirm that the evidence on planning matters that I present is within my areas of expertise and I am not aware of any material facts which might alter or detract from the opinions I express. I have read and agree to comply with the Code of Conduct for expert witnesses as set out in the Environment Court Consolidated Practice Note 2014. I have also read and am familiar with the Resource Management Law Association / New Zealand Planning Institute "Role of Expert Planning Witnesses" paper. The opinions expressed in this evidence, are based on my qualifications and experience, and are within my area of expertise. If I rely on the evidence or opinions of another, my evidence will acknowledge that position.

Tammy Wooster

My name is Tammy Wooster. I am a Senior Policy Planner at FNDC. I hold a Bachelor of Management Studies from the University of Auckland and Masters of Resource & Environmental Planning with Honours (2 class) from the University of Massey. I am an Intermediate Member of the New Zealand Planning Institute.

I have been employed in various resource management positions in local government since 2007. My experience has been in statutory policy and resource consent planning with the FNDC. My experience includes, processing and reporting on resource consent applications, district plan formulation and policy advice.

I confirm that the evidence on planning matters that I present is within my areas of expertise and I am not aware of any material facts which might alter or detract from the opinions I express. I have also read and am familiar with the Resource Management Law Association / New Zealand Planning Institute "Role of Expert Planning Witnesses" paper. The opinions expressed in this evidence, are based on my qualifications and experience, and are within my area of expertise. If I rely on the evidence or opinions of another, my evidence will acknowledge that position.