Planning Committee

Notice of Meeting
A meeting of the Planning Committee will be held in the Council Chamber, Forum North, Whangarei on:

Thursday
15 September 2016
10.30am

Committee
Councilor G C Innes (Chairperson)
Her Worship the Mayor
Cr S J Bell
Cr S J Bretherton
Cr C B Christie
Cr P A Cutforth
Cr S J Deeming
Cr S M Glen
Cr P R Halse
Cr C M Hermon
Cr G M Martin
Cr B L McLachlan
Cr S L Morgan
Cr J D T Williamson
Maori Advisor (Non voting) J Chetham
Planning Committee  
Terms of Reference

Chairperson
Councillor G C Innes

Members
Mayor
Section 41A(5) of the Local Government Act 2002 provides that the Mayor is a member of each committee of the territorial authority

Maori Advisor (non voting) J Chetham

Attendance at Meetings
The Chief Executive Officer, Group Managers, Department Managers and such other Council Officers as deemed necessary may attend committee meetings.

Quorum
A quorum for a meeting of this Committee shall be:

- half of the members if the number of members, including vacancies, is even or,
- a majority of members, including vacancies, if the number of members is odd.

Delegated Authority
1. Does not have the powers of Council to act in the following instances as specified by Clause (32) Schedule 7 of the Local Government Act 2002:
   a) the power to make a rate; or
   b) the power to make a bylaw; or
   c) the power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan; or annual plan; or
   d) the power to adopt a long-term plan, annual plan, or annual report; or
   e) the power to appoint a chief executive; or
   f) the power to adopt policies required to be adopted and consulted on under this Act in association with the Long Term Plan or developed for the purpose of the local governance statement; or
   g) the power to adopt a remuneration and employment policy.

2. Does have the power of Council to enter into contracts up to a value of $3 million + GST, provided that such contracts are in accordance with the Long Term Plan and Annual Plan.

3. Does have the ability to appoint Sub-committees to deal with any matters of responsibility within the Committee’s terms of reference and areas of responsibility and to make recommendations to the Committee on such matters and provided that the Sub-committee
shall not have power to act other than by a resolution of the Committee with specific limitations where there is urgency or special circumstances.

4. Does have the ability to make decisions in accordance with the Terms of Reference.

5. The powers and functions of council to act in respect of the following:
   - Health Act 1956 and Regulations
   - Hazardous Substances and New Organisms Act 1996
   - Dog Control Act 1996
   - Fencing of Swimming Pools Act 1987
   - Building Act 2004
   - Council Bylaws
   - Resource Management Act 1991
   - Food Act 1981
   - Such other legislation relevant to the committee's terms of reference.

Terms of Reference

The determination and implementation of policies in respect of the regulatory functions and responsibilities of Council.

The approval for public notification of proposed reviews, designations, removal of designations and changes to the District Plan.

To hear and determine objections, appeals and applications as required in respect of the regulatory functions and responsibilities of Council (sub-delegated to the Exemptions and Objections Committee).

Areas of Responsibility

- Environmental Health
- Building Control (including Property Information and Land Information Memoranda)
- Subdivision, Land Use and Development Control
- District Plan Changes
- District Plan Administration
- Village Planning
- General Bylaw Administration
- Animal (dog and stock control)
- Hazardous Substances and New Organisms Control
- Parking Enforcement
- Noise Control
- Food Act
- Submissions on relevant legislation
- Strategic Planning and Policy related to the issues listed above
- Community sector liaison and support
- Community Safety, City Safe, CCTV
- Community Funding
- Community Halls
- Museum/Art Museum liaison
- Heritage, Culture, Arts and Creative Industries sector liaison
- Such other functions as may be delegated by Council from time to time.
OPEN MEETING

APOLOGIES

CONFLICTS OF INTEREST
Members are reminded to indicate any items in which they might have a conflict of interest.

INDEX

<table>
<thead>
<tr>
<th>Item No</th>
<th>Page No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Minutes of a Meeting of the Planning Committee held 10 August 2016</td>
</tr>
<tr>
<td>2.</td>
<td>Minutes of a Meeting of the Community Funding Subcommittee held 10 August 2016</td>
</tr>
<tr>
<td>4.</td>
<td>Audit on National Monitoring System</td>
</tr>
<tr>
<td>5.</td>
<td>Plan Change 131 - Genetically Modified Organisms - Decision</td>
</tr>
<tr>
<td>6.</td>
<td>Plan Change 124 – Built Heritage Operative Date</td>
</tr>
<tr>
<td>7.</td>
<td>Te Uiroroi Hapu Environmental Management Plan Whatitiri Hapu Environmental Plan</td>
</tr>
<tr>
<td>8.</td>
<td>Local Easter Sunday Shop Trading Policy</td>
</tr>
<tr>
<td>9.</td>
<td>Road Name – Resource Consents</td>
</tr>
</tbody>
</table>

Local Government Act 2002 Amendment Act 2012 – Decision making
Full consideration has been given to the provisions of the Local Government Act 2002 Amendment Act 2012 in relation to decision making and in particular the current and future needs of communities for good quality local infrastructure, local public services and performance of regulatory functions in a way that is most cost effective for households and businesses. Consideration has also been given to social, economic and cultural interests and the need to maintain and enhance the quality of the environment in taking a sustainable development approach.

Recommendations contained in this agenda may not be final decisions. Please refer to the minutes for resolutions.
Minister of a meeting of the Planning Committee of the Whangarei District Council held in the Council Chamber, Forum North on Wednesday 10 August 2016 at 10.32am

Present:
Cr G C Innes (Chairperson)

Her Worship the Mayor S L Mai, Crs S J Bretherton, C B Christie, P A Cutforth, S J Deeming, S M Glen, P R Halse, G M Martin, B L McLachlan, S L Morgan, J D T Williamson and J Chetham (10.38am)

Apologies:
Crs S J Bell and C M Hermon

Moved: Cr Innes
Seconded: Her Worship the Mayor

“That the apologies be sustained.”

CARRIED

In Attendance:
Chief Executive (R Forlong), Group Manager District Living (P Dell), Governance Manager (J Marris), Policy and Monitoring Manager (P Waanders), Principle Planner (M McDonald), Team Leader, Futures Planning (K Grundy), Senior Strategic Planner (T Horton), Executive Assistant (J Crocombe) and Senior Meeting Co ordinator (C Brindle)

1. Confirmation of Minutes of a Meeting of the Planning Committee held on 13 July 2016

Moved: Cr Williamson
Seconded: Cr Deeming

“That the minutes of the meeting of the Planning Committee held on Wednesday 13 July 2016, having been circulated, be taken as read and now confirmed and adopted as a true and correct record of proceedings of that meeting.”

CARRIED


Moved: Cr Martin
Seconded: Cr Glen

“That Council:

a) Note the District Living Group Month report for July 2016.”

CARRIED

J Chetham joined the meeting at 10.28am during discussion on Item 2.
3. **UNISA: Upper North Island Key Sector Trends and Labour Demand**

   **Moved:** Her Worship the Mayor  
   **Seconded:** Cr Cutforth

   “That the Planning Committee:

   a) Receives the report;

   b) Approves staff to work with UNISA and other stakeholders to refine the proposed recommendations as set out in the UNISA report (attachment 1) and identify any specific actions for Whangarei District Council.”

   **CARRIED**

4. **Blue/Green Network Strategy**

   **Moved:** Cr Bretherton  
   **Seconded:** Her Worship the Mayor

   “That the Planning Committee:

   a) Adopts the Blue/Green Network Strategy for Whangarei City.”

   **CARRIED**

5. **New Road Names – Resource Consents**

   **Moved:** Cr Martin  
   **Seconded:** Cr Morgan

   “That the new private right of way at Karanui Road be named Pekapeka Place.”

   **CARRIED**

The meeting closed at 11.23am

Confirmed this 15th day of September 2016

G C Innes (Chairperson)
2. Minutes: Community Funding Subcommittee  
Wednesday, 10 August 2016

Minutes of a meeting of the Community Funding Subcommittee of the Planning Committee held in the Council Chamber Forum North on Wednesday 10 August 2016 at 8.30am

Present:
Cr S J Deeming (Chairperson)
Her Worship the Mayor S L Mai, Crs S M Glen, G M Martin and B L McLachlan

In Attendance:
Group Manager District Living (P Dell), Community Services Manager (O Thomas) and Senior Meeting Coordinator (C Brindle)

1. Performing Arts Fund

Moved Cr McLachlan  
Seconded Cr Glen

“That the Community Funding Sub-Committee:

a) Approves grant allocations from the 2016-2017 Performing Arts Fund as follows:
   i. Waipu Centennial Trust Board for Mamma Mia - $4,250
   ii. Whangarei Theatre Company for The Sound of Music - $3,250
   iii. Opera North for Opera in the Garden 2017 - $3,000
   iv. Taitokerau Talent (under Northland Performing Arts Charitable Trust) for 4 Star Whetu Wha - $2,500
   v. Company of Giants (under Northland Performing Arts Charitable Trust) for Milk and Honey - $2,000;

b) Declines grant allocations from the 2016-2017 Performing Arts Fund as follows:
   i. Tim Bray Productions for A Lion in a Meadow
   ii. Whangarei Pipe Band for Celtic Connexions II;

c) Requests staff to invite Opera North Incorporated to apply in the next round of the Transition Fund for the annual Opera in the Garden event.”

CARRIED

2. Community Fund (Round 1) 2016-2017 allocations

Moved Cr Glen  
Seconded Cr McLachlan

“That the Community Funding Sub-Committee

a) Approves grant allocations from the 2016-2017 Community Fund (Round 1) as follows:
   i. Northland Tennis Seniors (under Tennis Northland Inc) for National Seniors Tennis Teams Event - $5,000
ii. Tim Bray Productions for A Lion in a Meadow - $4,000
iii. Collaborationz Trust for Collaborationz 2017 - $2,500
iv. Tiaho Trust for International Day of People with Disabilities - $2,300
v. Barnardos New Zealand for Father's Day Event - $1,950
vi. Mountains to Sea Conservation Trust for Community Guided Snorkel Days - $1,800
vii. Prison Fellowship New Zealand for Angel Tree Christmas programme - $1,750
viii. Marsden Lions for Ruakaka Christmas Parade - $1,610
ix. Whangarei Steam and Model Railway Club for tram safety glass and skylight - $1,576
x. Northland TV Charitable Trust for Otangarei youth film project - $750.

b) Declines grant allocations from the 2016-2017 Community Fund (Round 1) as follows:
   i. Te Reo o Te Tai Tokerau for Nga Manu Korero
   ii. Whangarei Youth Space Trust for Inspirational Speaker Series
   iii. Bream Head Conservation Trust for community revegetation project
   iv. Whangarei Intermediate School for Ki o Rahi community day
   v. SeniorNet Bream Bay for tutor training and out of pocket expenses
   vi. Lion's Den Ministries for women's fitness and self-defence classes
   vii. Whangarei Vegans (under NZ Vegetarian Society) for Vegan Expo
   viii. Waipu Centennial Trust Board for Mamma Mia
   ix. Packard and Pioneer Museum (Anawhata Museum Trust) for educators information evening
   x. Camera Obscura Whangarei (under Northland Craft Trust) for education and digital tools.

c) Requests staff to invite Marsden Lions to apply in the next round of the Transition Fund for the annual Ruakaka Christmas Parade.”

   CARRIED

The meeting closed at 8.36am

Confirmed this 15th day of September 2016

S J Deeming (Chairperson)
3. District Living Monthly Report - August

Reporting officer: Paul Dell (Group Manager District Living)
Date: 15 September 2016

1 Purpose

To report on the District Living Group’s activities for the Month.

2 Recommendations

That the Planning Committee:

a) Note the District Living Monthly report for August 2016.

b) Confirms a Hearing Commission (Panel) consisting of three independent commissioners to hear and consider submissions on Proposed Plan Change 94B Papakāinga and make recommendations to Council.

c) Confirms the appointment of independent Commissioner Willow-Jean Prime to sit on the hearing panel (comprising of three independent commissioners) to hear and consider submissions on Plan Change 94B Papakāinga.

3 Group Manager’s Overview

Building activity continues to grow with 62 new residential consents being lodged compared to 40 for the same time last year. Compliance with timelines for both Building and Resource Consents is excellent but putting pressure on staff.

Enquiries on the Rural Plan Changes have been relatively quiet. Many of the enquiries have been about the use of Council’s website to view Maps and Rules.

The High Court has also released its decision on the appeal by Federated Farmers on GMO controls by councils. The High Court has upheld the Environment Court’s decision that Regional Councils are entitled to make provisions for the control of GMO’s in Regional Policy Statements.

4 Significance and Engagement

Having considered the Significance and Engagement Policy this proposal or decision is not considered significant and the public will be informed via agenda publication on the website and Council News

Attachments

District Living Monthly report August – Trim 16/95012
District Living Monthly Report August

Resource Consents Manager

Following a slight drop-off in the number of application received in July, August numbers have again increased with just under 50 being received. Post approvals applications (subdivisions) have continued to fall from the high June figures (41) to 25. This is below the monthly average for the first time since May but does follow the general pattern of peaks and troughs.

The number of resource consents processed to a decision is the highest (54) since March and for the first time in 5 months the number processed exceeds the number received.

The hearing of the notice of requirement for the proposed new water treatment plant at Whau Valley Road was held during August. The designation has been approved with conditions. The appeal period expires on 21 September 2016.

Policy and Monitoring Manager

The next group of plan changes are reaching various levels of finality whilst the notification of the Rural Plan Changes is progressing well. Fewer than expected public enquiries are being received which may increase as the public digest the maps and the provisions that will be applicable on their properties.

A request for Expression of Interest to be involved in the Urban Plan Changes has been sent out and advertised. With all of the staff available being involved in the Rural Plan Changes we are experiencing capacity issues. Some plan changes are highly technical i.e. lighting and hazardous substances, where experts have to be brought in.

Most of the projects of the Futures team have been completed and full attention has been given to the Inner City Development Plan and new initiatives that will determine the future growth of the city. Both 20/20 Momentum and the Blue/Green Network Strategy have been published and the Futures team will now be working on the implementation proposals.

Building Compliance Manager

The July – August figures have seen 156 building consent applications received, 157 building consents issued and 97 consents suspended for the month. The building sector activity has rallied in this winter period. The number of suspended applications is at 62% and this has decreased from last month’s figure of 73%. The ratio between commercial and residential consents has remained similar to last month 95% residential and 5% commercial for building consents issued.

The strength of the residential sector has continued with new dwellings featuring as 46% of all building work.

The combined value of building work is at $28,842,564.00 and this is a nett increase of $11,234,373.00 and continues to show strength in the building industry sector. The financial split between residential and commercial shows the commercial area is 3% of the market value /share in dollars (only) which continues to support the current confidence in the residential market.
The building industry (construction) has a continuing high level of inspections with 835 inspections performed for the month and Councils delivery within 48 hours of customer request is at 95% and regularly under pressure. The demand has increased.

The LIM area timeframe is at 100% with 151 LIMs received and 151 issued. This gives another strong indication of confidence and future activity in the housing market (real estate sector). The 10 day timeframe for compliance has been achieved this month and is being managed on a daily basis. Potential Contamination searches of Council records to meet the requirements for National Environmental Standard for contamination in soil has seen an increase of application with 24 received and 19 issued we are meeting the 20 day timeframe requirement.

Regulatory Services Manager

The Whangarei District Licensing Committee’s (DLC) annual report to the Alcohol Regulatory and Licensing Authority (ARLA) for the year ending 30 June 2016 recorded the following statistics:

In accordance with the Sale and Supply of Alcohol Act 2012 and during the review period the DLC determined a total of 661 applications (compared to 613 last year), which equates to an 8% increase in workload this year. These were made up of 353 applications for manager certificates; 168 applications for special licences and 84 licence renewal applications. Seventeen (17) of these were opposed applications, which needed to be determined by a full three person Committee.

During the year WDC Licensing Inspectors conducted 252 inspections of licensed premises or events.

Police and Northland District Health Board staff tested 74 premises during Controlled Purchase Operations (CPO’s), which resulted in a total of 3 sales or failures.

The district currently has 187 liquor licensed premises holding a total of 200 licences. These are made up of 88 x On-licences; 55 x Off-licences and 57 x Club-licences.

Community Services Manager

This reporting period has been busy as usual. The contestable funding has all but come to an end, for the calendar year, after this last month. In between times our Community Funding Officer has been compiling the annual report on all of the organisation’s “grants, concessions and loans” activity.

Community Safety has been steady with our operational networks and services being maintained and the CCTV Cameras on Pohe Island coming online. The team have also been working with the New Zealand Health Promotion Agency (HPA) to assist with the evaluation of Whangarei’s One Way Door Policy.

All of our Advisory Groups have remained active, with the theme of accessibility being a common trait from this month’s meetings. Finally, our quarterly promotion of school holiday programmes has been prepared as the end of term three draws near.
Resource Consents

The Resource Consents Manager (M McDonald) reports for August

Volume of Resource Consents Received

Volume of Post Approval (S223/S224) Applications Received
Volume of Resource Consents Processed

Difference between Consents Received and Processed
Distribution of when a decision is made for Non-Notified Resource Consent and other Permission Applications

Of the 15 consents processed in 15 working days or less, 4 were 'quick consents', being 10 days or less.

Performance Indicators

<table>
<thead>
<tr>
<th>Application</th>
<th>Timeframes</th>
<th>Volume</th>
<th>August (%)</th>
<th>Year’s average to date (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resource Consents</td>
<td>Consents processed with statutory timeframes</td>
<td>49</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Other Permissions</td>
<td>Processed within statutory timeframes</td>
<td>5</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>223 Issued</td>
<td>Within 10 working days</td>
<td>9</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>224 Issued</td>
<td>Within 10 working days</td>
<td>9</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>
Current Volume of Consent Applications

<table>
<thead>
<tr>
<th>Date received</th>
<th>Type</th>
<th>Agent</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/08/2016</td>
<td>SD</td>
<td>Cato Bolam</td>
<td>more detailed AEE required; need to consider rural plan change</td>
</tr>
<tr>
<td>4/08/2016</td>
<td>SD</td>
<td>N/A</td>
<td>DP Assessment, NES, Consent Notice and AEE required</td>
</tr>
<tr>
<td>15/08/2061</td>
<td>SD</td>
<td>N/A</td>
<td>suitable survey plan required; need to submit as s221 not s127</td>
</tr>
<tr>
<td>22/08/2016</td>
<td>LU</td>
<td>N/A</td>
<td>AEE and assessments against DP, affected parties, Part 2, and NES required. CT also required.</td>
</tr>
<tr>
<td>23/08/2016</td>
<td>LU</td>
<td>Designgroup Architects H &amp; K</td>
<td>NES required; assessment against Part 2 required</td>
</tr>
</tbody>
</table>

Appeals and other Matters

The appeal by Engebretsen & Song (Taurikura Store) was heard by the Environment Court on 15-16 August. The decision has been reserved.

The appeals relating to a proposed camp ground at Pataua North are continuing to progress following mediation in June. Parties are working towards an agreement that may see the appeal settled.
Policy and Monitoring

The Policy and Monitoring Manager (P Waanders) reports for August

District Plan

i) Plan Changes 85 A – D Rural, 86 A Rural (Urban Expansion) Environment, 86 B Living Environment Zoning and 87 Coastal Area

The proposed Plan Changes were publicly notified on 10 August 2016. Submissions close on 4 October 2016. Staff are answering phone and email queries, and meeting with individuals, to provide further information and to outline the likely effects of the proposed plan changes.

ii) Plan Changes 88 A – E Urban

Staff are considering zoning criteria and drafting provisions and section 32 reports. A request for Expression of Interest has been advertised for technical support for drafting of Living Environments.

iii) Plan Change 94B Papakāinga

Further submission period closed on 23 August 2016. 33 further submission points have been received. The plan change hearing has been scheduled for mid November 2016. To maintain process of the plan change it is necessary to hold a hearing as soon as possible which would fall within the Council election period. Therefore it is recommended that a panel of three independent hearing commissioners are delegated in accordance with sections 34 and 34A of the Resource Management Act (the Act) to hear, deliberate, and make a recommendation to Council on this plan change under the First Schedule of the Act.

Due to commissioner availability and the nature of this plan change it is recommended that an independent commissioner who has tikanga Maori expertise but is not currently on the Whangarei District Council delegated list of commissioners be appointed to sit on a hearing panel of three independent commissioners.

iv) Plan Change 100 – Sites of Significance to Maori

An update was provided to Te Kārearea Strategic Partnership Forum 17 August 2016. A meeting was held with the hapū project coordinator to devise a plan to complete the mapping work within the next few weeks. The opportunity at Te Kārearea to discuss with relevant hapū reps was utilised.

At this time, Patuharakeke have completed all the work and deposited the information with Council.

Ngati Hine has completed the mapping but there have been difficulties in finalising the Polygon (area) info. Ngati Hine have lodged their database with Council at the end of August. Feedback and acceptance of the database will be provided.

Ngati Wai have completed the mapping but due to a computer upgrade have had a problem of data access and corruption. Meetings have been had with Ngatiwai to sort their data from Google Earth and as a consequence information has been received and is to be vetted by the GIS team.

Ngati Kahu and Ngati Waiairiki. Council has received the first set of data but it requires some further Meta data info with it. This is ongoing and a meeting will be set up to discuss with their coordinator.

Ngati Hau. Staff are working with Ngati Hau on data format.
Te Parawhau. No data has been received yet.

This project has been a challenge for a number of the Iwi/Hapu due to the pressure on resources for the Waitangi Tribunal hearings, capacity, and also issues with data management.

We are currently working through these issues with the various Iwi/Hapu. We will also discuss with Te Huinga to seek their assistance.

In summary the majority of the mapping is complete and the focus is on addressing issues of data transfer and supporting Meta data.

v) Plan Change 113 – Ruakaka Racecourse
Changes to the provisions have been made to comply with the outcome of the Auckland Council declaration on ‘Management Plans’ and staff are working with parties to reconcile this with the mediated position. It is a slow process with forward and backward referrals to parties.

vi) Plan Change 131 - GMO
The hearing commissioners’ recommendation report has been received, being reported as a separate agenda item.

vii) Plan Change 124 - Built Heritage
The decision was notified on 20 July 2016, no appeals have been lodged with the Environment Court. The plan change is reported as a separate agenda item to confirm the operative date.

viii) Plan Change 109 - Transport
Staff are drafting provisions and the section 32 evaluation report. Request for Expression of Interest has been advertised for technical support on the drafting.

ix) Plan Change 90 – Coastal Hazards
A workshop was held with Council on 12 July 2016 to consider the draft plan change. Feedback from the workshop and legal review are being incorporated in to the draft plan change. Further work is underway to prepare a communication strategy for the pre-notification consultation.

x) Plan Change 114 – Landscapes
The proposed Plan Change was publicly notified on 10 August 2016. Submissions close on 4 October 2016. Staff are answering phone and email queries, and meeting with individuals, to provide further information and to outline the likely effects of the proposed plan change.

xi) Plan Change 102 – Minerals
The proposed Plan Change was publicly notified on 10 August 2016. Submissions close on 4 October 2016. Staff are answering phone and email queries, and meeting with individuals, to provide further information and to outline the likely effects of the proposed plan change.

xii) Plan Change - 115 Open Space
Council staff are undertaking initial scoping and background research into the Open Space Plan Change examining issues and options and drafting provisions. Staff are also considering zoning criteria and mapping. A request for quotes is being sent out for technical support.
### District Plan Change Progress

<table>
<thead>
<tr>
<th>Plan Change #</th>
<th>In Progress</th>
<th>Completed</th>
</tr>
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<tbody>
<tr>
<td>PC85</td>
<td></td>
<td></td>
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<tr>
<td>PC86A&amp;B</td>
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<tr>
<td>PC87</td>
<td></td>
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</tr>
<tr>
<td>PC90</td>
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</tr>
<tr>
<td>PC94B</td>
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<td>PC131</td>
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<tr>
<td>PC132</td>
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</tbody>
</table>

### Plan Change Details

- **Rural**
  - PC85
  - PC86A&D
- **Urban Expansion Environment**
  - PC87
- **Coastal Area**
  - PC90
- **Coastal Hazards**
  - PC94B
- **Papakāinga**
  - PC100
- **Site of Significance to Maori**
  - PC102
- **ME A**
  - PC109
- **Ruakākā Racecourse**
  - PC113
- **Landscape**
  - PC114
- **Open Space**
  - PC115
- **Built Heritage**
  - PC124
- **GMO's**
  - PC131
- **Hihiaua**
  - PC132

### Decision Timeline

- **Mediation Court Hearing**
  - 21.9.15
- **Hearing Commenced**
  - 21.11.16
- **Report**
  - 17.3.16
- **Consultation**
  - 21.10.14
- **Council Workshop**
  - 11.6.15
- **Drafted**
  - 12.10.16
- **Outline of Proposal**
  - 31.7.16
- **Submissions Close**
  - 4.10.16
- **Public Notification**
  - 10.8.16
- **Accepted by Council**
  - 13.7.16
- **s32 Report**
  - 13.3.13
- **Rural Urban Expansion Environment**
  - PC86A&D
- **Coastal Area**
  - PC87
- **Coastal Hazards**
  - PC90
- **Papakāinga**
  - PC94B
- **Site of Significance to Maori**
  - PC100
- **ME A**
  - PC102
- **Ruakākā Racecourse**
  - PC109
- **Landscape**
  - PC113
- **Open Space**
  - PC114
- **Built Heritage**
  - PC124
- **GMO's**
  - PC131
- **Hihiaua**
  - PC132

### Key Dates

- **Appeals Resolved**
  - 30.8.16
- **Appeal Period Closed**
  - 30.8.16
- **Hearing Commenced**
  - 21.11.16
- **Report**
  - 17.3.16
- **Consultation**
  - 21.10.14
- **Council Workshop**
  - 11.6.15
- **Drafted**
  - 12.10.16
- **Outline of Proposal**
  - 31.7.16
Plan Formulation

a) Implementing the Urban Growth Strategy

PC86A and B seek to implement the Urban Growth Strategy. Notification of PC86B will take another step towards implementing the Urban Structure Plans with the release of additional land zoned Living 1 and 3 Environment in the fringe of Whangarei City. Plan Changes 88A – E will review the urban area development.

b) Coastal Management Strategy

PC85C Rural Villages, PC87 Coastal Area and PC90 Coastal Hazards seek to implement the Coastal Management Strategy, the New Zealand Coastal Policy Statement 2010 and the Regional Policy Statement, which became partly operative on 9 May 2016. PC 85C and PC87 were publicly notified on 10 August 2016. Submissions close on 4 October 2016

c) Urban Design

Urban Design Guidelines for the District Plan are progressing. Discussion with planners over the amenity levels we would like to achieve within each urban zone are continuing. Design work with the landscape architects on Carpark to Park and Bank Street Revitalisation is being undertaken. The urban designer is working towards her architectural registration with the help of an Infrastructure and Services project engineer, developing skills in project management.

d) The Northland Regional Policy Statement (RPS)

The Regional Policy Statement for Northland has become partly operative on 9 May 2016. The territorial authorities have to do Plan Changes to the District Plan to give effect to the RPS ie the District Plan has to implement the RPS, not only having to be consistent or having regard to it. The RPS and links to the maps can be found on the NRC website at http://www.nrc.govt.nz/newrps.

The RPS will also trigger the revision of the Regional Plans such as the Water and Soil Plan, Air Quality Plan and the Coastal Plan into one Regional Plan – all of which will require further District Plan amendments. In terms of sec 75(4) (b) of the RMA, the District Plan cannot be inconsistent with these Regional Plans. The Draft Regional Plan was notified on 8 August for the first round of public comment and can be found on the NRC website http://www.nrc.govt.nz/newregionalplan. This round of comments closes on 23 September 2016.

Strategic Planning

e) Central Whangarei Structure Plan

Staff are working to finalise draft sections of the expanded Inner City Development Plan (ICDP), with the first half due to be completed next month. Future zoning provisions and related urban form matters continue to be worked through in conjunction with the District Plan team.

f) Whangarei 20/20 Momentum

The final document was approved by Council on 27 July 2016. Staff are using this document in meetings with stakeholders and external agencies to promote Council’s vision for the city centre. Copies are being provided and the document will be on Council’s website.
g) Village Plans

The Village Plan program is progressing well.

The Hikurangi Village Plan programme is now focused on improvements to the southern entrance on to George Street from State Highway 1. Safety approval from NZTA has been obtained for the project. Staff are now working with Revive Hikurangi and NZTA to identify a contractor.

The Otangarei Village Plan feasibility study for the rugby clubrooms is has been finalised. Staff are working with the club to establish the next steps for the project. Scoping work is underway for a master plan for the Central Reserve.

The Parua Bay Village Plan programme has finished.

The Kamo Village Plan programme is focusing introducing new murals. Potential artists have been identified and scoping work is underway. Planning work is underway for a Kamo Heritage Walk. Heritage information has been gathered from local sources and Heritage New Zealand / Pouhere Taonga.

h) Harbour Catchment Groups

The next meeting of the Whangarei Harbour Catchment Group will be in November 2016. Staff presented the Catchment Plan to Te Kārearea on 20 July 2016.

The Kaipara Harbour Catchment Group meets on a quarterly basis.

The Kaipara Moana Working Party met on the 26 August to discuss the work program to prepare for the future Treaty process. Whangarei District Council will work closely with Northland Regional Council, Kaipara District Council and Auckland Council on progressing this work.

i) State of the Environment Monitoring and Reporting

The Blue/Green Network Strategy was adopted on 10 August by the Planning Committee. The document has been sent for printing.

Staff attended the EDS conference, Biodiversity Northland quarterly meeting and Kiwi Coast quarterly meeting. Staff were also involved in discussions around the change in community planting but due to community concerns it will not be able to be resolved before the end of the planting season in September.

Several staff assisted with the judging of the Northland schools science fair on 29 August 2016.

j) UNISA

Whangarei District Council is leading a project called the ‘Upper North Island Story’ which will produce an infographic style document highlighting the key trends and statistics from UNISA lead research projects. A workshop involving relevant staff was held on the 15 August to progress the project which will be finalised in November.

k) Bank Street Revitalisation Group

The draft visual concept plan has been received. The initial document is now being discussed with internal staff.

l) GMOs

Auckland Council has adopted the recommendations from the Independent Hearings Panel for the Auckland Unitary Plan to which WDC was a party.
The GMO provisions based upon the draft plan provisions and section 32 analysis produced by the Inter-council Working Party on GMOs will remain in the Unitary Plan. An agenda item on the WDC GMO plan change is included for this meeting. A similar agenda item will be going to the FNDC in September.

m) Resource Consents Monitoring /Development Report

Data collection and analysis has begun on the 2015/16 resource consents monitoring/development report. In addition to meeting statutory requirements, the report serves to assist both general public queries and internal decision making. The information collected on both procedural and substantial issues is useful for planning purposes and can assist with district plan making and state of the environment monitoring. The data for the National Monitoring System for 2015/2016 has been submitted to the Ministry for the Environment. The Audit on previous inputs to the NMS is included as a separate item in the Agenda.

Building Compliance

The Building Compliance Manager (P Cook) reports for August

Building Inspection Numbers

![Building Inspection Numbers Graph](image-url)
Value of Building Consents

Lodged Issued Suspended
### Performance Indicators

<table>
<thead>
<tr>
<th>Service</th>
<th>August (%)</th>
<th>Year's average to date (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Consents</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>LIMs</td>
<td>91%</td>
<td>91%</td>
</tr>
<tr>
<td>LIMs <em>(Statutory Requirement)</em></td>
<td>100%</td>
<td>100%</td>
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<tr>
<td>PIMs</td>
<td>99%</td>
<td>99%</td>
</tr>
<tr>
<td>Inspections</td>
<td>95%</td>
<td>95%</td>
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</table>

### Building Consents Issued - Commercial and Residential Percentages

![25th July - 26 August 2016 Pie Chart]

- **Residential New Dwellings**
  - Value: $22,978,059.00
  - 46%

- **Commercial Consents**
  - Value: $975,000.00
  - 2%

- **Residential Value**
  - $25,167,569.00
  - 52%
New Dwellings Trend

25 July 2016 - 26 August 2016
Regulatory Services

The Regulatory Services Manager (G Couchman) reports for August

Environmental Health

The following is a summary of inspections/samples/notifications addressed

<table>
<thead>
<tr>
<th>Item</th>
<th>August</th>
<th>Year to date cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of inspections carried out on food premises</td>
<td>132</td>
<td>208</td>
</tr>
<tr>
<td>Number of registration applications processed under the Food Act</td>
<td>11</td>
<td>20</td>
</tr>
<tr>
<td>Number of verifications undertaken under the Food Act</td>
<td>10</td>
<td>24</td>
</tr>
<tr>
<td>Number of inspections carried out on other premises e.g. hairdressers, mobile shops, camping grounds</td>
<td>12</td>
<td>20</td>
</tr>
<tr>
<td>Number of water samples taken either at non-reticulated food premises or marine sampling/fresh water sampling</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Number of Health Act nuisances e.g. odour, noise, dust, drainage, rodents, offal etc</td>
<td>10</td>
<td>16</td>
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<tr>
<td>AEE – Assessments of environmental effects including monitoring</td>
<td>2</td>
<td>5</td>
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Premises Inspection Grading

Each month inspections of food premises are undertaken prior to their annual registration

This annual registration inspection includes an assessment of the premises in terms of Council’s Food Premises Risk Evaluation System which assesses four areas of performance

1. Premises layout
2. Food hygiene conduct and practices
3. Cleaning and sanitising
4. Food handler training

A grade is allocated to the occupier of each premise from this assessment

Food premises gradings

<table>
<thead>
<tr>
<th>Grade</th>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Cafe Latino</td>
<td>Mobile Coffee Shop, Whangarei</td>
</tr>
<tr>
<td></td>
<td>Eagle Sushi Bar</td>
<td>95 Kamo Road, Kensington, Whangarei</td>
</tr>
<tr>
<td></td>
<td>Suk Jai Thai Restaurant</td>
<td>93 Kamo Road, Kensington, Whangarei</td>
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<tr>
<td></td>
<td>King’s Mart</td>
<td>18 John Street, Whangarei</td>
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<tr>
<td></td>
<td>Khane Bahar Indian Restaurant</td>
<td>2/95 Kamo Road, Whangarei</td>
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<tr>
<td></td>
<td>Gengy’s Restaurant</td>
<td>62 Walton Street, Whangarei</td>
</tr>
<tr>
<td>Business Name</td>
<td>Address</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>--------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Walton Street Cafe</td>
<td>67 Walton Street, Whangarei</td>
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<tr>
<td>Strikers Cafe</td>
<td>129 Port Road, Whangarei</td>
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<tr>
<td>Rick's Bakery</td>
<td>Holyground Campground, 1 Wharf Road, Parua Bay, Whangarei</td>
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<tr>
<td>Cuppacakes</td>
<td>4 John Street, Whangarei</td>
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<tr>
<td>The Baker’s Crust</td>
<td>81 Port Road, Whangarei</td>
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<tr>
<td>Land and Sea Cafe, Bar and Eatery</td>
<td>Unit 1, Rauiri Drive, Marsden Point, Whangarei</td>
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<tr>
<td>Judge House of Ale</td>
<td>Walton Street, Whangarei</td>
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<tr>
<td>Pinto Thai Cuisine &amp; Catering</td>
<td>4a The Heights, Reotahi, Whangarei</td>
<td></td>
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<tr>
<td>Onerahi Fish &amp; Takeaways</td>
<td>112 Onerahi Road, Onerahi, Whangarei</td>
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<tr>
<td>Go Go Espresso</td>
<td>Reyburn Street, Whangarei</td>
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<tr>
<td>NZ Fudge Farm</td>
<td>Shop 3, Quay Street, Town Basin, Whangarei</td>
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<tr>
<td>Parua Bay Fish &amp; Chip Shop</td>
<td>1037 Whangarei Heads Road, Parua Bay, Whangarei</td>
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<tr>
<td>Gas Parua Bay</td>
<td>Whangarei Heads Road, Parua Bay, Whangarei</td>
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<tr>
<td>Airport Cafe</td>
<td>59 Handforth Street, Onerahi, Whangarei</td>
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<tr>
<td>Big Tomato Bakery</td>
<td>Marsden Point Highway, Ruakaka, Whangarei</td>
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<tr>
<td>Kingsway Dairy</td>
<td>11a King Street, Hikurangi, Whangarei</td>
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<tr>
<td>JC’s Organic Heirlooms</td>
<td>175 Apotu Road, Kamo, Whangarei</td>
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<tr>
<td>Cafe Narnia</td>
<td>74 Kamo Road, Kensington, Whangarei</td>
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<tr>
<td>D’Nari Foods Tikipunga</td>
<td>81 Paramount Parade, Tikipunga, Whangarei</td>
<td></td>
</tr>
<tr>
<td>Sabres Ezi Meals</td>
<td>80 Station Road, Kamo, Whangarei</td>
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<tr>
<td>Meadow Park Store</td>
<td>1 Meadow Park Crescent, Tikipunga, Whangarei</td>
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<tr>
<td>Mean’s Vietnamese Cafe</td>
<td>11 Rathbone Street, Whangarei</td>
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<tr>
<td>Tikipunga Hot Bread</td>
<td>81 Paramount Parade, Tikipunga, Whangarei</td>
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<tr>
<td>Otangarei Superette</td>
<td>167 William Jones Drive, Otangarei, Whangarei</td>
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<tr>
<td>JJ’s Kitchen and Coffeehouse</td>
<td>Bank Street, Whangarei</td>
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<tr>
<td>The Daily Catch</td>
<td>19/81 Paramount Parade, Tikipunga, Whangarei</td>
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<tr>
<td>Calico Blue</td>
<td>10 Ridgeway Drive, Kamo, Whangarei</td>
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<tr>
<td>Bacio Bar Limited</td>
<td>31 Bank Street, Whangarei</td>
<td></td>
</tr>
<tr>
<td>Two Birds Cafe &amp; Restaurant</td>
<td>378 Marsden Point Road, Ruakaka, Whangarei</td>
<td></td>
</tr>
<tr>
<td>Kitchen Giggles</td>
<td>42 Puakeatua Road, Maungatapere, Whangarei</td>
<td></td>
</tr>
<tr>
<td>Grade B</td>
<td>Name</td>
<td>Address</td>
</tr>
<tr>
<td>---------</td>
<td>-----------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>Mega Cafe Whangarei</td>
<td>44 Porowini Avenue, Whangarei</td>
</tr>
<tr>
<td></td>
<td>Glez Coffee House</td>
<td>Lower Tarewa Road, Whangarei</td>
</tr>
<tr>
<td></td>
<td>Reduced to Clear</td>
<td>19 Lower Tarewa Road, Whangarei</td>
</tr>
<tr>
<td></td>
<td>Legend Sushi</td>
<td>507 Kamo Road, Kamo, Whangarei</td>
</tr>
<tr>
<td></td>
<td>Sun Wah Restaurant</td>
<td>13 Bank Street, Whangarei</td>
</tr>
<tr>
<td></td>
<td>Kings Takeaways</td>
<td>525 Kamo Road, Kamo, Whangarei</td>
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<td></td>
<td>Delights</td>
<td>103 Puriri Park Road, Maunu, Whangarei</td>
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<td></td>
<td>Boons Bakery</td>
<td>483 Kamo Road, Kamo, Whangarei</td>
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<td></td>
<td>Meganlicious</td>
<td>32 Tudehope Road, Matarau, Whangarei</td>
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<td></td>
<td>Rainbow Dairy</td>
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<td>Cameron Street Dairy</td>
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<tr>
<td></td>
<td>Onerahi Bakery</td>
<td>114 Onerahi Road, Onerahi, Whangarei</td>
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<td></td>
<td>Onerahi Hot Bread</td>
<td>122 Onerahi Road, Onerahi, Whangarei</td>
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<td></td>
<td>The Old Taurikura Store</td>
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<td></td>
<td>Estuary Restaurant</td>
<td>Kopipi Crescent, Ngunguru, Whangarei</td>
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<td>The Apprentice Cafe</td>
<td>Dyer Street, Whangarei</td>
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<td>Ruakaka Sushi Shop</td>
<td>Ruakaka Shopping Centre, Ruakaka, Whangarei</td>
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<td>Emperor Chinese Takeaway</td>
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<td></td>
<td>The Roast House</td>
<td>Ruakaka Shopping Centre, Ruakaka, Whangarei</td>
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<td></td>
<td>Zippy's Cafe</td>
<td>Mobile, Whangarei</td>
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<td></td>
<td>Soda Cafe</td>
<td>505 Kamo Road, Kamo, Whangarei</td>
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<td></td>
<td>Happy Dragon Takeaways</td>
<td>404 Kamo Road, Kamo, Whangarei</td>
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<td></td>
<td>Whau Valley Takeaways</td>
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<td>Grade C</td>
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<td></td>
<td>Otaika Takeaways</td>
<td>1 Otaika Road, Whangarei</td>
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<tr>
<td></td>
<td>Waipu Bakery</td>
<td>12 The Centre, Waipu, Whangarei</td>
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<tr>
<td></td>
<td>Maunu Hot Bread Shop</td>
<td>74 Maunu Road, Whangarei</td>
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<tr>
<td></td>
<td>Grade D</td>
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</tbody>
</table>
### Food Premises Grades

![Bar graph showing Food Premises Grades](image)

### Liquor Licensing Monthly Statistics

<table>
<thead>
<tr>
<th>Item</th>
<th>August</th>
<th>Year to date cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of liquor licensing applications received</td>
<td>45</td>
<td>102</td>
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<tr>
<td>Number of applications determined by the District Licensing Committee</td>
<td>46</td>
<td>98</td>
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<tr>
<td>Number of public hearings conducted by the District Licensing Committee</td>
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<td>1</td>
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<tr>
<td>Number of premises inspections (routine)</td>
<td>16</td>
<td>28</td>
</tr>
<tr>
<td>Number of premises inspections (monitoring operations)</td>
<td>1</td>
<td>1</td>
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### Regulatory Compliance

<table>
<thead>
<tr>
<th>Complaints investigation</th>
<th>August</th>
<th>Year to date cumulative</th>
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<tbody>
<tr>
<td>Total number of complaints received</td>
<td>28</td>
<td>757</td>
</tr>
<tr>
<td>Number of Building Act 2004 complaints</td>
<td>15</td>
<td>440</td>
</tr>
<tr>
<td>Number of Resource Management Act 1991 complaints</td>
<td>11</td>
<td>290</td>
</tr>
<tr>
<td>Number of Fencing of Swimming Pools Act 1987 complaints</td>
<td>2</td>
<td>24</td>
</tr>
<tr>
<td>Number of complaints resolved during the month</td>
<td>27</td>
<td>648</td>
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<tr>
<td>Total number of complaints still under investigation</td>
<td>65</td>
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<table>
<thead>
<tr>
<th>Compliance inspections</th>
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<tbody>
<tr>
<td>Number of land use resource consent conditions monitored</td>
<td>28</td>
<td>579</td>
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<tr>
<td>Number of Fencing of Swimming Pools Act 1987 inspections</td>
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## Enforcement actions

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<tr>
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<td>Number of abatement notices issued</td>
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<tr>
<td>Number of infringement notices issued</td>
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<tr>
<td>Number of Building Act – Notices to fix</td>
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<td>16</td>
</tr>
<tr>
<td>Number of Building Act – warrants to alleviate immediate danger</td>
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<td>0</td>
</tr>
<tr>
<td>Number of Building Act – dangerous/insanitary buildings</td>
<td>0</td>
<td>25</td>
</tr>
<tr>
<td>Number of prosecutions/other applications</td>
<td>0</td>
<td>0</td>
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## Resource Management Act/District Plan Complaints

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<thead>
<tr>
<th>Month</th>
<th>0</th>
<th>5</th>
<th>10</th>
<th>15</th>
<th>20</th>
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<td>May-16</td>
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<td>Jun-16</td>
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<td>Jul-16</td>
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<td>Aug-16</td>
<td>15</td>
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Pool Inspections

Environmental Northland

Excessive Noise Complaints
Community Services

The Community Services Manager (O Thomas) reports for August

Funding

Grants from the Community Fund (Round 1) and the Performing Arts Fund were allocated this month, with $23,236 and $15,000 allocated respectively.

Round 1 of the Creative Communities Scheme closed on 12 August and 24 applications were received seeking $89,034. The CCS assessment committee meets on 15 September to decide on the available fund of $33,392 for this round. An assessment of project reports was also provided to the committee.

Another focus for the reporting period has been preparing the Grants, Concessions and Loans Annual Report for 2015/16. It’s currently expected that this report will on the agenda of the September Council meeting.

The Community Funding Officer is currently meeting, in person and on site, all of the Annual Operating Grant recipients. Visits for the month included SeniorNet Bream Bay, Ruakaka Rec Centre, and Waipu Museum.

Coming up will be planning the maintenance reviews of the community halls, and establishing an Expressions of Interest process for electing new members to the Creative Communities Scheme assessment committee.

Safety

Reported activities to the City Safe Call Centre saw a slight increase over the past month in both calls for service from the public and in the number of Community Officer reported activities. Despite this increase, there has been a dramatic decrease in reported truancy and graffiti vandalism, along with skateboard bylaw breaches and dishonesty offending. The City Safe Community Officers have reported an increase in vehicles misusing the loading zone parking provided in the Laneway and vehicles speeding in the laneway, as well as, motorists running red lights at the intersection of Bank and Cameron Streets. These motorists have been reported for the parking breaches and the driving offending.

The night City Safe Community Officers patrol from midnight to 4:00am over the weekends and are continuing to have a positive effect on safety in the City Centre, with a continued downward trend in reported antisocial behaviour. Both the day and the night City Safe Community Officers are networking with the CCTV volunteers and Police, that ensures the best deployment of resources are allocated to where they are required most, resulting in an overall reduction on antisocial behaviour.
The CCTV volunteers have reported a continued decrease in the number of liquor ban breaches, however, for this period; there has been an increase in intoxicated persons and disorder, along with an increase in the number of bikes being ridden in the mall. The Police CCTV Volunteers, who monitor the Council's CBD and Town Basin camera network, work closely with the City Safe Community Officer patrols, the Whangarei Community Patrol (CPNZ), Police, and Council’s contracted security staff.

![City Safe Call Centre Totals V's 6-Month Average](image)

![Reported Total CCTV Activity - Incidents & Offences: Jul-Aug'15 to Jul-Aug'16](image)
Graffiti vandalism is being removed quickly by our D'Tag contractor, as well as, by other Council contractors and City Safe partners, resulting in maintaining a positive image for our City Centre, main arterial routes, suburbs and satellite towns. Graffiti vandalism for this period has slightly increased in the number of tags removed, but has dropped in the number of jobs attended, which is reflected in the high ratio of 5.6 tags removed per job, showing high-density tagging that is occurring in the suburbs and satellite towns, as the amount of reported graffiti in the CBD has dropped. Overall, however, the total amount of graffiti vandalism occurring remains to be relatively low, compared to the extensive tagging that occurred in 2014, particularly for the April-May period when tagging peaked at over 4,900 tags being removed for that period.
Advisory Groups

At their monthly meeting on 10 August, members of the Youth Advisory Group had the opportunity to view an educational road safety video directed at youth presented by Morag Van der Meer from Road Safety Northland.

Members of the Positive Ageing and Disability Advisory Groups (PAAG and DAG) had their monthly meetings on 16 and 19 August respectively. Both groups had conversations with Anita Child, the Northland Regional Council co-coordinator of the Total Mobility Scheme and Nick Marshall, WDC Engineer on the shared pathway to be constructed from Kamo to central Whangarei. PAAG and DAG members were extremely pleased to hear from Anita about the proposed new shopping route connecting Rose Street, Te Manawa-The Hub, and Okara Park, a service they had repeatedly requested from the NRC CityLink bus service over recent years. In the course of the conversation, it was clear that very few members of both groups were familiar with the accessible features of the CityLink bus fleet, so Anita offered to take those interested on a short bus journey to experience these.

DAG and PAAG members were interested to look at the plans for the Kamo shared pathway and commented on features that they felt would contribute to making the pathway safer and more accessible for the residents they represent. Suggestions included having a marker on the light poles that would make a site easily locatable when requesting assistance, or even for meeting up with others, and ensuring that seats offset from the path are on a solid stand. Members from both groups reiterated the importance of lighting, CCTV cameras and seating.

On 12 August at a quarterly meeting of hydrotherapy pool stakeholders, the progress of the disability parking area and disability changing room were discussed. Although progress of these projects is slow, work is well underway. The group also discussed long term planning because of their concerns for the present facility meeting future need, with an ageing population; this demand is unlikely to diminish. The demand has been exacerbated by the closure of the hospital’s hydrotherapy pool.

Arts Culture and Heritage

Creative Northland

In addition to the promotion of local events in the Culture, Heritage and Arts sector, the team at CHART have been engaged in supporting several projects as follows:

- Creative Northland Website: The design process has progressed as far as the final proofing for content. The new website is planned to go live in September.
• Quest Hotel Project: Obtaining quotes for the art hanging system and pursuing contacts for installation, with tentative end of August installation date.
• Northland Youth Summit: Workshop planning underway leading up to the 2017 Northland Summit event.
• Matariki Seven Sisters Exhibition: The exhibition has been returned to Kiwi North for permanent location.
• ‘Kaitiaki Manu’: Arranging the installation of the winner of the 2016 Sculpture Symposium.
• Camera Obscura: Giving funding advice for an application to Oxford Trust for October 2016.
• ‘Stand Together’ relocation project: The sculpture is in the final stages of repair
• Creative Communities: Under this scheme, written support provided for an African cultural exchange and advice given to at least six local creative projects.
• Mamma Mia Productions: Advice and marketing support provided.
• Te Whara Art Trail: Business case development and funding advice given.

Kiwi North

During the school holidays on 20 July, the Tautoro community funded a trip for local children (discounted by Kiwi North) to visit the Kiwi House and Museum and experience the Tuatara encounter and train rides. The final day of the “Moving Memories – The journey of our Cenotaph” exhibition was on 14 August. Kiwi North has extended the special offer of a 50% entrance fee discount for senior citizens to 25 September.

Several groups of international students have visited Kiwi North including these Otani Japanese students, a multinational group of Swiss, Italian, French and Thai studying at Kamo High School and a French student hockey team from Douai. On 9 August, Kiwi North hosted a regional multi-sport orienteering event with 120 High School students participating in 15 teams.

Whangarei Art Museum (WAM)

From 9 July to 18 September, visitors to the museum can enjoy ‘Waitangi Wahine’, an exhibition curated by Chris Doherty-McGregor in 2015 to commemorate the 175th anniversary of the signing of Te Tiriti o Waitangi/The Treaty. The exhibition brings together works in a variety of media from five renowned Mana Wahine artists with reputations for pushing boundaries; Robyn Kahukiwa, Linda Munn, Suzanne Tamaki, Tracey Tawhiao and Andrea Hopkins.
A body of work created by Wharehine-based artist Alexis Neal (Te Ati Awa) ‘Whenua Ki Te Whenua’ is showing until 19 September. This solo exhibition celebrates the life and legacy of Pura Te Manihera McGregor (1855-1920, Nga Poutama, Ngati Ruaka, Ngati Rangi), a mana wahine and prominent figure in the Whanganui community. An important part of Pura’s legacy was the bequest of her personal taonga, now housed by the Whanganui Regional Museum.

A provocative exhibition showing from 22 July - 29 August is Hine,Noa,Tapu, the work of Vanessa Wairata Edwards and Tia Ranginu. This “modern girls guide to the pros and cons of tapu and noa” is described by Edwards as scratching “the surface around women, and the restrictions, cultural ideals, social assumptions and generalizations placed upon the female gender”.
4 Audit on National Monitoring System

Reporting officer: Paul Waanders (Policy and Monitoring Manager)
Date of meeting: 15 September 2016

1 Purpose
To be informed of the National Monitoring System Audit undertaken on the Whangarei District Council.

2 Recommendation/s
That the Planning Committee:

a) Notes the findings of the National Monitoring System Audit undertaken on the Whangarei District Council.

3 Background
The Ministry for the Environment used to undertake a biennial survey of all local authorities’ activities in the field of the Resource Management Act. These surveys had a number of limitations and did not really measure the effectiveness of local authorities. In 2013 the National Monitoring System was trialled and in 2014 the first formal survey was conducted.

The information will help to:

- Align how information is captured, shared and reported with existing statutory processes and council processing systems.
- Know if the Ministry, other government agencies and local authorities (city or district councils, regional councils and unitary authorities) are fulfilling their roles and responsibilities under the RMA.
- Identify where intervention is required and what form of intervention is most appropriate.
- Measure the success of RMA reforms.
- Provide an evidence base for informing policy development under the RMA.
- Determine if common concerns and perceptions of the RMA are accurate.
- Identify examples of good practice that can be shared and promoted.
4 Statutory Requirement

In terms of section 27 of the Resource Management Act 1991 the Minister may require local authorities to supply information on:

a) How a local authority exercises any of its functions, powers or duties under this Act; and

b) How it is held by the local authority; and

c) How it may reasonably be required by the Minister.

This has to be supplied within 20 working days of a notice to supply information and a local authority further must not charge the Minister for the supply.

5 Audit

The Minister has appointed 4SIGHT consultant to undertake an independent audit of a selected group of councils' responses on the 2014/15 returns. Seven councils were randomly selected, being:

- Tararua District Council;
- Horowhenua District Council;
- Whangarei District Council;
- Christchurch City Council;
- Northland Regional Council;
- Wellington Regional Council; and
- Tasman District Council.

The purpose of the audit is to ensure data integrity and accuracy in NMS reporting, provide greater insights into council monitoring practices, and identify opportunities for improvements both in terms of council monitoring and the NMS. In particular, the audit process is intended to:

- Verify the information supplied to the Ministry in response to the 2014/15 reporting year to determine the accuracy of this information;
- Provide confidence to all parties that the NMS reporting is based on accurate information;
- Provide greater insights into council monitoring systems for key RMA processes and functions, their strengths and limitations;
- Identify opportunities to improve council processes and systems to collect and report data (not necessarily limited to the NMS); and
- Identify potential improvements to the NMS both in terms of the data collected and the methods of reporting used.

Therefore the aim was twofold, namely to audit the councils on their reporting and secondly to improve the National Monitoring System.

The 2016/17 request has already incorporated some of the suggestions made during the audit.
6 Audit Report

The audit was conducted on the 19th and 20th of May 2016 and a draft report was made available for comments and corrections. A copy of the report is attached as Attachment 1.

Three areas were audited:

a) Resource Consents;

b) Plan-Making (District Plan); and

c) Compliance and Monitoring.

a) Resource Consents

It was recognised that the number of resource consent applications are increasing and that due to shortage of staff, five consultants are contracted to assist in processing applications. The process of pre-application/pre-lodgement meeting conducted at WDC, is acknowledged which ensures the correctness of the application contents.

No resource consent applications are yet submitted electronically and filling in the NMS is still a manual task as Tech 1 is not yet geared to populate the NMS. This was a deliberate decision as MfE were making changes to the data collection requirements. To continually amend an automated system due to their changing requirements was not considered to be an appropriate response. Automated input will be further investigated at a later date.

There is some discussion about rejecting resource consent applications which do not comply with requirements whilst WDC try to assist applicants to obtain the information before an application is rejected. It was felt staff should be stricter, hence more applications now being reported in the monthly report as being rejected.

The responsible way in which section 92 additional information requests are handled was noted as well as the honesty with regard to section 37 extension of time and where time frames are not met that the discount policy is applied. The willingness to discuss issues with applicants over the phone to resolve these were noticed.

Inaccuracies were reported where there were differences between the paper file, Tech 1 and the NMS; mainly on processing dates. These were explained due to triple handling of the applications resulting in adding to recorded dates. It was accepted that there were less than 5 day differences recorded. Our view is that the errors were data entry errors only and none resulted in working days being recorded as less than actual. Automated entry may assist in relation to this.

One issue that was recorded was that extensions of processing days in terms of section 37 are normally not sent to applicants for agreement. This is accepted and measures have been put in place to ensure that section 37 requirements are met.

b) Plan-Making

The process of the rolling review was acknowledged on the time sheets that are now kept as a result of the NMS. It is recognised that Excel spreadsheets are used as Plan-Making does not have access to Tech 1. These remarks were submitted to the Information Services team to prioritise. Due to some spare capacity in the development of the Trilogy programme this matter is now being investigated with the aim to incorporate Plan Making into the corporate system.
It was recognised that completing the NMS is a manual operation with information transferred from project plans, TRIM and Excel spread-sheets – a very time consuming task.

The NMS concentrates on neither the formal process once the Plan Change is accepted or adopted but does not measure the preparation time (section 32) nor the long appeal process. The 2016/17 NMS now has references to these areas of plan making which in future will show more realistic processing timelines to be reported.

No inconsistencies were reported in Plan-Making.

c) Compliance and Monitoring

It was acknowledged that consent condition monitoring is only one of the functions of the team and that complaints and general compliance are all functions of the team, hence the issue of consents conditions monitoring sometimes falling behind. A compliance officer has returned from maternity leave and this should rectify the resource shortfall.

It was noted with interest that activities are determined either to be compliant or non-complying – no grades of compliance. Until all resource consent conditions have been complied with the consent is deemed non-compliant. The way how non-compliant activities are dealt with, is with three letters and a warning sent before enforcement is actioned.

It was recorded that Tech 1, TRIM and CRM works well for compliance and monitoring and that it was easy to transfer information to the NMS.

Staff did report that conditions of consents were sometimes not practical or enforceable and that they would have liked to be part of the conditions formulation rather than inheriting the conditions. This is to be discussed with the new Resource Consents Manager.

7 Opportunities for Improvement of the National Monitoring System

The main comment from staff about the NMS was the question “so what” – without a defined use of the date the system will just remain a collection of data without purpose. Outcome based systems are to be promoted.

The second point was to upload the information in the Cloud so councils can use it to improve their own systems.

Comments were also made about the potential that the system can have as part of the development capacity calculation.

Some technical changes were also suggested.

8 Attachments

National Monitoring System Audit 2014/15 – Summary of Findings for Whangarei Council (TRIM 16/79281)
# REPORT INFORMATION AND QUALITY CONTROL

| Prepared for: | Jessica Phillips  
|               | Resource Management Performance and Design Team  
|               | Ministry for the Environment |
| Authors:      | James Hendra  
|               | Senior Policy and Planning Consultant  
|               | Briar Belgrave  
|               | Policy and Planning Consultant |
| Document Name | NMS Audit - Summary of Findings for Tasman District Council (v2) |
| Version History | V1 – Draft for Council Review  
|                 | 26 May 2016.  
|                 | V2 – Draft with Council feedback  
|                 | 1 June 2016.  
|                 | V3 – Final Report for Client.  
|                 | 17 June 2016. |
As Table 1 demonstrates, there were some inaccuracies identified between the dates reported in the NMS and that recorded in the files and on the Tech1 system at WDC. There were also some inaccuracies identified for dates between the paper files and Tech1 itself. The range of inaccuracies’ for these key dates is also provided below but it should be noted that most inaccuracies found were generally at the lower end of scale, ranging from 1-5 days: 

- The range of inaccuracy for lodgement dates was 1 day.
- The range of inaccuracy for the decision date ranged from 3-14 days.
- The range of inaccuracy for section 37 time extensions ranged from 1 day- 4 months.
- The range of inaccuracy for section 92 request dates was 1 day- 4 months.

<table>
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<tr>
<th>Table 1: Accuracy of dates recorded in consent paper files and Tech1</th>
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<tbody>
<tr>
<td>Resource consent information at WDC is lodged, recorded and stored in both an electronic format (Tech1 and TRIM) and paper files (hard copies of resource consent files and application checklist forms).</td>
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<tr>
<td>Table 1 below summarises the accuracy of key resource consent dates reported by WDC.</td>
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1 INTRODUCTION

1.1 Purpose of project

4Sight Consulting has been engaged by the Ministry for the Environment to undertake an independent audit of council responses to the 2014/2015 National Monitoring System (NMS). Seven councils have been selected to participate in the audit based on a random selection method for different types of councils, and Whangarei District Council was one of the councils selected.

The purpose of the audits is to ensure data integrity and accuracy in NMS reporting, provide greater insights into council monitoring practices, and identify opportunities for improvements both in terms of council monitoring and the NMS. In particular, the audit process is intended to:

- Verify the information supplied to the Ministry in response to the 2014/2015 reporting year to determine the accuracy of this information;
- Provide confidence to all parties that the NMS reporting is based on accurate information;
- Provide greater insights into council monitoring systems for key RMA processes and functions, their strengths and limitations;
- Identify opportunities to improve council processes and systems to collect and report data (not necessarily limited to the NMS); and
- Identify potential improvements to the NMS both in terms of the data collected and the methods of reporting used.

1.2 Purpose of report

The purpose of this report is to summarise the findings from the on-site audit of Whangarei District Council that took place on 19 and 20 May 2016. It is based on discussions with relevant staff members and a review of a sample of consents but is not intended to provide a comprehensive record of the discussions that took place or a detailed description of councils systems, procedures and processes or the effectiveness of these. To help support and validate the findings in this report, feedback was obtained from each relevant council to:

- Confirm that we have recorded the council’s general RMA procedures and processes correctly and clarify/amend any areas as necessary;
- Confirm that we have recorded the council’s RMA monitoring systems correctly and expand on these as required, particularly in relation to their strengths and weaknesses;
- Ensure that the NMS reporting processes have been described accurately and clarify as required; and
- Review the areas of improvement identified in this report and expand on these as necessary.

Once the audit reports for each council has been finalised, they will then be attached to a consolidated report provided to the Ministry which summarises the audit findings across the seven councils. This report will also focus on:

- Identifying areas of good practice in council RMA processes and potential areas of improvement;
- Identifying some of the strengths and limitations on council RMA monitoring systems;
- Issues faced by councils in responding to the NMS and how these might be addressed; and
- General improvements to the NMS.
2 OVERVIEW OF COUNCIL SYSTEMS AND PROCEDURES

2.1 Overview of Council procedures and processes

The purpose of this section is to provide an overview of Whangarei District Council’s (WDC) procedures and processes that relate to NMS information requirements across resource consents, plan-making and compliance, monitoring and enforcement. It is based on discussions had during the on-site audit on 19 and 20 May 2016 and is not intended to provide a detailed record of all WDC procedures and processes. Following the on-site audit, feedback was obtained to:

- Confirm that we have recorded councils general procedures correctly and clarify/amend any areas as necessary; and
- Address any gaps/expand on areas council thinks will provide more insights into how they do things.

2.1.1 Resource consents

- WDC’s resource consent team consists of the Consents Manager, Principal Planner, 3 team leaders, 3 consenting planners, 3 environmental engineers, 1 post approval officer, 1 development contributions officer and 3 administration staff. The team also has 5 consultants who regularly do consent processing work to assist the resource consent team. Currently, lodgement numbers are the highest they have been in the last 5 years.

- The general procedure to process consents at WDC is summarised below with a more detailed discussion on the key procedures of interest (section 88(3), section 92 and section 37) provided in the following sections:

  o A duty planner is available via phone or at the customer service desk to provide advice to applicants. The availability of a duty planner is based on a roster which rotates between staff within the consents team.

  o When applications are lodged over the counter (no/very few applications are lodged electronically), they go to the customer service counter where they are dated and time stamped. The customer service team is responsible for completing a basic check of the application. The check is based on the mandatory fields which must be completed for the council to accept and process an application e.g. invoice, completed AEE etc.

  o The applications are then sent to the consents administrators who are responsible for setting up and loading the application into Tech1 and creating the paper files. The consents administrator is also responsible for scanning the application into the system and giving each application a unique consent identification number.

  o The applications then get sent to the team leader who completes the section 88(3) check which is usually done on the day or day after the application is lodged, and this was verified through the audit. The team leader will use the basic section 88 form when doing the completeness check and on that form flag anything that the processing planner should be aware of or consider. The team leader then allocates the consents to staff based on their workload, complexity of consent and staff experience. WDC try to process 90% of resource consents internally, but do use consultants, particularly for council applications. Once the section 88(3) completeness check has been completed, the consents administration staff sent out the acknowledgement letter and invoice.

  o The application is then sent to the processing planner. The resource consent planner processing the application is responsible for recording the relevant information into Tech1. This includes the use of section 92, section 37, section 95 and 104 decisions etc. and information is also recorded on the paper file. Where an applicant’s agent requests, or where the complexity of the proposal requires then, the draft decision and conditions are often sent to the applicant before the decision is finalised.
Once the application has been processed through to a recommendation to grant consent, it then gets returned to the team leader who signs the decision. An electronic copy of the decision is sent to the applicant by the team leader as soon as the decision is signed off, which was verified during the audit. All applications are then sent to development contributions for assessment before being returned to the consents administration staff.

Once the consent is back with the consents administration staff, they are responsible for sending a hard copy of the decision letter and the final invoice before any the final details into Tech1 and the paper file. Any consents requiring monitoring is then passed onto the Compliance and Monitoring Team.

- WDC noted the importance of their internal checklists and forms to assist with consent processing and ensuring that all dates and decisions all line up across the paper files, Tech1 and the internal NMS spreadsheet. The use of these checklists were verified in the consent audit which found these checklists and forms were generally always filled out.

General NMS Procedures:

- While the processing planners are responsible for inputting the relevant information into Tech1, it is the consents administration staff who are responsible for pulling together the NMS information. This is done on an ongoing basis. WDC staff noted that it takes around 6-10 minutes to fill in the NMS spreadsheet for each consent.

- WDC have an internal copy of the NMS spreadsheet saved into TRIM, where the NMS information is entered by the consents administration staff at two stages, after the section 88(3) check is completed and once a decision has been made on each resource consent application.

- NMS reporting at WDC is based on an entirely manual system, as Tech1 is not set up to report or automatically extract this information. It would not be realistic to prepare the NMS report as a single task, hence the approach to complete the spreadsheet on an ongoing basis.

Pre-Application:

- WDC noted that pre-application meetings can take place before lodgement of applications, particularly for more complex applications. WDC have a rostered duty planner available for informal meetings daily, this service is only available in the afternoons. The booking of a pre-application meeting occurs at any suitable time for all parties.

- WDC’s duty planner is available for pre-application meetings/advice by appointment, drop in visits and phone calls. The duty planner sits out at the front desk in reception at WDC. If pre-application queries come in via the phone, the call centre sends the call through to the duty planner. WDC staff noted that the majority of pre-application meeting requests come in from consultants.

- WDC’s general preference is for applicants to book in pre-application meetings and this practice is encouraged when the proposal is sufficiently complex. When pre-application meetings are booked in, a task is set up in Tech1 and the team leader will assign one of the consent planners to deal with the pre-application meeting and provide advice. WDC staff noted that the team leaders assign the planners to the pre-application meetings based on staff experience, workloads and the area of enquiry.

- In terms of pre-application time/charging, there is an internal policy that the first hour of the council’s time is free and any additional time after that should be charged. However, in reality, WDC generally does not charge if this pre-application time is exceeded. WDC staff noted that lots of the pre-application meetings go well over an hour, however their preference is to not charge for this time because it often ends up improving the quality of the applications lodged and reduces the need for section 92 requests down the track.

Section 88(3):

- WDC noted that they do reject applications (WDC identified that they rejected 15 applications as incomplete during 2014/15, however this was not reported in the NMS. The council suggested that the
The team leaders at WDC are responsible for undertaking the section 88(3) completeness checks using the standard 88 checklist form. The basic test that WDC follow to determine whether an application is completed is—is there enough information for the planner’s to start assessing and processing the application—if not, then it should be returned as incomplete. The s88 form does not set out the statutory information requirements of schedule 4.

WDC staff noted that they tend to try and strike a balance between the complexity of the application and the worth of rejecting the application, and recognise that they try to be pragmatic when completing the section 88(3) checks. WDC’s general preference is to try and get any missing information informally through a phone call or email to the applicant, if it is something minor which can be sorted quickly, as it is more efficient than the time it takes to formally reject the application as being incomplete. WDC’s aim is to not return applications as incomplete, and they will aim to get the information other ways first, however the staff noted that if significant pieces of information are missing or they get no response from their informal request then they will return the applications.

WDC staff also noted that they do not want to increase the use of section 92 which does have a bearing on their decisions to return applications under section 88(3) where the information which is missing is substantial and the planners know that a section 92 request will otherwise be required.

WDC staff noted that they show less leniency for consultants and professionals when determining if an application should be returned under section 88(3) for being incomplete as opposed to lay people. WDC also show less leniency for complex applications when determining if an application is incomplete under section 88(3), as opposed to simpler applications e.g. specific simple infringements such as a setback infringement, where written approval has been supplied.

The main reasons applications are returned as incomplete under section 88(3) by WDC include:

- The mandatory fields for lodging applications have not been completed; or
- Poor quality applications, or applications with no AEE.

**Section 92:**

- All consent planners at WDC have delegations to make section 92 requests, however WDC’s requirement and process is that all section 92 requests must be co-signed by the team leader before being sent to applicants. This was verified during the audit, where all section 92(1) letters were co-signed by the processing planner and team leader.

- Information requests are normally made to applicants under section 92(1) rather than requesting reports to be commissioned under section 92(2) of the Act. This is illustrated in the NMS response from WDC for the 2014/15 reporting period where 100% of the further information requests were section 92(1) requests.

- WDC’s general preference is to avoid section 92(1) requests if possible, and often it if it just a simple point of clarification, then the planners are encouraged to give applicants a phone call or email to obtain that information rather than issuing a formal section 92 request. WDC staff noted that if timeframes are getting tight, then the council will always outline to the applicant the timeframes the council are working within and clearly state that if the information can’t be provided within 1-2 days, then the council will issue a formal section 92(1) request.

- On the section 88 checklist forms the team leaders have a section where they signal to the assigned processing planner if a section 92 request may be required. WDC staff noted that this process works well and often provides a good reminder for the processing officer to think about this request as soon as they start processing the application rather than later down the track when they are nearing the end of the statutory timeframes.
When WDC issue a formal section 92(1) request, a formal letter is always sent (via email with the letter attached) to the applicant. A copy of the letter is always saved into TRIM and in the paper files which was verified during the audit.

WDC staff noted that the main reasons they use section 92(1) is when technical information is needed, for example an assessment under the National Environmental Standard for Contaminants in Soil or assessments from an expert such as landscape architect, ecologist, geotechnical engineer.

**Section 37:**

- The team leaders at WDC have delegations to make requests for time extensions under section 37. The consent planners make a recommended to the team leaders if a section 37 timeframe extension is required and this will be agreed to and signed off by the relevant team leader.

- WDC generally do not seek an applicant’s agreement to extend timeframes under section 37A(4)(b)(i) and instead therefore apply 37A(4)(b)(ii) ‘special circumstances’. WDC generally do not formally advise applicants of the section 37 timeframe extension until the time of decision as opposed to when the extension of time starts. Where section 37 is used, WDC include this in the decision which outlines that section 37 was used and provides the reasons why it was required. If applicant agreement is sought, it is normally done via email or a phone call, with a record of the agreement being saved into TRIM. This was verified to have occurred in some instances during the audit, although as noted, in most cases the applicant’s agreement is not sought.

- WDC staff noted that they do not use section 37 if processing has simply gone over time (i.e. special circumstances do not apply) and in those instances the council will record the processing days accordingly and apply the statutory discount. Common reasons for section 37 timeframe extensions identified by WDC include:
  - The complexity of the application;
  - Time involved in the use of commissioners; and
  - Review of draft conditions.

**Decisions:**

- All consent planners are responsible for drafting the recommendation based on a standard section 104 report. Delegations for decision making typically sit with the Team Leaders; every resource consent decision must be signed off by the team leaders, or person with delegated authority.

- The exception is where the consent is a WDC resource consent, and in that instance, a duty commissioner will sign off the decision report to avoid any perceived conflict of interest; or where the Team Leader doesn’t hold delegated authority.

**2.1.2 Plan-Making**

- The WDC Policy team consists of two teams with oversight from the Policy and Monitoring Manager. The ‘futures team’ deal with all the district strategies (e.g. growth strategy, urban strategy), village planning and water planning, whereas, the ‘district plan team’ deal entirely with the Whangarei District Plan. The planning teams also have 1 full time and 2 part time administrators.

- WDC are currently undertaking a rolling review of the district plan which commenced in 2007. The planning team is nearing the end of the rolling review, and have the ‘big sections’ of the plan left e.g. rural zone and designations. WDC staff noted that the remaining work to be done as part of the rolling review is not little plan changes, rather the introduction of substantive sections to the plan.

- Each plan change process/section of the rolling review process at WDC is assigned a dedicated project lead. The project lead develops a specific project plan to manage the process, with the Manager having oversight of all projects.
• All planning staff are required to fill out timesheets which are set up in excel spreadsheets. The timesheets are calculated weekly and time is reported down by the staff to specific projects. WDC noted that they initiated the timesheet process because of the NMS reporting requirements, as previously this information was not being captured. The policy team does not have access to Tech1, and therefore use of spreadsheets is the only available system.

• WDC staff noted that the recording timesheets for the planning/policy teams has created a lot of more transparency in terms of the costs of the processes and is a useful tool internally for tracking time spent and how long particular processes are taking.

2.1.3 Compliance and monitoring

• The Compliance team consists of a team leader and 3 compliance officers. The team undertakes the monitoring of resource consent conditions as well as the investigation of complaints and associated enforcement under the Building Act and the Resource Management Act. The Team Leader also undertakes a supervisory role of regulatory services functions which have been contracted out (Dogs, parking, excessive noise, bylaw enforcement and functions under the Fencing of Swimming Pools Act).

• The team must juggle work load across these areas and there are times when work can fall behind including that relating to resource consent condition monitoring. Typically however priority is given to ensure that any significant consent is monitored.

Monitoring consents:

• WDC have monitoring schedules for all consents that require monitoring but staff note that during times of high workload such as when a staff member is on extended leave, monitoring programmes can fall behind schedule. The team is become multi skilled to increase their flexibility in meeting work load across a range of tasks.

• WDC do not monitor each condition individually, however their internal policy is to monitor conditions and the level of compliance together as a whole for each resource consent; they look at the conditions together in a suite when determining if an activity is compliant.

• Only one officer in the compliance and monitoring team is responsible at any one time for dealing with the monitoring of resource consents. This position rotates between the team monthly so that each officer has a turn at this role. WDC staff noted that this system works well as it means, that the majority of the focus can be on responding to complaints, but all officers still have a hand in monitoring resource consents and it gives the team some diversity in their work. An exception is if the monitoring required is for a complex or difficult consent, and then a note is assigned to the monitoring schedule on Tech1, which states which officer is responsible for the monitoring (this is normally the officer that first received the consent after a decision was made).

• Once consents are processed at WDC, an event is set up in Tech1 which sends notifications to the compliance and monitoring officers for all consents requiring monitoring. It is the officer who receives the notification who is responsible for setting up the monitoring information in Tech1 and entering in a monitoring date/frequency. Monitoring reports are run monthly through Tech1 to determine which consents are due to be monitored, and then depending on workloads, the consent monitoring will be carried out.

• WDC’s compliance and monitoring staff do not have a role in the drafting and review of consent conditions. WDC staff noted that the lack of input the team has in the conditions drafting stage has caused issues for monitoring, where consent conditions are drafted in a manner which might not be measurable or enforceable. It was noted that the team would like to have more of a role in consent condition drafting and they believe they could contribute to the practicability and enforceability of conditions at the monitoring stage.

Non-compliance and formal enforcement action:
- WDC’s internal policy is that any breach of a resource consent condition is considered ‘non-compliant’. This is how consents are recorded as ‘non-compliant’ in the NMS spreadsheet.
- WDC do not have a set rating scales or levels of compliance/non-compliance. WDC’s policy for non-compliance is based on two simple categories of compliant or non-compliant. WDC’s preference if non-compliance is recorded is to give people a chance to fix and remedy the non-compliance before using formal enforcement actions. WDC staff noted that generally they prefer to try and work with people before having to use enforcement action, which was verified during the audits with the council having very little use of enforcement action only issuing 1 abatement notice and 1 infringement notice in 2014/15.
- WDC’s standard policy when dealing with non-compliance is to issue 3 letters and warning addressing the non-compliance and asking for it to be remedied before escalating the situation and using an enforcement action tool. WDC are trying to focus more on an action based approach to dealing with non-compliance and trying to get behaviour changes. WDC staff noted that their approach generally works well and avoids the need for enforcement action. It was noted that the staff find that generally people are very quick to fix issues and address the non-compliance once it is recorded and they become aware of the issues and what corrections are required.
- WDC staff noted that if the non-compliance was significant then they would go straight to using an enforcement tool and would likely issue an infringement notice, however recognised that this does not happen very often. While WDC prefer not use enforcement action if possible, the staff noted that they will use it when it is required.
- All compliance and monitoring officers can recommend and use any enforcement action tool, however the general preference and practice in the council is for the officers to talk to the team leader first who generally has the final say on what action will be taken.

Complaints:
- When complaints are lodged with WDC they are loaded in CRM. The team leader then assigns the complaints to the compliance and monitoring officers, based on the area of the complaint, staff workloads and experience.
- WDC generally deal with complaints through calling the person who laid the complaint back to have a discussion and get more information before proceeding further. The officer will then generally always carry out a site visit and undertake an investigation. An assessment is carried out for every complaint and recorded in TRIM. Based on the information received through the phone call and site visit, the officers will then determine if and what action is required.

2.2 Overview of Council RMA Processing and Monitoring Systems
The purpose of this section is to provide an overview of WDC’s monitoring systems that are used to track and record resource consent process, plan-making and compliance monitoring and respond to NMS information requirements relating to those processes. It is based on discussions had during the on-site audit and is not intended to provide a detailed description of monitoring systems. Council feedback was sought in relation to:
- Confirming that we have described councils systems accurately and clarify any areas as required;
- Ensuring we have captured the key benefits and limitations of councils systems and expand on these required; and
- Addressing any gaps that council thinks will provide more insights into how they do things.

2.2.1 Resource consents
- Tech1 is the main system used by WDC to monitor and report on the processing of resource consents, which records and tracks all the key dates, working dates etc. This is used in combination with paper files which processing staff still rely on to process consents and record consent processing documentation.
(letters, emails etc.). Tech1 is also used by WDC consenting staff for all financial reporting, including staff timesheets.

- In addition to Tech1, WDC also uses ‘TRIM’ which provides the main electronic document management database. All documents relating to consent processing e.g. letters, requests, applications, decisions, are saved into TRIM under the consent ID number.

- Tech1 is linked to TRIM, and all the resource consent information can be accessed through both systems. WDC council staff acknowledged that the two systems generally work well together.

- It was noted by WDC consenting staff that Tech1 is generally user-friendly and works well if you know how to use it properly to record and track resource consent information. However, WDC acknowledged that there is lack of understanding across the council on how to use it, which means that Tech1 is not used to its maximum potential. Due to the lack of understanding on how to navigate Tech1, there are mixed feelings about how user-friendly the system is.

- WDC’s consenting team are moving to a new system, through Tech1 called ‘One Council’. The shift to a new system was driven by the limitations of TRIM, a desire for the council to move onto Sharepoint or the Cloud which they currently cannot due with TRIM. WDC staff noted that the new system will be largely similar to what they have currently with Tech1, but will provide the council staff with greater capabilities to use online electronic document management portals.

2.2.2 Plan-Making

- The planning team are in the process of completing a rolling district plan review, which started in 2007 when the district plan was first notified. The planning team do not utilise Tech1 or any other system to record and monitor their plan-making processes. Rather, the planning team utilises excel spreadsheets and individual project plans to help monitor and track their planning processes and the key dates. The planning team also uses TRIM as their main document management system to store all documents associated with plan changes and other plan-making processes. All plan changes are given a separate number and the documents for each plan change are saved under that number in TRIM.

- The individual project leads are reasonable for managing the project plans, updating the excel spreadsheets and managing the associated plan-making documentation in TRIM. The individual project plans and excel spreadsheets generally work well and are adequate for the lead policy planners to track key processes and dates, such as statutory timeframes, dates, who needs to be spoken to and when, and key milestones etc. However WDC staff noted that they would see huge benefit, if like other teams (e.g. consenting and compliance), there was a system available and suitable to monitor, record and track plan-making processes, rather than having to just use spreadsheets.

2.2.3 Compliance and monitoring

- Tech1 and CRM (for complaints) are the main systems used by the compliance and monitoring team to track and record their compliance and monitoring activities. In addition, TRIM is also used as the main document management system for managing all documents (e.g. letters, monitoring notes, site visit notes, reports). WDC staff noted that Tech1, TRIM and CRM work well and provide good functionality for the different requirements of the team.
3 ISSUES ENCOUNTERED RESPONDING TO THE NATIONAL MONITORING SYSTEM

3.1 Issues reported by council responding to NMS

The purpose of this section is to summarise some of the main issues experienced by WDC when responding the NMS for the 2014/15 period. Council feedback was sought in relation to:

• Ensuring that the councils NMS reporting processes have been described accurately and clarify as required; and
• Confirming that the main issues have been identified and expand on these as required.

3.1.1 Resource consents

• Tech1 is not set up to be able to automatically report or extract the NMS information requirements. WDC maintain an internal copy of the NMS spreadsheet which is manually filled in for each resource consent at two stages (after section 88(3) check, and after a decision is made) based on the information entered into Tech1 and TRIM.

• WDC staff noted that the NMS spreadsheet is not particularly onerous, but the manual entry of all the data is the biggest problem/issue WDC experienced. WDC staff noted that the manual entry of all the NMS information, naturally opens up issues around human error, which was identified as being one of the main reasons for the errors in their initial responses.

• WDC noted that Tech1 could be automated to extract the NMS information requirements, but WDC have not invested the time or money into setting this up as they are aware that the NMS is subject to ongoing change and therefore would require repeated investment to respond to changes made to reporting requirements. If there was certainty that reporting requirements would remain constant over a reasonable period of time then the investment might be justified.

• WDC noted that they did experience issues with the NMS spreadsheet and the ambiguity with some of the data fields about what is required. WDC staff acknowledged that the errors in their initial NMS responses were due to the data field requirements being unclear and lack of certainty in particular areas in terms of how to respond.

3.1.2 Plan-Making

• To respond to the NMS information requirements on plan-making, an internal copy of the NMS spreadsheet on plan-making was filled out towards the end of the 2014/15 reporting period. The NMS spreadsheet is saved as an internal document in TRIM and was filled out by the team leader.

• It was noted that the document management system (TRIM), and excel spreadsheets were of no help in responding to the NMS requirements. In order to fill out the NMS spreadsheet, the team had to go through every single plan change folder saved in TRIM, excel spreadsheet and project plan in order to manually enter the data into the NMS spreadsheet, due to the lack of a system in place for monitoring and tracking plan-making processes. WDC staff noted that there is no simple or straightforward way for the planning team to report this information without a good system in place which the team simply do not have. This made responding to the NMS a very time consuming and slow task because of the manually entry requirement.

• Despite the time consuming and slow process to report on the NMS, the planning team did not encounter any major issues responding to the 2014/15 NMS information requirements. It was noted that the NMS spreadsheet and data requirements could be filled out without too many difficulties.

• WDC did report some difficulties/frustrations with the NMS spreadsheet wanting responses to all active plan changes, of which the council simply had no answer for some the data fields as some plan changes had not been notified yet, however staff may have been working on the foundation for that plan change for a long time. WDC noted that this seemed onerous and time consuming and clearer instructions need to be
provided about what is expected to avoid unnecessary time spent on adjusting the spreadsheet just to put in N/A’s when it is very clear from the information reported why cells were left blank.

3.1.3 Compliance and monitoring

- To respond to the NMS, a report was run through Tech 1 towards the end of reporting period to extract the compliance and monitoring information required for the NMS monitoring. One officer pulled together the compliance and monitoring information into the NMS spreadsheet towards the end of the 2014/15 reporting year and did not identify any significant issues in responding to the information requirements.

- It was noted by WDC compliance and monitoring staff that the NMS information requirements on compliance and monitoring are minimal and only requires very basic information. WDC staff noted that it was easy to respond to the information requirements and as such did not identify any issues or difficulties responding to the information required.

- WDC staff noted that the information required through the NMS, was information that the council already had and was already recording and capturing prior to the NMS requirements which made it very quick and straightforward to fill in. WDC staff also noted that they thought the NMS spreadsheet was well set up and worked well for recording the compliance and monitoring information which made it easier for the council to be able to quickly respond.
OVERVIEW OF AUDIT FINDINGS

The purpose of this section is to provide a summary of the findings from the on-site audit of a sample of WDC resource consents to verify the accuracy of the NMS reporting. This involved reviewing a random sample of 25 consent files out of the total 308 resource consent applications processed in the 2014/15 reporting year. However, as the use of section 92, section 37 and section 88(3) were of particular interest to the Ministry, the random sample method was repeated until the consent sample included the following:

- At least 8 section 92 requests;
- At least 8 section 37 time extensions; and
- At least 1 application returned as incomplete under section 88(3).

For each consent, the paper file and data recorded on Tech1 was reviewed to check key dates and processes against that reported for that consent in WDC’s NMS response for 2014/15 using the unique consent identifier.

4.1 Findings from resource consents audit

4.1.1 Accuracy of dates

Resource consent information at WDC is lodged, recorded and stored in both an electronic format (Tech1 and TRIM) and paper files (hard copies of resource consent files and application checklist forms). Table 1 below summarises the accuracy of key resource consent dates reported by WDC.

Table 1: Accuracy of dates recorded in consent paper files and Tech1.

<table>
<thead>
<tr>
<th>Accuracy of dates (% correct)</th>
<th>Paper files</th>
<th>Tech1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lodgement date</td>
<td>100%</td>
<td>96%</td>
</tr>
<tr>
<td>Decision Date</td>
<td>92%</td>
<td>92%</td>
</tr>
<tr>
<td>Section 92 requests</td>
<td>96%</td>
<td>92%</td>
</tr>
<tr>
<td>Section 92 responses</td>
<td>88%</td>
<td>84%</td>
</tr>
<tr>
<td>Section 37 extensions</td>
<td>100%</td>
<td>92%</td>
</tr>
</tbody>
</table>

As Table demonstrates, there were some inaccuracies identified between the dates reported in the NMS and that recorded in the files and on the Tech1 system at WDC. There were also some inaccuracies identified for dates between the paper files and Tech1 itself. The range of inaccuracies’ for these key dates is also provided below but it should be noted that most inaccuracies found were generally at the lower end of scale, ranging from 1-5 days:

- The range of inaccuracy for lodgement dates was 1 day.
- The range of inaccuracy for the decision date ranged from 3-14 days.
- The range of inaccuracy for section 92 request dates was 10 days- 1 month.
- The range of inaccuracy for section 92 response dates was 1 day- 4 months.
- The range of inaccuracy for section 37 time extensions ranged from 6-9 days.

Overall, the result from the audit of resource consent dates found that:
There was generally a high level of consistency between NMS and Tech1 and paper file dates. The inaccuracies identified between the NMS dates and dates recorded in Tech1 and on file, is likely due in part to the NMS information being manually entered and the natural human error associated with this process, or perhaps due to entries being made on a following working day which may span a weekend in some cases.

A fairly high percentage of the key resource consent dates reported in the NMS were correct. Where there were inaccuracies identified through the audit, these were generally minor being only 1-5 days different. For example, a section 92(1) response date was recorded in the NMS as 31/12/2014, whereas the date captured on Tech1 and in the paper files was 1/12/2014. Similarly a lodgement date was recorded in the NMS as 23/04/2015, whereas the date on file at WDC was 24/04/2015.

There were a few instances where the discrepancies between key resource consent dates provided through the NMS and those on file at WDC were more substantial. For example, a section 92(1) request date was recorded in the NMS as 13/06/2015, whereas the date on the paper file at WDC was 13/05/2015. This instance is most likely a human error. Similarly, a section 92(1) response date was recorded in the NMS as 18/08/2014, whereas the date identified on the paper files at WDC was 29/04/2014.

### 4.1.2 Accuracy of general resource consent information

Table 2 below summarises the accuracy of the resource consent information provided as part of the NMS 2014/15 reporting requirements, based on the audit sample.

<table>
<thead>
<tr>
<th>Accuracy of general resource consent information (% accurate)</th>
<th>Paper files</th>
<th>Tech1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consent type</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Activity class</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Description of activity</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Notification of application</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Pre-application meetings</td>
<td>88%</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Overall, the results from the audit of general resource consent information found:

- The large majority of the general resource consent information from the audit sample was 100% accurate and consistent with that reported through the NMS. There were no inconsistencies identified with WDC’s reporting on the consent types, activity class, and description of activities and notification of applications.

- The information on pre-application meetings was found to be reasonably accurate, however there were inconsistencies with the NMS responses and WDC’s files for three resource consents. WDC’s NMS response indicated that no pre-application meetings had taken place for these three resource consents, however a review of the paper files found that pre-application meetings had taken place, and there was documentation verifying this. This was only based on a review of the paper files however, as this information is not recorded and shown in Tech1.

### 4.1.3 Accuracy of council consent processing fees

- The total processing fees were found to be 100% accurate and consistent on Tech1 with what was reported by WDC in the NMS response. There were no inconsistencies identified.
• A total of 96% of the total processing fees were found to be accurate and consistent in the paper files with WDC’s NMS response. There was one resource consent where the total processing fees on file did not match the NMS response. The difference in cost between the two processing fees was $1140.74.

4.1.4 Section 88(3)- Completeness checks

WDC’s NMS response indicated that they did not return any applications as incomplete during the 2014/15 reporting year, so we did not seek to verify this. However, during the on-site audit, WDC noted that they did return 15 applications as incomplete under section 88(3) during the 2014/15 reporting year. Therefore, no returned applications were reviewed during the audit.

4.1.5 Section 92- Information requests

WDC’s response to the NMS of the 2014/15 reporting period indicates that 144 (47%) applications were subject to a section 92(1) request for further information. Sixteen of the 25 consents sampled involved section 92(1) or 92(2) request. The following summarises the findings from the audit in relation to section 92:

• As outlined above, the dates for both section 92(1) requests and responses were reasonably accurate. However, there were some inaccuracies identified between the section 92 dates reported in the NMS and the dates recorded on WDC papers files and in Tech1, as follows:
  o 96% of the section 92 requests dates were correct in regards to WDC’s paper files, and 92% of the dates correct from Tech1 information; and.
  o 88% of the response dates to the section 92 requests were accurate in regards to WDC’s paper files, and 84% accurate in relation to Tech1 information.

• The primary reasons for the differences between the section 92 response date in the NMS and paper files and Tech1 is likely due to human error when the information has been manually entered into the NMS spreadsheet or perhaps due to entries being made on a following working day which may span a weekend in some cases.

• The reasons for the section 92(1) requests and the responses were reviewed through the paper files and TRIM. The reasons for using section 92(1) were clearly outlined for each of the resource consents and can be summarised as follows:
  o Written approvals;
  o Required an assessment of compliance against the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2013;
  o Further assessment and consideration of impacts/effects;
  o More detailed plans and diagrams required;
  o Requires technical/specialist reports and assessments;
  o Requires comprehensive scheme plans and more detailed plans/diagrams.
  o Plan clarification; and
  o Consideration of additional rule breaches.

• Overall, the section 92 requests were considered to be justified and based on relevant information to understand the effects of the activity not just minor matters that could be clarified over the phone. There was one instance however where a section 92 request was made solely for written approvals, which is not considered to be within scope of section 92.
4.1.6 Section 37- Timeframe extensions

WDC’s 2014/15 NMS response indicates that 33 (10.7%) of the total consent applications processed during 2014/15 involved a section 37 timeframe extension. Ten of the 25 consents sampled involved the use of section 37 time extensions. A review of the use of section 37 by WDC found:

- The section 37 dates provided in the NMS were generally very consistent with that found through the review of paper files and Tech1. The accuracy of the information was as follows:
  - 100% of the section 37 timeframe extensions dates were correct in regards to WDC’s paper files, with no errors or inconsistencies found; and
  - 92% of the section 37 timeframe extension dates were correct in regards to Tech1, with only two inconsistencies identified.

- The length of the section 37 time extensions varied from **1-85 days**.

- Of the 10 resource consents sampled, applicants agreement was not sought by the council for 8 of applications, and this was verified during the audits where no recorded documentation of applicant’s agreement for the 8 resource consents using section 37 was found. The use of section 37 and the reasons were recorded in the decision reports for all 10 resource consent applications which used section 37 timeframe extensions.

- The reasons for using section 37 were recorded both in WDC’s paper files and on Trim. The main reasons for using section 37 are as follows:
  - To allow for submitter discussions and negotiations;
  - To correct conditions and allow for applicant review of conditions;
  - Miss-communication between the council and applicants regarding further information responses provided which held up time;
  - Delays in receiving further information under section 92(1);
  - Allow for decision to be signed off by an independent commissioner;
  - Allow for written confirmation to be provided by iwi; and
  - Obtain cultural impact assessments.
5 OPPORTUNITIES FOR IMPROVEMENT TO COUNCIL MONITORING SYSTEMS AND THE NMS

The purpose of this section is to summarise some of the improvements identified by WDC during the interviews both in relation to their internal RMA processes and monitoring systems and improvements to the NMS recording and reporting. Council feedback was sought to ensure we captured the main areas of improvements that were discussed.

5.1 Council recommendations to improve NMS recording and reporting

- It was suggested that it would be useful to have the NMS spreadsheet on an online portal such as the Cloud, where all councils can access it and pick it up without having every council managing their own spreadsheets.
- In addition, WDC staff noted that it would be useful if MfE provided a centralised system for the NMS, and more broadly a centralised system for all councils to use for consent processing. WDC staff noted that all councils are essentially carrying out the same processes and having to respond to the same information requirements, and as such the reporting errors and difficulties with reporting could easily be remedied if the Government provided one system which was well designed and set up for councils to use. It was felt that this would significantly reduce reporting errors, not just WDC’s but all councils and make the NMS reporting much more streamlined and straightforward.
- WDC staff noted that the NMS is just simply capturing and monitoring the process which does not tell you a lot, and it has a long way to go to produce meaningful outputs and results on the effectiveness of the RMA, its implementation and council processes. WDC noted that the NMS does not help in telling you if your processes are effective or not, and as such is under achieving and missing an opportunity. In this context, it was suggested that more work needs to be done by MfE to ‘complete the loop’ and become more outcomes focused to tell a better story and provide a feedback loop. This would help councils gauge their performance and lead to better processes, decision-making and outcomes.
- NMS reporting requirements collectively (over resource consents, plan-making and compliance and monitoring) were acknowledged by WDC as being large and time-consuming. Comments were also made that the NMS data requirements/fields seem very repetitive. WDC staff noted it should be carefully considered whether all the current information requirements/data fields are essential, and any information which is unnecessary or does not have a clear benefit should be removed in order to make the spreadsheet more concise and user-friendly. This was seen as benefiting all councils not just WDC.
- It was noted that it is hard to give constructive feedback on how to improve the NMS, when it is not completely clear how/what it is being used for and what value it is adding. It was suggested by WDC, that it needs to be made very clear to councils what the value of the reporting is and MfE should be demonstrating its value, so that there is an incentive to keep up and improve reporting. It was also noted that by the value and actual use of the NMS data being conveyed to councils, it provides better opportunities to provide more meaningful feedback on the system and how it could be improved.
- It was emphasised that the NMS spreadsheet is missing capturing the important and meaningful information on the requirements and functions. WDC staff noted that the NMS does not pick up on the “crunchy issues”, and as a result is not reflecting the full picture specifically for plan-making. It was noted that in reality the information being reported into the NMS spreadsheet for plan-making is only telling the easy part of the story. For example, WDC staff noted that the NMS spreadsheet is difficult for councils to be able to report meaningful information on the fundamental aspects of plan-making processes such as iwi engagement, pre-notification consultation and section 32, where much quality work happens which will affect the content and plan making processes.
- In addition, it was suggested that one improvement for the plan-making information in the NMS is to improve the data fields around section 32 to capture more valuable information, and add additional fields
to capture information on the types of plan changes being undertaken, and high court and environment court processes.

- WDC staff noted that the NMS could be significantly improved by providing clear and specific definitions for each data field outlining what is required. It was felt that the NMS data requirement explanations in the guidance material were often at times a bit ambiguous, and it was not always 100% clear what was being required. More detailed definitions for each data field would assist in this area.

- WDC suggested that it would be helpful and likely improve NMS reporting if there was greater feedback on what other councils are doing and being able to look at other processes. It was noted that this would help in thinking more about the processes and practices being used internally when there is a measure to compare practice against. Also, it was recognised that being able to see how other councils responded to the NMS would be useful, and greater feedback on this, e.g. where a council has done really well with their NMS reporting would potentially help reduce other council’s reporting issues and give a benchmark/guide to work with.

- WDC staff noted that they do not think the ‘acceptable responses’ in the NMS spreadsheet for resource consents actually cover everything, and suggested that the responses which can be entered should be expanded to capture more information. In addition, WDC staff noted that some of the spreadsheet requirements are far too strict which does make reporting more onerous and difficult and it can often take quite some time determining what acceptable response to use and how to make the information fit into the spreadsheet.

- WDC staff noted that one improvement to the NMS and reporting process would be if MfE could come in and extract all the information required out of each council system. WDC staff suggested that it would make the process more user-friendly and less time-consuming for the councils.

- WDC staff suggest ‘locking’ fields within the spreadsheet, with the aim of reducing human error. For example, where a date is required don’t allow a text answer such as N/A to be entered.

### 5.2 Opportunities for improvement to council systems and processes

- WDC staff noted that as a result of the NMS, the council has made internal improvements to their processes and now have put in a new checks and balances system which the consent administration staff use to check the information going into the NMS spreadsheet to try and ensure accuracy of the information the council are providing.
5 PC131 Genetically Modified Organisms - Decision

Reporting officer: Melissa McGrath (Team Leader, District Plan)
Date of meeting: 15 September 2016

1 Purpose
To seek a Council decision to adopt the report and recommendation of the Hearing Panel relating to a Council-initiated plan change (PC131: Genetically Modified Organisms) and to authorise notification of the plan change decision.

2 Recommendation/s
That the Planning Committee:

a) Adopts the report and recommendations of the Hearing Panel dated 31 July 2016 on proposed Plan Change 131 Genetically Modified Organisms, in accordance with Clause 10 of Part 1 of Schedule 1 of the Resource Management Act 1991; and

b) Resolves to publicly notify Council’s decision on PC131 in accordance with Clauses 10 and 11 of Part 1 of Schedule 1 of the Resource Management Act 1991.

3 Background
The purpose of PC131 is 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.

PC131 has 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. The Working Party comprises Auckland Council (and predecessor councils), Far North District Council (FNDC), Whangarei District Council (WDC), Kaipara District Council and Northland Regional Council.

The Working Party carried out a comprehensive investigation into the risks posed to communities and councils from the outdoor use of GMOs and options to manage those risks. As a result of those investigations the Working Party developed draft planning provisions and a draft section 32 analysis to support those provisions.

Auckland Council included those provisions in its Proposed Unitary Plan. Following hearings on the proposed Unitary Plan the Independent Hearings Panel recommended that the GMO provisions remain in the Unitary Plan with minor modifications. The Auckland Council adopted those recommendations on 19 August 2016.
WDC and FNDC included the same provisions in a plan change to their respective district plans. WDC PC131 was notified and heard concurrently with FNDC PC18. Collectively there were 589 submissions and 120 further submissions to these plan changes. A total of 284 submissions and 65 further submissions were received for PC131 and 305 submissions and 55 further submissions were received for PC18.

In a decision of the High Court, it ruled that Regional Councils are entitled to make provisions for the control of GMO’s in Regional Policy Statements. This will be carried forward into District Plans.

The Councils appointed Barry Kaye (Chair), Bill Smith, and Willow-Jean Prime as Independent Hearings Commissioners (with Willow-Jean Prime being a FNDC Councillor) to hear the plan changes. The joint hearing took place on 13 and 14 June 2016 in Whangarei and 16 June 2016 in Kaikohe.

The timeline for the notification and hearing process was as follows:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of public notification of plan change for submissions</td>
<td>15 July 2014</td>
</tr>
<tr>
<td>Closing date for submissions</td>
<td>9 September 2014</td>
</tr>
<tr>
<td>Date of public notification for further submissions</td>
<td>18 November 2014</td>
</tr>
<tr>
<td>Closing date for further submissions</td>
<td>16 December 2014</td>
</tr>
<tr>
<td>Hearing dates</td>
<td>14 – 17 June 2016</td>
</tr>
<tr>
<td>Hearing closed</td>
<td>7 July 2016</td>
</tr>
<tr>
<td>Recommendation of Hearing Panel</td>
<td>31 July 2016</td>
</tr>
</tbody>
</table>

**Hearing Panel’s Recommendations**

The recommendation of the Hearing Panel in response to all submissions received and heard is attached (as Attachment 1.) This includes a track change version of the PC131 provisions.

The Commissioners have recommended that Council accept the changes recommended by Council’s reporting planner and technical experts, based on the s42A report and matters reconsidered in light of evidence presented by submitters at the hearing and detailed in the Council officers’ right-of-reply. These include a number of amendments to the wording of the plan change text.

The hearing panel’s recommendation in summary is that:

- The Proposed Plan Change 131 to the Whangarei District Plan be approved with modifications; and
- Those submissions and further submissions which support the Proposed Plan Change are accepted to the extent that the Proposed Plan Change is approved with modifications; and
- Those submissions and further submissions which seek further changes to the Proposed Plan Change are accepted to the extent that the Proposed Plan Change is approved with modifications; and
- Except to the extent provided above, all other submissions and further submissions are rejected.
4 Discussion

Options available to Council

Council is required to make a decision on PC131, based on the following two options:

1. Adopting the Hearing Panel’s recommendation as Council’s decision, or
2. Rejecting the Hearing Panel’s recommendation and proceeding no further with PC131 by withdrawing the Plan Change.

If the Council adopts the Hearing Panel’s recommendation, the Council decision on PC131 is required to be notified in accordance with the RMA. An appeal period of 30 working days then applies.

5 Significance and engagement

Council’s Significance and Engagement Policy has been considered in relation to this Agenda item.

The decisions or matters of this Agenda item do not trigger the significance criteria outlined in Council’s Significance and Engagement Policy, and the public will be informed via Agenda publication on the website.

6 Attachments

1 Recommendations of the Hearing Panel (16/87101)
IN THE MATTER of the Resource Management Act 1991

AND

Proposed Plan Change 18 to the Far North District Plan and
Proposed Plan Change 131 to the Whangarei District Council District Plan

Relating to Genetically Modified Organisms.

COMMISSIONERS RECOMMENDATIONS REPORT:

RECOMMENDATIONS TO THE FAR NORTH DISTRICT COUNCIL AND THE WHANGAREI DISTRICT COUNCILS ON THE PROPOSED PLAN CHANGES

1.0 INTRODUCTION

This report sets out the recommendations that the appointed Hearings Commissioners (“the Commissioners”) have made to the Far North District Council (“FNDC”) and to the Whangarei District Council (“WDC”) in relation to Proposed Plan Change 18 and Proposed Plan Change 131 (“the Plan Changes”) to the operative Far North District Plan and the operative Whangarei District Plan (“the District Plans”) in accordance with the Resource Management Act 1991 (“the RMA”).

This report provides an account of the hearing process leading through to our separate recommendations to each of the Councils on the Proposed Plan Changes (“PPCs”).

2.0 OUR RECOMMENDATIONS

Our recommendations to the Councils are that the two Plan Changes (“PPC 18 AND PPC 131”) be approved, with some minor modifications, and that the submissions and further submissions be accepted, accepted in part, or rejected in accordance with our recommendations. This report
should be read in full for our reasons to approve the Plan Changes and we set out below a brief summary of those reasons:

- We have concluded that the benefits of the proposed Plan Changes provisions outweigh the costs and the risks of not acting are considered to be greater than the risks of acting.
- The proposed provisions to address the management of Genetically Modified Organisms (“GMOs”) within the two planning districts are the most appropriate method to achieve Part 2 of the RMA.
- The Section 32 reports underpinning the Plan Changes appropriately and adequately identify and assess the pros and cons of the chosen methods.
- We consider that the proposed objectives are the most appropriate means to achieve the purposes of the RMA and that the proposed policies, rules and methods are the most appropriate way to achieve the objectives.
- We consider that the regulation and management of GMOs is mandated under the RMA and that a precautionary approach with adaptive management response provisions is appropriate.
- Mana Whenua submissions and evidence have supported a precautionary approach, have generally supported the Plan Changes and in some instances have requested further restrictions to the extent of an overall prohibition.
- We consider that the proposed Plan Change provisions do not duplicate the Hazardous Substances and New Organisms Act 1996 (“HSNO”) provisions, rather they complement them.

3.0 BACKGROUND

A joint hearing report addressing details of the proposed Plan Changes and the associated submissions was prepared by FNDC Senior Policy Planner, Tammy Wooster and WDC Consultant Planner, David Badham, in accordance with Section 42A of the RMA. The report is hereinafter referred to as “the Section 42A report”. The Section 42A report included consideration of all of the relevant statutory considerations. The recommendations in the Section 42A report were that the Plan Changes be approved with some modifications partly as a response to the submissions and further submissions.
4.0 THE PLAN CHANGES IN MORE DETAIL

We were told that PPC 18 and PPC 131 have been developed collaboratively over the past 10 years with other local authorities in the Northland / Auckland region who had formed an Inter-Council Working Party on GMO Risk Evaluation and Management Options (“The Working Party”) in response to what they considered to be significant community concerns regarding the outdoor use of GMOs.

We were also told that 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 and/or regional management of GMOs, which resulted in the formulation of the relevant Section 32 Evaluation Reports and draft Plan provisions.

The Section 42A report also noted that:

“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”.

A comprehensive description of the background to the work commissioned by the Working Party was provided to us and was made available via each of the Councils. The information in and attached to the Section 42A report provided a comprehensive description of the background of the Plan Changes and was available from either Council.

The Section 42A report advised all parties how to access the relevant information online.
5.0 APPOINTMENT

The WDC appointed us (Barry Kaye (Chair), Bill Smith and Willow-Jean Prime) as Independent Hearings Commissioners, while the FNDC appointed us (Barry Kaye (Chair), Bill Smith as Independent Hearings Commissioners, with FNDC Councillor Willow-Jean Prime being an internal Commissioner). This gave us delegated authority to hear the submitters, further submitters and the Councils’ experts and to make recommendations to the respective Councils on the proposed Plan Changes and the submissions and further submissions thereto.

Prior to the hearing, we were provided with and considered the details of the Plan Changes and the submissions (including the further submissions), the Section 42A report and the expert evidence and other evidence that was pre-circulated.

6.0 THE JOINT HEARING

The joint hearing took place on 13 and 14 June 2016 in Whangarei and 16 June 2016 in Kaikohe. Lisa McColl, Jane Murdoch and Janette Bosman, Support Assistants ably assisted the Commissioners with the day to day management of the hearing process.

At the start of each day a Karakia was given by Commissioner Prime. At the completion of the hearing of evidence on 16 June we adjourned the hearing to enable advising Counsel for the two Councils and the Reporting Officers to provide in writing their responses to the evidence.

Those responses were provided on 28 June 2016 and after consideration of all the material before us we closed the hearing on 7 July 2016.

6.1 Submitters/Evidence
An overview of the parties who presented evidence and the nature of those are set out below.

Monday 13 June 2106

• Paul Waanders of WDC and Greg Wilson of FNDC.
  Mr Waanders, Manager of the WDC Policy and Monitoring Department, provided an overview of the Plan Changes and highlighted the risk considerations, the need for a
precautionary approach and the need to recognise the cultural perspective on the GMO debate.

• Greg Wilson, Manager of the FNDC District Plan Team also provided us with submissions on the process leading up to the Plan Changes.

• Graeme Mathias, Legal Counsel for both Councils provided opening submissions which traversed the range of issues identified in the submissions as well as providing a succinct overview of the process underpinning the proposed Plan Changes.

• David Badham and Tammy Wooster – Reporting Officers for WDC and FNDC - relied upon their Section 42A report and other information they provided such as their Addendum 1 addressing additional submission points which had been omitted in error from the Section 42A report and out of scope changes.

• Doctor Kerry Grundy, Professor Jack Heinemann and Doctor John Small, all being witnesses for the Councils provided their expert evidence in support of the proposed Plan Changes. Doctor Grundy in particular noted his lengthy involvement with the process including a lead role in the Joint Council Working Party.

• Keir Volkerling spoke for Ngatiwai and Ngapuhi in supporting the Plan Changes generally.

• Soil and Health Association, GE Free Northland, and 15 other parties represented by Mischa Davis, Marion Thomson, Donald Nordeng, Marty Robinson, Vernon Warren (an expert planning witness), Claire Bleakley, Ngaire Hart. Collectively these witnesses provided strong support for the proposed Plan Changes and gave evidence traversing a range of matters in support of their case. They talked about crop contamination, buffer zones, effects on organic foods and certifications, GMOs as a threat to the local economy and the environment, significance to Iwi (Colmar Brunton survey 2009), the need for local plans to reflect local aspirations, why the RMA and the proposed Plan Changes are complementary to HSNO and not duplication and management issues with GMO releases and containment. Mr Vern Warren referred to Mr. Manhire’s evidence noting that he was one of the most experienced people in the organic market sector in
NZ and that his views were of some significance as to the adverse effects of unmanaged GMO releases in particular. Mr Warren also noted that the Commissioners were required to rely upon Judge Newhook’s recent decision in relation to whether or not Regional Plans could address GMO matters. He talked about the participatory process leading into the Plan Changes being promulgated and advised us that in his opinion District Plans should address GMOs and that the issue went beyond technicalities as the heart of the matter was around the effects on patterns of land uses. He supported the prohibited activity status for outdoor release of GMOs noting that a non complying activity status means rules are set up to intervene only when necessary and that approach did not take a precautionary view as required given the lack of certainty around many issues associated with GMOs. In his view non complying activity status was the ‘doorway of uncertainty’. He also noted the submitter’s support for the proposed bonding regime as third parties should not bear the costs of “pollution” and agreed with Mr Mathias in respect of the matters he addressed. He concluded that the proposed Plan Changes were underpinned by extensive research and analysis and that that the Plan Changes fit the purposes of the RMA.

- Ms Philippa Guthrie, a policy analyst for the Ministry for the Environment (“MfE”) presented the Ministry’s evidence that had been filed. She had no specific expert qualification from what we could discern in her answers to questions from the Commissioners and advised us that the ‘evidence’ was a collaboration of various individuals in the Minister’s Wellington offices none of whom was present to answer questions. Her main theme in the statement she took us through was that the proposed Plan Changes duplicate HSNO provisions and processes and was unnecessary. On that basis the Minister opposed the proposed Plan Changes per se. She stressed that the Environmental Protection Agency (“EPA”) process of administering the HSNO legislation was rigorous and more than adequate notwithstanding it was a centralised administrative process with little input from local communities—notwithstanding the comments she made to the contrary in support of the inclusiveness of that EPA process. Our overall position is that the Minister’s evidence was of marginal value and bordered on advocacy rather than being the expert evidence we needed which would have better helped us in getting to the essence of the Minister’s position.
• Rachel Major owned an organic shop in Maungaturoto and spoke passionately about the dis-benefits of GMOs and the need to manage them through the proposed Plan Changes. While her statement was not expert evidence she provided helpful information that enabled us to understand the position of people like her who were strong supporters of organic methods and products. She spoke about Monsanto and sterile seeds caused by genetic modification. She also noted the issue was about the quality of food products and their nutritional value. She advised us that her research showed 70% of US food products were genetically modified. She was not convinced by arguments that GMOs could be contained. She was opposed to any provisions for GMOs but advised us that if the Plan Changes were all that the Councils could do then she supported them.

• Joint Submitters - GE Free New Zealand, Auckland GE Free Coalition, Clair Bleakley (presented a slide show as evidence), Ngaire Hart (Bee expert), Jon Carapiet, Charles Drace, P.Kirkwod and Michael Trott. These submitters presented comprehensive evidence opposing GMOs outside of containment and supporting the Plan Changes provisions. A range of examples were given illustrating their views that GMO experiments were frequently disastrous and resulted in unpredicted outcomes.

• Catherine Murupaenga-Ikenn (delayed discussion Via Skype) addressed cultural grounds for supporting the proposals and spoke in relation to indigenous groups and their values.

• Ms. Margaret Hicks added to her written submissions in her presentation. She opposed field trials and spoke about Ethics referring to Socrates. Her view was that the targeted species cannot speak for themselves, thus the GMO process is unethical. GMOs are fundamentally wrong as they interfere with the natural makeup of living species. It is a misuse of science in her view. The precautionary approach is the only approach. She noted that the supporters for GMOs were dominantly commercial interests. She advised us that she believed all EPA field trial applications get approved. Her position was the GMO process represented an abuse of power.

• Steve Goldthorpe, an energy systems analyst, referred to Ms Hicks submissions and agreed that her views on ethics were sound. But he differed in that mankind was charged with being the custodians of the world. He considered that GMOs interfered with
creatures designed for a natural world. He was of the view that GMO releases should be prohibited unless there were no doubts as to adverse effects being avoided and where there was universal acceptance of GMOs in the global food market. He supported the use of RMA processes and that HSNO was not the only available method. He considered the Northland region to be agriculturally isolated from the rest of NZ and that it was appropriate and simple to have different rules for Northland. Overall he concluded that he supported the Plan Changes proposals.

Tuesday 14 June 2016

- Doctor Benjamin Pittman an expert witness for GE Free Northland and Soil & Health Association presented his evidence around a Maori view of the world. He is a well-known and respected expert in Maoritanga. He advised us how he claimed representation for a range of Maori groups noting kaitiakitanga and rangitiratanga status. He discussed the concept of ‘mauri’ noting everything is interconnected ultimately. The key issue he highlighted was the (unacceptable) notion of mixing ‘mauri’. He said mixing of ‘mauri’ may be allowed if there were clearly proven beneficial outcomes. Even then high levels of risk management were needed. That was the key reason why he supported a precautionary approach. He referred us to s7 (a) of the Act and the obligations therein. He agreed with Commissioner Smith that a Rahui could ban GMOs and that the EPA was obligated as a Treaty matter to take a Rahui into account when making any decisions on GMOs. Doctor Pittman noted that the RMA processes properly involved communities unlike HSNO. He also advised us that there was a current (Maori) ban on GMOs on the regional area extending from Bombay in the south to Cape Reinga on the north. In answer to a question from Commissioner Willow Jean Prime he advised that ban came from a Hui in 2012 in Kaikohe where that ban was agreed to unanimously by all participants.

- Zelka Grammer for GE Free Northland & Soil & Health Association of New Zealand Inc advised us she supported the Plan Changes as they were sensible. There is a duty of care responsibility on Councils. She supported the bond provisions noting we need checks and balances. She advised us that the Rural Women NZ group she spoke for engaged in a range of rural activities. She referred to the 2012 Hui that Dr Pittman advised us of and noted that was a clear community direction to the Councils (and
Federated Farmers). Overall she supported the proposals even though she would like even tougher provisions.

- John Clark supported GM research when done safely but was against open air research. He sought that open air trials be prohibited and not a discretionary activity. He also sought that people carrying out GM research be financially accountable for the risks they introduce. He agreed with Professor Heinemann that there was insufficient information available to accurately assess risks. He provided us with many examples of failures or unexpected outcomes and a huge amount of information on a memory stick that he gave us to read. He referred to connections with climate change and the need to save seeds to enable protection of ‘good’ stock. He noted no matter what the ‘promises’ were about the benefits of GM crops the results had not proven to match the promises. His overarching relief was that open air research should not be a discretionary activity but prohibited.

- Federated Farmers ("FF") represented by Richard Gardner (internal lawyer and policy planner) and John Blackwell (President FF Northland) provided evidence. We note we were left unclear as to whether Mr Gardner’s statement was evidence or submissions as FF’s internal lawyer or a mix of those. Mr Gardner advised of FF’s total opposition to the proposed Plan Changes. He also advised us that FF’s had a neutral policy on GMOs for at least 20 years. We note here that we were at odds to reconcile “a neutral position” with “strong opposition”. He said the role of managing GMOs was a central government role (taking a similar position to MfE). He advised us that we shouldn’t manage GMOs but only manage the effects of GMOs. He did however agree that the Environment Court decision by Judge Newhook which we have already referred to was the current law and that accordingly councils’ can manage GMOs through RMA provisions. He also though preferred that no decision on the Plan Changes be made until the High Court appeal by FFs on the Judge Newhook decision had been determined.

- He referred to Doctor Bellingham’s evidence wherein a controlled activity status for GMOs was sought. Doctor Bellingham was not called as an expert witness by Mr Gardner and the evidence filed for these Plan Changes was evidence that Doctor Bellingham prepared for the hearings about GMO provisions in the Proposed Unitary Plan for Auckland. As that evidence was not specific to the proposed Plan Changes in
any manner or detail we have paid little attention to that noting that Mr Gardner’s position on that was the same as Doctor Bellingham’s in any event.

- We also note that Mr Mathias advised us in his right of reply in relation to our questions about the validity of some evidence that;

8.1  *In my submission, accepting that it is entirely up to the Committee as to what weight it gives any evidence or submissions it receives, such evidence and submissions presented to it where there was no appearance by the deponent or author should be disregarded. It is not appropriate to say that the evidence presented on the PAUP would be as applicable to the districts administered by WDC and FNDC. There should have been consideration of the actual districts to which the plan changes were directed. No such consideration was given. Further non-attendance means that the witnesses could not have their evidence scrutinised and they could not be questioned by the Committee. The legal opinion and evidence, as attached to the submissions for Pastoral Genomics as presented to the district plan change on the Hastings District Plan, the authors of which were not present at the Northland hearings, should be treated similarly.*

8.2  *Leaving to one side the issue of respect for the Committee itself, I believe it is not unreasonable to say that the presentation of such evidence, (as prepared for the PAUP) albeit on the same subject matter without witness being present, suggests that no consideration has been given to the actual plan changes you are considering. At the very least one might have expected a statement from the witnesses saying they had considered the plan changes and believed that the evidence presented on the PAUP applied in the same manner but there was not even that level of consideration. The manner in which the evidence was presented shows a contempt for the process that WDC and FNDC have pursued. Such evidence/submissions should be entirely disregarded.*

We agree with Mr Mathias in that respect.

- Mr Gardner submitted that the EPA process was rigorous and that the terms ‘take into account’ did in fact represent a precautionary approach. We have a differing view on that matter taken in the context of the proposed Plan Changes provisions and Mr Mathias’s advice that the Councils are required to ‘give effect to’.
Mr Gardner through questioning conceded that GMOs could potentially be seen as a regional planning issue. Also in reply to questions Mr Gardner noted that the Plan Changes were contrary to FFs position on ‘endorsing farmer’s rights).

Mr Gardner confirmed FF’s opposition to the proposals and his position was unchanged having read the Section 42A and Section 32 reports.

- Michael Finlayson advised us that he had been in Herikino since 2000. He was a Landcare Programme member with a lengthy record of contributions to pest eradication (30,000 hours of his time). He talked about the unintended consequences of GMOs. He referred to NZ’s clean green image and how GMOs adversely affect that image. Overall he advocated a precautionary approach and thus supported the Plan Changes.

**Thursday 16 June 2016**

- Pastoral Genomics represented by Doctor Dunbier who spoke as an employee rather than an expert. He accepted that the Environment Court decision of Judge Newhook set the legal ground upon which we had to make our findings and recommendations. He supported national level regulation rather than the proposals. He advised that in his experience local regulation has problems. HSNO was a comprehensive piece of legislation in his view and was adequate to the task. He thought that the Section 32 reporting was deficient and that Doctor Grundy and Professor Heinemann were biased. He believed it was not feasible to dovetail the RMA and HSNO approaches and consenting processes would become prolonged. He was of the opinion that GMO crops were likely to have less unintended consequences than other methods such as mutations and cross breeding. He questioned the credibility of much of the research and information referenced by opposing submitters. He thought much of the opposition was value based and not scientifically based. He said we should “bite the bullet and regulate the product and not the process”.

- Arnold James Kalnins a retired architect owned a lifestyle block and was a staunch opponent of GMOs. He endorsed the GE Free NZ evidence. He noted his research showed GMO and non GMO farms can’t coexist. He noted that GMOs were
unpredictable technology. He gave examples of GMO related disasters and noted that GMO releases can't be 'recalled'. In terms of a clean green image no GMOs at all was the best safeguard. Unpredictability was a characteristic of the GMO context. He noted “we shouldn’t dabble with creation”.

- John Sanderson from Kerikeri was involved with natural products (and an ex aircraft engineer). He supported the proposals noting that the Councils had acted after listening to the communities. He agreed the approach was not duplication (with HSNO) but complementary. He also noted once the EPA approves a product they have no jurisdiction and after that a Territorial Local Authority (“TA”) can manage as proposed. His view was that the MfE evidence that only the EPA has adequate expertise was ‘scaremongering” and also that they were disingenuous. He noted the reference by other opposing submitters to HSNO and the term ‘take into account’ did not equate to a needed precautionary approach. He also noted that bonds were appropriate as any liability under HSNO only existed once there had been a breach. Penalties couldn’t re-capture an inadvertent release of a GMO for example.

- Colonel Bob Jones advised us his background as a scientist for the US Army. He also noted he had spent 2 years researching GMOs. He preferred that the proposed Plan Changes take a tougher stance but supported what was proposed in any event. He wanted any trials to be prohibited activities. He noted in respect of Doctor Dunbier's evidence that while HSNO is a national statute that the effects of GMOs were local and that is where they should be managed. He also noted there was no consensus information that GMOs were safe no matter what any of the opposing submitters had said. The EPA hardly ever rejected any application in his understanding.

- James Valley advised us of his concerns about the dangers of GMOs. He noted he had help set up the Hamilton Safe Food Campaign. He also noted the differences between genetic selection and GMOs noting the former did not introduce foreign genes. He provided us with an overwhelmingly long list of research and references in support of his position opposing GMOs. Mr Valley sought that any EPA approved GMO experiments or field trials be prohibited and also that all GMO releases be prohibited. Apart from that he supported the proposed Plan Change. He requested an amendment to the proposed provisions (PC 18) seeking the addition of a clause stating that any application to
release a GMO that is transgenic (foreign genetic material added) must be publicly notified and automatically declined. He also addressed the definition of both ‘transgenic' and ‘GMOs’. He reconfirmed that he sought outcomes as set out in the submissions he filed which supported the Plan Changes subject to some amendments.

- Martin Robinson and his witnesses Charles Nathan and Diana Ellis who were called under his umbrella as they had not lodged submissions but in the interests of natural justice the Commissioners advised that approach was acceptable and thus their views could be made known. Mr Nathan turned out to be well informed and a person of some importance in a range of local and wider Maori/Iwi groups and had some status in that regard. He advised us of the same opposing GMO Hui mandate that Doctor Pittman had referred us to. He also referred us to a Kemp document from 2008 and a Hapu management plan which had a policy of containment. (page 10 of the Section 42A report referred to the relevant Hapu management plan). He said within the Hokianga rohe GMOs were opposed. He supported the precautionary approach. Diana Ellis referred us to a You Tube video by Arpad Pusztai which provided evidence against GMOs.

- Fiona Robinson from Kerikeri supported the proposed Plan Changes. She talked about the clean green image being one reason people come to NZ. She spoke about organics and how gene insertions infect cells. She noted our immune systems were not designed to cope with GMO food products. She sought an organic GM free NZ.

The Joint Section 42A report prepared by Ms Wooster and Mr Badham was taken as read at the hearing. It had been pre-circulated to submitters and ourselves.

After adjourning the hearing on the 16 June 2016 and before closing on the 7 of July Ms Wooster and Mr Badham provided a written response to the evidence that had been heard over the hearing duration and re-confirmed to us that, subject to some amendments to the original recommendations (on Plan Change provisions detail) to us, that the Plan Changes be recommended to the Councils for approval with the submissions and further submissions to be determined accordingly.

We also received written submissions in reply from Mr Mathias, the Counsel for the two Councils.
Mr Mathias addressed a number of matters following the Commissioners’ directions at the time of adjourning the hearing. Those included the following points, some of which were also directly addressed by Ms Wooster and Mr Badham in their reply.

(i) **What is the distinction between a genetically modified organism (“GMO”) and a new organism and can the relationship between them in terms of the Hazardous Substances and New Organisms Act 1996 (“HSNO”) and the Resource Management Act 1991 (“RMA”) be clarified with particular relationship to the plan changes and in that regard is the existing definition of a GMO in the plan changes appropriate?**

(ii) **Are there any provisions in the Regional Policy Statement (“RPS”), other than the GMO provisions which are under appeal, which is in any way relevant, either positive or negative, to the plan changes?**

(iii) **What consideration was given to the use of the non-complying activity status in the plan provisions both in relation to the provisions of the plan changes and the S.32 analysis?**

(iv) **What is the position of the S.42A reporting officers on the proposed use of the controlled activity status as proposed by Dr Bellingham in his evidence?**

(v) **What is the status of the evidence and submissions presented by or on behalf of Federated Farmers and Pastoral Genomics where the evidence and submissions tendered was not in fact formally presented as either evidence or submissions to the Committee? Dr Bellingham’s evidence to the Auckland Unitary Plan hearings was specifically referred to.**

(vi) **What is the Council's position on the proposition of duplication between the HSNO and RMA regimes in relation to GMOs?**

(vii) **Has their position on liability changed following submissions? How would the bonding regime envisaged by the plan changes apply?**

(viii) **How would the containment of trials once an EPA approval had been granted work in a practical sense?**

(ix) **What is the position of the S.42A reporting officers on the proposition that there be a total prohibition for both releases and trials as sought by some submitters?**

(x) **Has GMOs been identified in the relevant planning documents as a significant issue?**

(xi) **What is the difference in public participation opportunities under the different regimes**
provided by HSNO and the RMA? In particular making submissions on applications to EPA as against public engagement in planning processes under RMA.

(xii) What provisions do the iwi/Hapu management plans listed in the Section 42A report have in regard to GMOs?

(xiii) Do provisions in iwi/Hapu management plans have any standing in relation to applications for approval to the EPA?

(xiv) Should the Committee consider the outstanding determination of the High Court on the appeal of the Environment Court decision?

(xv) What consideration should be given to the submission of Mr Valley in relation to transgenics and the definition of GMOs in the plan changes?

(xvi) How would monitoring work in terms of field trials with respect to access on adjoining or adjacent properties if required?

We discuss our findings on these matters in the main body of this report.

6.2 Expert Evidence

Some evidence was pre circulated to us and that included;

- Evidence of Marty Robinson, Marion Thomson, Jon Manhire and Linda Zelka Grammer for Soil and Health Association of NZ Incorporated.
- An unsigned statement of evidence from the Ministry for the Environment.
- Statements of evidence from Doctor Kerry Grundy, Professor Jack Heinemann and Doctor John Small for the Far North and Whangarei District Councils.

We received limited expert planning evidence at the hearing with planning evidence received only from Mr Vern Warren, a very experienced qualified planner, who represented Soil and Health NZ.

We note particularly that it was unhelpful that both FF and the MfE requested potentially far reaching and fundamental amendments to the proposed Plan Changes but did not provide any expert planning analysis of the changes proposed in their submissions at the hearing.

An approach was taken by FF that the evidence presented to the hearings for GMOs in the Proposed Auckland Unitary Plan could be considered as evidence to the proposed Plan
Changes and without any of the experts who provided that evidence being in attendance to produce their evidence and to answer questions from the Commissioners.

In our opinion that is not an appropriate (or acceptable) approach and we consider that the request by that submitter in particular to adopt the use of the controlled activity approach for GMOs is not supportable by any expert evidence because of that failure.

7.0 SUBMISSIONS

The Section 42A report included a summary of the submissions and further submissions received to each of the Plan Changes and also included a copy of each submission. We have read all the submissions and have included below an overview of what the submitters requested and also what was raised at the hearing.

Collectively there were 589 submissions and 120 further submissions to the Plan Changes. The WDC received 284 submissions and 65 further submissions. The FNDC received 305 submissions and 55 further submissions. The submissions were categorised in sections as follows:

- Support - entire plan change as written.
- Support in part – specific amendment.
- Support in part – prohibited activity status.
- Oppose – entire plan change.
- Oppose in part – specific amendments.

When making our recommendations to the Councils, and when they make their subsequent decisions, under Clause 10 of the First Schedule of the RMA, it is necessary to give reasons for allowing or not allowing any submissions (grouped by subject matter or individually) either in part or wholly. The recommendations and the Council decisions may also include consequential alterations arising out of submissions and any other relevant matters considered relating to matters raised in submissions.

We took as read the Section 42A report that had been prepared by Council reporting officers. It had been pre-circulated to submitters and ourselves. The planning report was structured under headers identifying the different issues.
That report helpfully provided us with a tabulated reference to the issues.

Under each issue identification of the details contained within the submissions (and allied further submissions) was followed by a discussion on the submissions and a determination recommendation to us. We were able to question the submitters and experts as the hearing proceeded. We note that we agree with the recommendations made by the reporting officers. The principal parts of the Section 42A report that address the submissions and make recommendations has been adopted by us as the structure to be followed in our findings on the submissions to the Plan Changes. The final recommended versions of the proposed provisions are attached as Attachments A and B to this recommendation report.

The Commissioners wish to acknowledge the appearance of the submitters, and/or their representatives, and also the tabled information from submitters, at the hearing, both in support and opposition to either the whole or parts of the Plan Changes. The information that was provided from the submitters assisted us in understanding the issues and reaching our findings and recommendations.

8.0 STATUTORY CONTEXT

Section 74 of the RMA sets out the matters to be considered by a territorial authority in preparing or changing its district plan. These matters include doing so in accordance with its functions under Section 31, the provisions of Part 2 and its duty under Section 32. Further, also having regard to other documents, including regional planning documents, management plans and strategies prepared under other Acts and iwi planning documents.

Section 75 of the RMA, in addressing the contents of district plans, requires that a district plan must give effect to any national policy statement, any New Zealand Coastal Policy Statement any regional policy statement and must not be inconsistent with a regional plan.

Section 31 addresses the functions of territorial authorities under the RMA and includes:
(a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district;

(b) The control of any actual or potential effects of the use, development, or protection of land,…

Section 32 RMA provides for the consideration of alternatives, benefits, and costs and requires that an evaluation must be carried out and that an evaluation must examine:

(a) The extent to which each objective is the most appropriate way to achieve the purpose of this Act; and

(b) Whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

For the purposes of this examination, an evaluation must take into account the benefits and costs of policies, rules, or other methods.

Part 2 of the RMA, being the purpose and principles of the statute, is the overarching part of the RMA. Regard is to be given to all matters within it.

Part 1 of Schedule 1 to the RMA applies to plan changes by local authorities. Clause 10 states a local authority must give a decision on the provisions and matters raised in the submissions received to the plan change and must include the reasons for accepting or rejecting any submissions. In doing so a local authority may address the submissions by grouping them according to the provisions of the plan change to which they relate or the matters to which they relate and, may include matters relating to any consequential alterations necessary to the plan change arising from the submissions. A local authority is not required to give a decision that addresses each submission individually. A local authority may also withdraw its plan change in which case that action is to be notified and reasons given for doing so (Clause 8D).
9.0 STATUTORY CONSIDERATIONS

We have carefully considered the statutory and other plans listed under section 6.0 of the Section 42A report and find that the Plan Changes as modified will be consistent with those documents listed.

9.1 General

The Councils had completed an evaluation of the Plan Changes with regard to Part 2 of the RMA which included the purpose of the Act as contained in Section 5, Section 6 - Matters of National Importance, Section 7 - Other Matters and Section 8 - Treaty of Waitangi.

The Councils had also considered Section 31 of the RMA which sets out the functions of territorial authorities in giving effect to the purpose of the RMA and an evaluation in accordance with Section 32 of the RMA.

Section 32(1) states that an evaluation must:

- 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
- Examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
  - Identifying other reasonably practicable options for achieving the objectives; and
  - Assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
- Summarising the reasons for deciding on the provisions; and
- 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.

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

- 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—
- Economic growth that are anticipated to be provided or reduced; and
• Employment that are anticipated to be provided or reduced; and
• If practicable, quantify the benefits and costs referred to in paragraph (a); and
• Assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

Any evaluation in terms of Section 32 is ongoing, and must be undertaken to confirm the appropriateness of the Plan Changes. We were told that the Section 32 Reports were completed prior to notification and that the Reporting Officers had no involvement in the preparation of the Section 32 Evaluation but that they had reviewed the Evaluation and supporting material referenced within it and considered the Evaluation to be comprehensive and to demonstrate careful consideration of the issues and options relevant to the proposed Plan Changes provisions.

We were provided with and have read the legal opinions of Dr Somerville that the Section 32 Evaluation was properly carried out and subsequently reassessed after the RMA amendments in 2014 and it met the new statutory criteria. While some submitters in opposition dispute that we find that the Section 32 reporting met the statutory requirements, was robust and reflected an iterative evolution that occurred over a period of analysis and evaluation of up to 14 years duration and was inclusive of the findings of a range of experts who we note also advised the Auckland Unitary Plan Hearings Panel on the same GMO related matters.

For the reasons set out in this recommendation report we have concluded that the Section 32 Evaluation does demonstrate that the proposed objectives are the most appropriate means of achieving the purpose of the RMA and that the proposed provisions are the most efficient and effective means of achieving the objectives.

9.2 National Policy Statements

There were no national policy statements relevant to the Plan Changes although a number of submitters did refer to the possible release of a National Policy Statement on Production Forestry. However, as no Statement has been released it does not have any legal effect and we do not believe that it is relevant to our consideration of the Plan Changes.
9.3 Proposed Northland Regional Policy Statement (PRPS)

The plan changes are subject to the PRPS and the Section 42A Report in section 6.0 outlined the Reporting Officers opinions which were that the provisions in the PRPS do not prevent the Plan Changes proceeding and that in any event, the PRPS provisions should be attributed little weight as they are still subject of an appeal.

We had read and were also told during the hearing of evidence that the Operative Regional Policy Statement (RPS) does not contain provisions relating to GMOs but that provisions had, after hearings, been included in the PRPS and that these provisions had been appealed firstly to the Environment Court and then to the High Court on points of law by FF. At the time of our hearing and making our recommendations to the Councils, the High Court had not released its decision and we have therefore taken the Environment Court decision as the current law when making our recommendations.

Responding to our questions we were told that the RPS does not exclude the District Councils’ from regulating for GMOs within their areas and as a result of the evidence, submissions and legal advice we received we have concluded that the Plan Changes (as amended in accordance with the reporting planners recommendations) will remain consistent with the operative RPS.

9.4 Iwi and Hapu Management Plans

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.

Although Iwi and Hapu Management Plans were referenced in the Section 32 Report it did not (at that time) 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 Report was completed. A list of the formally recognised Iwi / Hapu management plans for each Council is provided below.

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

- Ngati Kuta ki Te Rawhiti Hapu Management Plan fifth edition
- Ngati Rehia Environmental Management Plan 2007
There are four recognised Iwi / Hapu Management Plans in the Whangarei District:\(^1\):
- Ngatiwai – “Te Iwi o Ngatiwai: Iwi Environmental Policy Document 2007”
- Patuharakeke – “Patuharakeke Hapu Environmental Management Plan 2014”

We were told that those documents generally oppose the release of GMOs to the environment, advocate a precautionary approach to GMOs and that some advocate local management of GMOs.

The opinions of the Reporting Officers after having reviewed each document and taking into account the provisions were that the proposed provisions of the Plan Changes were consistent with, and in some respects will help achieve the outcomes sought in the documents.

We heard evidence from a number of iwi representatives/witnesses who all spoke in support of the Plan Changes and the Councils’ actions in trying to protect the community. We were also told by Mr Charles Nathan that at a Hui in 2012 there was a unanimous vote to ban GMOs in the area from the Bombay Hills to Cape Reinga.

In respect of those matters Mr Mathias in his reply submissions advised that;

12.1 Part 2 of the RMA has a more broadly drawn sustainable management purpose. It specifically addresses people and communities providing for their social, economic and cultural well-being and for their health and safety while “safeguarding the life-supporting capacity of air, water, soil and ecosystems”.

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\(^1\) It is noted that some iwi / hapu management plans transcend the Council boundaries and are recognised by both WDC and FNDC.
12.2 Further S.6 requires recognition and provision as matters of national importance (my emphasis)

(c) The protection of areas of significant indigenous vegetation and significant habitat of indigenous fauna.

(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga.

12.9 Further Part 2 requires particular regard to be had in the management of the use, development and protection of natural and physical reserves, to Kaitiakitanga

12.10 These principles it is submitted point to an enhanced role for Maori under the RMA than that provided for in HSNO.

Based on the advice we received and the evidence in front of us we have concluded that the overarching position of Iwi is to generally oppose GMOs. That is a fundamental Part 2 consideration that we have taken on board in reaching our recommendations.

9.5 Hazardous Substances and New Organisms Act 1996 (HSNO)

The majority of submissions in opposition to the Plan Changes related to the matter of jurisdiction, the role of the RMA and HSNO in the management of GMOs and that central government has sole responsibility to regulate GMOs through the EPA under HSNO. They also thought it is more efficient and effective to manage GMOs at the national level and that it was 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. Those in opposition who attended and spoke at the hearing reiterated this view.

The Reporting Officers focused their evidence on the provisions of the Plan Changes in terms of achieving the relevant requirements of the RMA. They did not provide a detailed analysis of the HSNO provisions which were set out in the FE decision by Judge Newhook which was attached as Attachment 10 to their report and discussed further in the legal submissions of Mr Mathias on behalf of both Councils.

We had read the decision of the Environment Court before the hearing and have referred to it during our deliberations and believe that it does provide 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, encompass GMOs.

Both Reporting Planners gave evidence (via the Section 42A report, in answer to questions and in their reply comments) (which was not contradicted by any other planning expert at the hearing), that in their view, the Plan Change provisions prepared under the RMA were not in conflict with HSNO and that they considered that the provisions were complementary, and in some cases, additional to the controls on GMOs that can be applied by the EPA under HSNO. Their joint opinion was that the provisions represent an appropriate response, given the level of scientific uncertainty highlighted by Professor Heinemann, the economic analysis of Doctor Small and the level of concern expressed by the community.

Based on all the submissions and evidence that was put before us and taking into account the decision of the Environment Court and the advice to us that the Court decision establishes the current law that we must consider, we are of the view that the proposed Plan Changes do not duplicate what is provided in HSNO; rather that they complement the HSNO processes.

We note that there are other instances where Councils consider issues under the RMA which are also considered under other legislation such as the Building Act, Civil Aviation Act and Historic Places Act.

10.0 PRINCIPLE ISSUES IN CONTENTION AND FINDINGS

Having read the submissions, evidence and tabled evidence and the Section 42A Report and attachments and listened to the evidence presented at the hearing we consider now the principle issues in contention and our findings in respect of each issue.

10.1 The Overall Purpose and Scope of the Plan Changes
The overall purpose and scope of the Plan Changes was limited to a relatively confined and focused set of the effects associated with GMOs.

10.2 Jurisdiction

A number of submitters, including the MfE, FF and Pastoral Genomics who all had representatives attend the hearing, opposed the Plan Changes, in part, on the basis that there is no jurisdiction for local authorities to manage and control GMOs in New Zealand and that sole responsibility should be with central government and more specifically the EPA under HSNO.

We note that the issue of jurisdiction for local authorities to regulate GMOs under the RMA was recently subject to an appeal to the Environment Court in Federated Farmers of New Zealand v Northland Regional Council [2015] NZRMA 217. A copy of the decision was attached to the Section 42A report. 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.

Although the decision is currently subject to an appeal to the High Court by FF based on points of law, the Environment Court decision, we were told, was the current legal position on jurisdiction and this was addressed by Councils’ legal representative Mr Mathias in his statement to us. In addition Mr Gardner for FF and Doctor Dunbier for Pastoral Genomics did acknowledge that based on the Environment Court decision that the Councils do have jurisdiction.

We note also that although the MfE opposed the Plan Changes and had a representative present a statement at the hearing no expert evidence was presented by the MfE and it did confirm in paragraph 7 of the statement that the Court’s finding is in line with statements from Government in the past and Crown law advice but did go on to say that local authorities must pass the statutory tests in the RMA and that the MfE maintains that the Councils have not passed the statutory tests.

In relation to the matter of duplication of regimes Mr Mathias in his reply submissions advised us as follows;
9.1 While it is clear that both the RMA and HSNO have provisions in common and both record that amongst their purpose and principles is the protection of the environment and the health and safety of people and communities the focus of HSNO is clearly more limited than that of the RMA. It only applies to hazardous substances and new organisms. It has a specific focus on considering their risks and benefits before approving their introduction into New Zealand for research in containment, field trialling or release to the environment. Its focus is on the decision whether to allow importation into New Zealand rather than the on-going integrated management of the resource (GMOs) itself.

9.2 The consideration of effects under the two statutes is also different. The definition of effect in the RMA includes "any potential effect of high probability" and "any potential effect of low probability which has a high potential impact". These aspects are not included in the definition of effect under HSNO. Also cumulative effects are treated differently under the two statutes. Whilst both refer to cumulative effects which arise over time or in combination with other effects the definition in the RMA extends to other effects “regardless of the scale, intensity, duration, or frequency of the effect”.

9.3 This feature, or point of differentiation, was considered by the Environment Court in considering the differences between the meaning of effect in the RMA and HSNO. The Environment Court found that cumulative effects are dealt with in somewhat more detail in the RMA.

9.4 This point of difference was also identified by the Environment Court in NZ Forest Research Limited v Bay of Plenty Regional Council 14 where the Court held that Section 3(f) of the RMA, extending the definition of effect to include "any potential effect of low probability, which has a high potential impact",

"... most certainly points to taking a precautionary approach -indeed it may go further than a precautionary approach would ordinarily be thought to require because it is premised on a given effect having a known low probability of occurrence, and an unknown likelihood of a possible high impact".

9.5 It is also submitted that there is a different risk assessment process between the two enactments. The evaluation of S.32 in the RMA is to assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.

9.6 Similarly the reference to risk in S.32(4)(b) of the RMA in the context of uncertain or insufficient information, requires local authorities to consider a precautionary management approach which would entitle them to take anticipatory measures and to
consider alternatives in light of potential significant or irreversible harm that could result from proceeding on the basis of uncertain and/or inadequate information.

9.7 It might be considered that this reference to risk is wider than the wording in S.7 of HSNO which refers to scientific matters when taking a precautionary approach.

9.8 The regulatory function/jurisdiction under HSNO is limited to the importation for release and/or release from containment of new organisms. When exercising that function to achieve the purpose of HSNO the focus is on the risks and benefits of importing GMOs into New Zealand at a national level. Assessment at a regional, (and therefore at a district level), follows upon a HSNO determination. There is a different functional approach involved. 15

9.9 As the Environment Court stated at paragraph 50 of its decision, the High Court in Bleakley v Environmental Risk Management Authority 16 recognised that RMA provisions go significantly beyond the narrower provisions of HSNO. Adverse effects on the environment resulting from applications which have been granted approval under HSNO will continue to be dealt with under the RMA.

9.10 As identified in both these decisions there are two regimes. While there are elements of duplication there are significant points of difference so providing for controls under the RMA is not simply a duplication of the HSNO regime. It would recognise, as identified by the Environment Court, the wider role that the RMA plays in the management of natural and physical resources.

9.11 HSNO is also an act which has a national rather than a community/district base as the area of its consideration. The RMA, on the other hand has a local and regional focus. This was addressed in my opening submissions so will not be traversed.

Following from Mr Mathias’s advice, and as we have noted elsewhere in this recommendation report, we consider that the Councils have met the appropriate statutory tests and overall, based on the Environment Court Decision and the submissions and evidence presented to us, we are of the unanimous opinion that the Councils have jurisdiction to manage and control GMOs within their respective District Plans.
If following the High Court Decision sought by FF we are found to be wrong in that regard (or if there are any changes to the relevant legislation) then the matter will no doubt be addressed through the appropriate statutory processes in any event.

10.3 Integrity of the Section 32 Evaluation

Based on the evidence we consider that the Councils have complied with the Act in regards to the Section 32 analysis. A number of submissions in opposition to the Plan Changes considered that the Section 32 analysis was not adequate for a number of reasons. Those reasons included;

- The 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 evaluation overstates the economic risks of GMOs and understates the potential benefits of GMOs.

At the hearing we heard from a number of submitters (FF, MfE and Pastoral Genomics) regarding this matter but we did not hear any expert planning evidence to refute the Reporting Officers’ professional opinions. We were also told in evidence and at the hearing by Doctor Grundy (witness for the Councils) that the Section 32 Evaluation was one of the most extensive evaluations he had seen in his career. Doctor Grundy also told us that, contrary to the issue raised by some submitters that the evaluation was biased because Professor Heinemann and he had completed it, that neither he nor Professor Heinemann had any involvement in the preparation of the Section 32 analyses at any time. We were told that the Inter Council Working Party draft Section 32 Report was written by Mitchell Partnership in conjunction with Duenorth Ltd and Simon Terry Associates and that prior to publication of the central background report to the draft Section 32 Report an independent peer review was undertaken by an academic at Victoria University of Wellington.

Having read all the submissions and evidence on this matter and having read and listened to Professor Heinemann 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 Plan Changes provisions we agree with his opinion and note that although Doctor Dunbier did
appear before us on behalf of Pastoral Genomics we did not hear any independent expert evidence to refute that of Professor Heinemann. Another issue regarding the Section 32 Evaluation related to the economic risks of GMOs and this was addressed in the expert evidence of Doctor Small. Again, we did not hear any expert evidence in opposition to his evidence although we do acknowledge that there was some economic evidence attached to the submissions and circulated evidence but for whatever reasons opposing parties did not call any expert to give evidence.

We rely on Doctor Small’s evidence with regard to the potential economic costs and benefits of the proposal and his conclusion that there is a benefit from taking a precautionary approach to the release of GMOs and that the potential costs are modest.

Having taking into account all the submissions and evidence before us we are of the view that the Section 32 Evaluation prepared for the Plan Changes is comprehensive and demonstrates careful consideration of the preparation of the proposed provisions. Overall we consider that the 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.

### 10.4 Precautionary Approach and Non-Complying//Prohibited Activity Status

We heard a range of opinions and views on the appropriateness of a precautionary approach and the merits or otherwise of prescribing a prohibited activity status to the outdoor release of GMOs. FF, MfE and Pastoral Genomics represented the opposing position on both management of GMOs through the Plan Changes and the hierarchical activity status given to activities including prohibited activities. Supporting submissions generally were in accord with the proposal apart from some who sought greater or more stringent control of activities at all levels. A number of submitters sought prohibited activity status for field trials.

Mr Mathias provided us with some advice regarding the possible appropriateness of a non complying activity status for outdoor release of GMOs. He advised us that the use or not of non complying activity status was properly canvassed in the Section 32 assessment report. He noted that;
In the first report prepared for the Inter Council Work Party ("ICWP") entitled "Community Management of GMOs: Issues, Options and Partnership with Government" prepared by Simon Terry Associates, the report authors analysed the issue, (that being recorded as "cultivation of GM crops will cause trace contamination in non GM crops"), with a detailed consideration given to the precautionary approach in considering issues of liability and compensation. The authors prepared a detailed analysis of the response options available. Under Section 4.3.2 of this report – pages 27 through 29 - analysis was given to the controls available through the RMA. This identified that amongst the type of controls available was that of non complying status.

The second report commissioned for the ICWP entitled "Community Management of GMOs II: Risks and Response Options" prepared by Simon Terry Associates and Mitchell Partnerships contained a detailed analysis of the mechanisms available under the RMA as a response framework to the risk of GMOs.

Section 4 of this report (p.47 – 52) considered the process involved in decision-making and the availability of the RMA for GMO management. Included in that report at para 51 it identified that non complying activity status was a means of activity control – see p.51 paras 3 and 7.

In Section 4.5 of this report discretionary and prohibited activities were given more detailed analysis, such categories of use having been identified in the context of activity categorisation ranging from permitted at one extreme to prohibited at the other. Particular analysis was given to the categories of discretionary and prohibited activities those having been identified as the most appropriate status for the activities which were under consideration.

The third report commissioned from the same authors of the second report for the ICWP entitled "Community Management of GMOs: Recommended Response Options" contains further detailed analysis. This analysis supported the previously recommended activity categories of discretionary for field trials and prohibited for releases into the environment. In the appendix to this report there is a high level description of proposed rules based on such activity categorisation.

In the S.32 report the rationale for adopting the chosen activity categories is outlined in section 4.3.1 (see p.27 -29) with an assessment being made of the policies, rules and other methods in Table 2 on p.39 - 43.
Throughout the S.32 preparation process legal reviews were undertaken by Dr Somerville QC. His analysis and the rationale for adopting various activity status for GMOs land use is included in his first opinion dated 23 February 2004. At page 23 he identifies a check list for establishing district plan provisions.

In his third opinion dated January 2013, Dr Somerville focused on the legal implications of the proposed policies and rules following classification of GMO activities as prohibited or discretionary in order to achieve the objective of a precautionary approach to managing the risks of GMOs. He considered the evaluation that leads to this classification met the requirements of S.32 of the RMA.

It is submitted that the S.32 analysis is comprehensive and robust. It presents a clear logic to the classification of activities as permitted, discretionary and prohibited those being based on the level of risk posed by the different land use activities involving GMOs.

Throughout the process consideration has been given to the various statuses of activities in terms of the RMA. A sound basis is established for the classification as permitted, discretionary and prohibited in order to achieve the objectives of the RMA and, when necessary, the need for a precautionary approach to manage the risks of GMOs where such risk is identified is specified.

Dr Somerville has determined that the evaluation process leading to this classification met the requirements of S.32 of the RMA.

We find that Mr Mathias has set out succinctly the relevant matters that we must consider in relation to this aspect of considering appropriate planning approaches and the appropriate hierarchy of land use activities and concur with the conclusions he reaches. In respect of outdoor field trials and the appropriate activity status we concur with the reporting planners where they state in that regard in the Section 42A report at para 90 that:

“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”.

Accordingly we find that the proposed methods are appropriate and accord with sound resource management principles and approaches and in the context of the relevant planning districts, will deliver a planning framework that reflects the views of majority of the submitters who participated in this planning process.

10.5 Liability and Bonds

In regard to the issues around the appropriateness of the proposed provisions related to Liability and Bonds we again rely strongly on the advice of Mr Mathias. He advised us as follows in his reply submissions;

10.1 The policies for land use controls being imposed in relation to GMOs in the plan changes record that the Councils envisage any resource consent granted for field trials being subject to conditions to ensure the consent holder is “financially accountable” for any "adverse effects associated with the activity" and that such will be done "via the use of bonds". Further the policies identify that a resource consent granted would also require monitoring costs to be met by the consent holder with further provision for a consent holder to be liable for "adverse effects caused beyond the site".

10.2 The development of performance standards for the WDC plan change envisage a performance bond with an "approved trading bank" guarantee while the FNDC provision (Rule 19.6.2.2) details its requirement for a bond being "akin to a bank guarantee". If the question of the committee is directed at the limitation of bonding to a "trading bank" then consideration may need to be given as to whether any submission actually sought that the category of party who might provide guarantees could be wider than approved trading banks. The thrust of the submissions opposing the liability regime envisaged by the plan changes was not so much at the specification of the requirement of any bond to be from an approved trading bank but rather at the requirement of a bond. The Councils' position on liability has not changed following submissions.

10.3 While the category of entity which could be approved for bonding purposes might be wider than trading banks they are the usual entities that local authorities accept as guarantors of performance bonds.

10.4 Certainly the FNDC plan change is less prescriptive as to the party which is to provide the guarantee and in theoretical terms there would be no reason why the category of
guarantor could not be extended to include approved insurance companies albeit that insurance companies do not, or at least in WDC’s experience, commonly provide this type of guarantee. In the current commercial world one finds this form of security being offered by trading banks rather than insurance companies.

10.5 As the provision of bonds is a point of submission, it being contended there should be no bonding, so the nature of the guarantor is seemingly within scope although it is not understood that any party specifically sought or gave evidence which would support a wider category of guarantor than that provided by the plan changes.

10.6 If the Committee considers a wider category of guarantors should be specified there would seem to be no bar to such provision within the plan changes.

We note that a number of submitters specifically addressed this matter and generally were in support of the proposed provisions in this regard noting that one of the prevailing reasons for that was the view that those provisions avoided transferring any subsequent liability to unknown third parties and keep the parties responsible for any adverse impacts as the liable party. In our finding, that is an appropriate approach and is consistent with basic principles of natural justice. It is also one of the tools available for use under Section 108 of the RMA.

10.5 Iwi Interests and Weighting in Terms of Relevant Statutory Context

The question was posed to Mr Mathias as to whether any provisions in Iwi/Hapu Management Plans have standing before the EPA given MfE argued that the EPA gives such matters adequate consideration.

Mr Mathias advised us that in relation to EPA processes and any consideration of Iwi interests under HSNO that;

12.3 In my submission they have no greater standing than any other submitter. Such plans have no identified status under HSNO.

12.4 This can be contrasted with the RMA where tangata whenua have a much greater role.

12.5 S.35A RMA requires district councils to keep a record of each iwi and Hapu within its district and the planning documents recognised by an iwi authority.

This gives a legislative acknowledgement of such plans which is not replicated in HSNO.
12.6 S.36B RMA then entitles a local authority to enter into a joint management agreement with an iwi authority which can provide for the parties to jointly perform or exercise a local authority's functions in relation to a natural and physical resource.

12.7 The definition of such an agreement in S.2 RMA provides a wide scope for such agreements. They can cover broad or narrow RMA issues.

12.8 While Ss.6(d) and 8 HSNO require the EPA to take into account the relationship of Maori with their (inter alia) valued flora and fauna and the Treaty of Waitangi. These requirements are not as broadly drawn as similar provisions in Part 2 of the RMA.

12.9 Part 2 of the RMA has a more broadly drawn sustainable management purpose. It specifically addresses people and communities providing for their social, economic and cultural well-being and for their health and safety while "safeguarding the life-supporting capacity of air, water, soil and ecosystems".

12.10 Further S.6 requires recognition and provision as matters of national importance (my emphasis)
   (c) The protection of areas of significant indigenous vegetation and significant habitat of indigenous fauna.
   (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga.

12.11 Further Part 2 requires particular regard to be had in the management of the use, development and protection of natural and physical reserves, to Kaitiakitanga.²⁹

12.12 These principles it is submitted point to an enhanced role for Maori under the RMA than that provided for in HSNO.

We concur with Mr Mathias and note that we had evidence that Iwi / Hapu Management Plans and an identified Hui resolution clearly opposed GMOs in Northland.

11.0 WILL THE PLAN CHANGES ACHIEVE WHAT THEY SET OUT TO ACHIEVE

We find, from the submissions, evidence, the evidence at the hearing and our observations that the Plan Changes with minor amendments will achieve the purposes set out in the proposed objectives. The purpose of the Plan Changes is clear and they have significant support from the affected local communities. Opposing submitters represent organisational positions in the main and rely upon a regime under HSNO administered by the EPA whereby there is discontent by
many submitters that EPA processes do not adequately engage with local communities thus the support for a RMA regime which complements the HSNO regime through a local effects based regime directed to the local community context.

12.0 SECTIONS 31 AND 32 RMA

Before a plan change is publicly notified an evaluation must be carried out by the Council that must examine:

- The extent to which each objective is the most appropriate way to achieve the purpose of the RMA; and
- Whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

An evaluation must take into account:

- The benefits and costs of policies, rules, or other methods; and
- The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

A report is required to be prepared summarising the evaluation and give reasons for that evaluation.

These Section 32 “tests” are fundamental to the consideration of any plan change and when discussed reference is usually made to relevant case law that is the Environment Court decisions relating to Nugent, Eldamos and Long Bay. Those decisions have considered the Section 32 process in detail and serve to highlight the importance of it as the basis on which any plan change proceeds.

The Plan Changes were accompanied by two Section 32 Evaluations. We reviewed those reports and have considered the submissions raising issues about the rigorousness of the Section 32 assessments. We have reached the view that the Plan Changes are necessarily,

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2 Nugent Consultants v Auckland City Council, NZRMA 481, 1996; Eldamos Investments v Gisborne District Council, Decision WO47/05; and Long Bay Okura Great Park Society Incorporated & Others v North Shore City Council, AO78/2008.
and have been demonstrated satisfactorily to be, the most effective means of achieving the objectives of the Plan Changes.

The Section 31 RMA functions include requiring the control of any actual or potential effects of the use, development, or protection of land. The range of actual or potential effects arising from the Plan Changes has been addressed in the Plan Changes documentation and in the Councils’ Section 42A report.

We are satisfied that all actual and potential adverse effects associated with the Plan Changes have been taken into account in preparing them.

We have found that the range of actual or potential effects arising from the Plan Changes have been properly addressed in the Plan Changes documentation and in the joint planning report.

We are satisfied that all actual and potential adverse effects associated with the Plan Changes have been taken into account in preparing the Plan Changes provisions and the modifications recommended by the reporting planners improve the Plan Changes.

Overall we conclude from the Section 32 Evaluation that the approach adopted in the Plan Changes meets the Section 32 tests of the RMA.

13.0 REPORTING PLANNERS AMENDMENTS TO THE PLAN CHANGES

The Reporting Planners recommended a number of amendments to the Plan Changes provisions following their consideration of the submissions prior to the hearing. At the end of hearing submissions on 16 June they requested time to consider all the submissions and evidence that had been heard and/or tabled and requested an opportunity to put their response in writing at a later date. After discussing the issue we decided to adjourn the hearing until 7 July 2016 when we closed so that Ms Wooster and Mr Badham could put their response in writing. This response was received on 28 June 2016 and included amended Plan Changes provisions reflecting the discussions during the hearing and also included the legal submissions in reply from Mr Mathias the Councils’ legal adviser.
Ms Wooster and Mr Badham gave an overview of their joint response and said that they considered that the framework could be maintained with a few minor modifications which they provided.

14.0 CONCLUSIONS ON THE PLAN CHANGES

Our principal finding is that the Plan Changes should be approved, in accordance with our commentary above and the recommendations in Appendices A and B as set out below.

The Plan Changes should be amended in accordance with the recommendations of the Reporting Planners provided to us as part of their reply responses.

15.0 THE COMMISSIONERS’ RECOMMENDATIONS ON THE PLAN CHANGES

Having had regard to the provisions of the Resource Management Act 1991 and in particular to Section 74, Section 75, Section 31 and Section 32;

and,

Having considered the actual and potential effects on the environment of the proposed Plan Changes and the avoiding, remedying and mitigating of those effects;

and

Having considered the details of the proposed plan changes, the submissions, the further submissions, the legal submissions and the evidence in support of those submissions and further submissions, and the Joint Section 42A report from the FNDC and WDC Reporting Planners at the hearing of the proposed Plan Changes and submissions;

and

Acting under a delegation from the FNDC and WDC to hear and recommend to them decisions on the proposed Plan Changes and the submissions and further submissions;

and

For the reasons set out in this report, our recommendations are as follows:
A. Recommendations to the Far North District Council on Proposed Plan Change 18

That pursuant to Clauses 29 and 10 of Schedule 1 of the Resource Management Act 1991,

- The Proposed Plan Change 18 to the Far North District Plan be approved with modifications; and.
- Those submissions and further submissions which support the Proposed Plan Change are accepted to the extent that the Proposed Plan Change is approved with modifications; and
- Those submissions and further submissions which seek further changes to the Proposed Plan Change are accepted to the extent that the Proposed Plan Change is approved with modifications; and
- Except to the extent provided above, all other submissions and further submissions are rejected.

The consequential modifications to the text of the Plan Changes as a result of our recommendations for the Plan Change to be approved are attached as Attachment A.

B. Recommendations to the Whangarei District Council on Proposed Plan Change 131

That pursuant to Clauses 29 and 10 of Schedule 1 of the Resource Management Act 1991,

- The Proposed Plan Change 131 to the Whangarei District Plan be approved with modifications; and.
- Those submissions and further submissions which support the Proposed Plan Change are accepted to the extent that the Proposed Plan Change is approved with modifications; and
- Those submissions and further submissions which seek further changes to the Proposed Plan Change are accepted to the extent that the Proposed Plan Change is approved with modifications; and
- Except to the extent provided above, all other submissions and further submissions are rejected.
The consequential modifications to the text of the Plan Changes as a result of our recommendations for the Plan Change to be approved are attached as Attachment B.

Hearings Commissioners Barry Kaye (Chair), Bill Smith and Willow-Jean Prime:

Barry Kaye  
Hearings Chair on behalf of Commissioners Smith and Prime

Dated: 31st July 2016
19 GENETICALLY MODIFIED ORGANISMS

CONTEXT

Genetic modification (GM) refers to a set of techniques that alter genetic makeup by adding, deleting or moving genes (within or between species) to produce new and different organisms. Genetically modified organisms (GMOs) are products of genetic modification. Another term often used to refer to the same technique is genetic engineering (GE).

A wide range of GM products are being researched and developed for commercialisation. While the GMOs commercialised to date are, in general, directed at reducing harvest losses by combating pests and viruses, research into future varieties is attempting to considerably widen the scope of applications. This includes improved growth in plants, improved tolerance to environmental conditions, and creating entirely new products and sectors of economic activity in agriculture, horticulture, plantation forestry, dairying, aquaculture and medicine.

The absolute and relative benefits associated with the development and use of GMOs is continually being redefined as this and other forms of applied biotechnology advance. However there remains scientific uncertainty with respect to potential adverse effects of GMOs on natural resources and ecosystems. The risks could be substantial and certain consequences irreversible. Once released into the environment, most GMOs would be very difficult to eradicate even if the funding were available for this, irrespective of the consequences. If the GMO is related to a food product, the “GE Free” food producer status of a district or region would likely be permanently lost, along with any marketing advantages that status confers.

The relevant legislation which applies to the management of GMOs in New Zealand is the Hazardous Substances and New Organisms Act 1996 (HSNO Act). The HSNO Act establishes the legal framework for assessments by the national regulator, the Environmental Protection Authority (EPA). This Act sets minimum standards (section 36) and provides for the EPA to set additional conditions that are to apply to a particular GMO activity.

While the HSNO Act provides the means to set conditions on the management of GMOs within a specific geographic area or irrespective of location, councils have jurisdiction under sections 30 and 31 of the Resource Management Act 1991 (RMA) to control land and water use activities involving field trials and the release of GMOs, to promote sustainable management under the RMA.

Local regulation can address key gaps that have been identified in the national regulatory regime for the management of GMOs, in particular the absence of liability provisions and the lack of a mandatory precautionary approach. Benefits of local level regulation, in addition to the controls set by the EPA, include:

- Ensuring GM operators are financially accountable in the long-term through bonding and financial fitness provisions for the full costs associated with the GMO activity. This includes accidental or unintentional contamination, clean-up, monitoring and remediation.
- Adoption of a precautionary approach to manage potential risks (economic, environmental, social and cultural) associated with the outdoor use of GMOs.
- Protection of local/regional marketing advantages through reducing risks associated with market rejection and loss of income from GM contamination of non-GM crops, and negative effects on marketing, branding and tourism opportunities.
- Addressing cultural concerns of Maori, particularly given that Maori make up a considerably greater proportion of the population in Northland than is represented nationally.

Given a council’s general duties of care for its financial position and that of its constituents, there is a ready justification for councils to enforce mandatory conditions to provide for both financial accountability and avoidance of economic damage. These controls would act in addition to those that may be set by the EPA under the HSNO Act.

19.1 ISSUES

19.1.1 The outdoor use of GMOs can adversely affect the environment, economy, and social and cultural resources and values, and significant costs can result from the release of a GMO.

19.2 ENVIRONMENTAL OUTCOMES EXPECTED

19.2.1 Manage risk and avoid adverse effects on people, communities, tangata whenua, the economy and the environment associated with the outdoor use of GMOs.
19.2.2 Provide the framework for a unified approach to the management of the outdoor use of GMOs in the Far North to address cross-boundary effects.

19.2.3 Ensure accountability by GMO operators for the full costs related to the monitoring of GMO activities, and any migration of GMOs beyond specified areas, including unintentional GM contamination.

19.2.4 Ensure accountability by GMO operators for compensation via performance bonds in the event that the activity under their operation results in adverse effects to third parties or the environment.

19.3 OBJECTIVES

19.3.1 The environment, including people and communities and their social, economic and cultural well being and health and safety, is protected from potential adverse effects associated with the outdoor use, storage, cultivation, harvesting, processing or transportation of GMOs through the adoption of a precautionary approach, including adaptive responses, to manage uncertainty and lack of information.

19.3.2 The sustainable management of the natural and physical resources of the district with respect to the outdoor use of GMOs, a significant resource management issue identified by the community.

19.4 POLICIES

19.4.1 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.

19.4.2 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 (to the extent possible) for any adverse effects associated with the activity, including clean-up costs and remediation, including via the use of bonds.

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.

19.4.4 To ensure that a resource consent granted for the outdoor field trialling of a GMO is subject to a condition requiring that monitoring costs are met by the consent holder.

19.4.5 To require consent holders for a GMO activity to be liable (to the extent possible) for any adverse effects caused beyond the site for which consent has been granted for the activity.

19.4.6 To adopt an adaptive approach to the management of the outdoor use, storage, cultivation, harvesting, processing or transportation of a GMO in the district through periodic reviews of these plan provisions, particularly if new information on the benefits and/or adverse effects of a GMO activity becomes available.

19.5 METHODS OF IMPLEMENTATION

DISTRICT PLAN METHODS

19.5.1 Rules in the Plan to control GMO field trials and to prohibit the release of GMOs in the Far North.

19.5.2 Where resource consents are required to undertake GMO activities protection of the environment, economy, society and cultural values may be achieved by imposing conditions of consent.

OTHER METHODS

19.5.3 The Council will liaise with other Councils in order to achieve an integrated approach to GMOs in Northland.

19.5.4 The Council will encourage all applicants to actively engage with the public and tangata whenua through early dialogue when developing land use proposals to ensure that adverse effects are avoided, remedied or mitigated.
COMMENTARY

The outdoor use of GMOs has the potential to cause adverse effects on the environment, economy and social and cultural wellbeing. The objectives and policies seek to protect the community and receiving environment from risk associated with any GMO activity.

The application of a precautionary approach to the outdoor use, storage, cultivation, harvesting, processing or transportation of GMOs in the district shall mean that:

- The release of a GMO is prohibited (this is to avoid the risk that significant adverse environmental effects will arise, including adverse effects on the economy, community and/or tangata whenua resources and values); and
- 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.

Pastoral farming, dairying, horticulture and forestry are important land uses in the Far North and are major contributors to the local and regional economy. Therefore there are a range of outdoor GMOs that GMO developers could consider using in the district or region, including GM food crops, trees, animals, and pharma crops. The potential for adverse effects, including accidental contamination, resulting from the outdoor use of GMOs poses a “risk” to the community and environment. By specifying classes of GMOs and applying standards to the outdoor use of GMOs, the risks associated with their use, storage, cultivation, harvesting, processing or transportation can be reduced.

Within the Far North, this will involve managing and limiting the outdoor use of GMOs. Further, performance standards will be used to mitigate any adverse effects associated with contamination of GMOs beyond the subject site, thereby reducing the risks to the community, environment and economy.

Accidental or unintentional migration of GMOs that result in GMO contamination and subsequent clean-up and remediation can be expensive. Council therefore requires a GMO operator to meet all potential costs associated with the activity and will secure long-term financial accountability through appropriate standards and bonding provisions.

The EPA is not obligated to set monitoring requirements as a part of its approval process, and can only require monitoring where it is relevant to assessing environmental risk. Under section 35 of the RMA, a council has a duty to monitor, which can be expensive. Requiring a GMO operator to meet the costs of monitoring, via consent conditions, ensures the costs are meet by the activity operator.

To avoid foreclosure of potential opportunities associated with a GMO development that could benefit the district or region, there is the ability to review a particular GMO activity if it were to become evident during the field trial stage or in light of other new information that a particular GMO activity would be of net benefit to the district or region and that potential risks can be managed to the satisfaction of Council. A council or a GMO proponent can initiate a plan change to change the status of a GMO activity.

19.6 RULES

Activities affected by this Section of the Plan must comply not only with the rules in this Section, but also with the relevant standards applying to the zone in which the activity is located (refer to Part 2 - Environment Provisions), and with other relevant standards in Part 3 – District Wide Provisions.

19.6.1 PERMITTED ACTIVITIES

An activity is a permitted activity if:

(a) it complies with the standards for permitted activities set out in Rules 19.6.1.1 below; and
(b) it complies with the relevant standards for permitted activities in the zone in which it is located, set out in Part 2 of the Plan - Environment Provisions; and
(c) it complies with the other relevant standards for permitted activities set out in Part 3 of the Plan - District Wide Provisions.

19.6.1.1 INDOOR USE AND RESEARCH INVOLVING GENETICALLY MODIFIED ORGANISMS

GMOs that are not specifically provided for in 19.6.2 Discretionary Activities and 19.6.3 Prohibited Activities below are a permitted activity. These include (but are not limited to):

(a) Research within contained laboratories involving GMOs;
(b) Veterinary Vaccines using GMOs; and
(c) The use of non-viable genetically modified veterinary vaccines and viable genetically modified veterinary vaccines with a specific delivery dose supervised by a veterinarian.
(c) Medical applications involving the manufacture and use of non-viable GM products.

Note: Such activities may require consents and / or permits under other legislation / plans.

19.6.2 DISCRETIONARY ACTIVITIES

An activity is a discretionary activity if:

(a) it does not comply with one or more of the standards for permitted activities as set out under Rule 19.6.1.1; but

(b) it complies with all rules of 19.6.2.1 Genetically Modified Organisms Field Trials, 19.6.2.2 Bond Requirements and 19.6.2.3 Monitoring Costs below; and

(b) it complies with the relevant standards for permitted, controlled, restricted discretionary or discretionary activities in the zone in which it is located, set out in Part 2 of the Plan - Environment Provisions; and

(c) it complies with the other relevant standards for permitted, controlled, restricted discretionary or discretionary activities set out in Part 3 of the Plan - District Wide Provisions.

The Council may impose conditions of consent on a discretionary activity or it may refuse consent to the application. When considering a discretionary activity application, the Council will have regard to the assessment criteria set out under Section 19.7.

19.8 If an activity does not comply with the standards for a discretionary activity, it will be a non-complying activity unless it is a prohibited activity subject to Section 19.6.3 below.

19.6.2.1 GENETICALLY MODIFIED ORGANISMS FIELD TRIALS

Outdoor field trialling of a GMO (where the proponents of such activities have prior approval of the EPA) shall be a discretionary activity.

Applications must provide:

(a) Evidence of approval from the EPA for the specific GMO for which consent is sought.

(b) Details of proposed containment measures for the commencement, duration and completion of the proposed activity.

(c) Details of the species, its characteristics and lifecycle, to which the GMO activities will relate.

(d) Research on adverse effects to the environment, cultural values and economy associated with the activity should GMOs escape from the activity area, and measures that will be taken to avoid, remedy or mitigate such effects.

(e) Evidence of research undertaken that characterises and tests the GMO, and the certainty associated with the accuracy of that information.

(f) A management plan outlining ongoing research and how monitoring will be undertaken during, and potentially beyond, the duration of consent.

(g) Details of areas in which the activity is to be confined.

(h) Description of contingency and risk management plans and measures.

19.6.2.2 BOND REQUIREMENTS

Council requires the applicant for the resource consent to provide a performance bond (akin to a bank guarantee) in respect of the performance of any one or more conditions of the consent, including conditions relating to monitoring required of the GMO activity (prior to, during and after the activity), and that this be available for payment to redress any adverse environmental effects and any other adverse effects to third parties (including economic effects) that become apparent during or after the expiry of the consent.

The exact time and manner of implementing and discharging the bond shall be decided by, and be executed to the satisfaction of Council.

Matters that will be considered when determining the amount of the bond are:

(a) What adverse effects could occur and the potential significance, scale and nature of those effects, notwithstanding any measures taken to avoid those effects.

(b) The degree to which the operator of the activity has sought to avoid those adverse effects, and the certainty associated with whether the measures taken will avoid those effects.
(c) The level of risk associated with any unexpected adverse effects from the activity.
(d) The likely scale of costs associated with remediating any adverse effects that may occur.
(e) The timescale over which effects are likely to occur or arise.
(f) The extent of monitoring that may be required in order to establish whether an adverse effect has occurred or whether any adverse effect has been appropriately remedied.

19.6.2.3 MONITORING COSTS

A GMO discretionary activity may require monitoring during, and beyond the duration of consent. Monitoring is to be carried out by either the Council or consent holder with appropriate reporting procedures to the relevant regulatory authority.

A monitoring strategy for a GMO discretionary activity can include the following matters:
(a) Inspection schedules for the site, storage areas and equipment (daily, weekly, monthly, events based).
(b) Testing of procedures (e.g. accidental release response).
(c) Training programmes for new staff, updates for existing staff.
(d) Audits of sites and site management systems.
(e) Sample testing of plants and soils in neighbouring properties for the presence of migrated GMOs.

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.²⁹⁴¹

19.6.3 PROHIBITED ACTIVITIES

19.6.3.1 OUTDOOR RELEASE OF GENETICALLY MODIFIED ORGANISMS

Outdoor release of food-related and non-food-related Genetically Modified Organisms, not otherwise provided for in Rules under 19.6.1 and 19.6.2 above is a prohibited activity.

19.7 NOTIFICATION

All applications for resource consent under rule 19.6.2 must be publicly notified.

19.8 ASSESSMENT CRITERIA

The matters set out in s104 and s105, and in Part II of the Act, apply to the consideration of all resource consents for land use activities.

In addition to these matters, the Council shall also apply the relevant assessment matters set out below.
(a) Site design conditions should ensure GMO sites are designed and managed in a manner that avoids or minimises risks of adverse effects from activities carried out on the site. This shall include provisions to prevent the migration of GMOs beyond the area designated for the activity.
(b) 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 must be 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, more stringent measures than those required under the provisions of the HSNO Act may be imposed to manage potential risks. 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) The duration of any consent will be aligned with EPA approval terms.
3 DEFINITIONS

Note: Any words included under this section shall have the meaning as defined here throughout this Plan unless specifically stated otherwise in the text of the Plan. Where the definition of a word is identified as being from the Resource Management Act 1991 (or any other Act), these words have been included in a Glossary.

GENETICALLY MODIFIED ORGANISM FIELD TRIALS (TESTS)
In relation to a genetically modified organism (GMO), the carrying on of outdoor trials, on the effects of the organism under conditions similar to those of the environment into which the organism is likely to be released, but from which the organism, or any heritable material arising from it, could be retrieved or destroyed at the end of the trials.

GENETICALLY MODIFIED ORGANISMS (GMOs)
Unless expressly provided otherwise by regulations, any organism in which any of the genes or other genetic material:
(a) have been modified by in vitro techniques; or
(b) are inherited or otherwise derived, through any number of replications, from any genes or other genetic material which has been modified by in vitro techniques.

For the absence of doubt, this does not apply to genetically modified (GM) products that are not viable (and are thus no longer GMOs), or products that are dominantly non-GM but contain non-viable GM ingredients (such as processed foods).

GENETICALLY MODIFIED ORGANISM RELEASE
To allow the organism to move within New Zealand free of any restrictions other than those imposed in accordance with the Biosecurity Act 1993 or the Conservation Act 1987.

A release may be without conditions under s34 of the Hazardous Substances and New Organisms Act 1996, (HSNO) or subject to conditions under s38A of the HSNO Act.

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.
The purpose of this chapter is to manage the outdoor use of Genetically Modified Organisms (GMOs). The outdoor use of GMOs can have adverse effects on people, communities, tangata whenua, social and cultural wellbeing, the environment and the economy.

Sources of risk from the outdoor use of GMOs include:

- Socio-cultural risk - concerns of Maori, such as mauri, whakapapa, tikanga, including the integrity of nature, the mixing of genes from unrelated species, and effects on indigenous flora and fauna.
- Environmental risk - including adverse effects on non-target species (e.g. birds and insects), genetically modified (GM) plants becoming invasive and disrupting ecosystems, and altered genes transferring to other organisms.
- Economic risk - the risk that cultivation of GM crops will cause economic damage, in particular through accidental or unintentional migrations of GMOs resulting in GM contamination appearing in non-GM crops and associated market rejection and loss of income, negative effects on marketing and branding opportunities, and costs associated with environmental damage.

There is a lack of information, including scientific uncertainty, concerning the effects of GMOs in the environment and risks of irreversible, adverse effects which could be substantial. In order to manage the effects of outdoor use, storage, cultivation, processing or transportation of GMOs, an adaptive precautionary approach to risk management is adopted for the Whangarei District.

The application of a precautionary approach shall mean that the Release of a GMO is prohibited and that Field Trials of a GMO (where the proponents of such activities have prior approval from the Environmental Protection Authority (EPA)) shall be a discretionary activity so as to avoid the risks of potential adverse effects. Some activities, such as research within contained facilities, some veterinary vaccines and certain medical applications are permitted activities. The classification is based upon a hierarchy of risks, from negligible for permitted activities to high risk for prohibited activities. Discretionary activities (Field Trials) are subject to development and performance standards, including a requisite for bonds to cover possible environmental or economic damage and monitoring requirements.

The application of an adaptive risk management approach is to avoid foreclosure of potential opportunities associated with a GMO development that could benefit the district. There is the ability to review a particular GMO activity if it were to become evident during the field trial stage, or in light of other new information, that the particular GMO activity would be of net benefit to the district and that potential risks can be managed to the satisfaction of Council. Council or a GMO developer can initiate a plan change to change the status of an activity.

It is anticipated that the objectives, policies, eligibility rules and general development and performance standards in this chapter will achieve the following results:

1. Adoption of a precautionary approach to manage potential risks (social, cultural, environmental and economic) associated with the outdoor use of GMOs.
2. Ensuring users of GMOs are financially accountable in the long-term through bonding and financial fitness provisions for the full costs associated with the GMO activity. This includes accidental or unintentional contamination, clean-up, monitoring and remediation.
3. Protection of local/regional marketing advantages through reducing risks of adverse effects associated with market rejection and loss of income from GM contamination of non-GM crops, and negative effects on marketing, branding and tourism opportunities.
4. Addressing cultural concerns of Maori, particularly given that Maori make up a considerably greater proportion of the population in Northland than is represented nationally.
GMO.2
GMO Land Use Controls

GMO.2.1 Objectives

1. The environment, including people and communities and their social, economic and cultural well being and health and safety, is protected from potential adverse effects associated with the outdoor use, storage, cultivation, harvesting, processing or transportation of GMOs through the adoption of a precautionary approach, including adaptive responses, to manage uncertainty and lack of information.

2. The sustainable management of the natural and physical resources of the district with respect to the outdoor use of GMOs, a significant resource management issue identified by the community.

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.

2. Financial Accountability
To ensure that a resource consent granted for the Field Trials of a GMO is subject to conditions that ensures that the consent holder is 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.

3. Risk Avoidance
To ensure that a resource consent granted for the Field Trials 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.

4. Monitoring Costs
To ensure that a resource consent granted for the Field Trials of a GMO is subject to a condition requiring that monitoring costs are met by the consent holder.

5. Liability
To require consent holders for a GMO activity to be liable (to the extent possible) for any adverse effects caused beyond the site for which consent has been granted for the activity.

6. Adaptive Approach
To adopt an adaptive approach to the management of the outdoor use, storage, cultivation, harvesting, processing or transportation of a GMO in the district through periodic reviews of these plan provisions, particularly if new information on the benefits and/or adverse effects of a GMO activity becomes available.

GMO.2.3 Information Requirements

Applications for GMO Field Trials are to provide:

- Evidence of approval from the EPA for the specific GMO for which consent is sought. The duration of any consent granted will be aligned with EPA approval terms.
- Details of proposed containment measures for the commencement, duration and completion of the proposed activity.
- Details of the species, its characteristics and lifecycle, to which the GMO activities will relate.
- Research on adverse effects to the environment, cultural values and economy associated with the activity should GMOs escape from the activity area, and measures that will be taken to avoid, remedy or mitigate such effects.
- Evidence of research undertaken that characterises and tests the GMO, and the certainty associated with the accuracy of that information.
- A management plan outlining on-going research and how monitoring will be undertaken during, and potentially beyond, the duration of consent.
- Details of areas in which the activity is to be confined.
- Description of contingency and risk management plans and measures.
GMO.2
GMO Land Use Controls

GMO.2.4 General Development & Performance Standards

Without limiting the discretion reserved to Council on any application for consent, discretionary activities are to comply with the following minimum controls in order to establish in the district. The general development and performance standards are in addition to any controls/conditions that are imposed and monitored by the EPA under the Hazardous Substances and New Organisms (HSNO) Act.

1. Bond

Council requires the applicant for the resource consent to provide a performance bond, with an approved trading bank guarantee, in respect of the performance of any one or more conditions of the consent, including conditions relating to monitoring required of the GMO activity (prior to, during and after the activity). This bond is to be available for payment to redress any adverse environmental effects and any other adverse effects to third parties (including economic effects) that become apparent during or after the expiry of the consent. The form of, time and manner of implementing and discharging the bond shall be decided by, and be executed to the satisfaction of Council.

2. Monitoring Costs

All costs associated with monitoring required for discretionary activities will be borne by the consent holder. This includes any monitoring that is required to be undertaken beyond the consent duration, as required by a resource consent condition.

3. Assessment of Applications and Conditions

Where necessary, more stringent measures than those required under the provisions of the HSNO Act may be imposed to manage potential risks. A review clause (pursuant to Section 128 RMA) may be included in the conditions, where deemed necessary, to address any future changes in technology, and the scope of environmental, economic and cultural effects. An application for a discretionary activity may be granted with or without conditions, or be declined by the Council having regard to the relevance of the following matters:

- Site Design, Construction and Management

Site design conditions should ensure GMO sites are designed and managed in a manner that avoids or minimises risks of adverse effects from activities carried out on the site. This shall include provisions to prevent the migration of GMOs beyond the area designated for the activity.

- Transport

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 must be in place to ensure that any vehicle visiting the site is thoroughly cleaned and checked prior to leaving the site to avoid unintentional GMO distribution.

- Monitoring

A GMO discretionary activity may require monitoring during, and beyond the duration of consent. Monitoring is to be carried out by either the Council or consent holder with appropriate reporting procedures to the relevant regulatory authority.

- Reporting

Reporting requirements by the consent holder will be stipulated in the consent conditions.

GMO.2.5 Particular Matters

Matters that will be considered when determining the amount of bond required are:

- What adverse effects could occur and the potential significance, scale and nature of those effects, notwithstanding any measures taken to avoid those effects.

- The degree to which the operator of the activity has sought to avoid those adverse effects, and the certainty associated with whether the measures taken will avoid those effects.

- The level of risk associated with any unexpected adverse effects from the activity.

- The likely scale of costs associated with remediating any adverse effects that may occur.

- The timescale over which effects are likely to occur or arise.

- The extent of monitoring that may be required in order to establish whether an adverse effect has occurred or whether any adverse effect has been appropriately remedied.

A monitoring strategy for a GMO discretionary activity can include the following matters:

- Inspection schedules for the site, storage areas and equipment (daily, weekly, monthly, events based).

- Testing of procedures (e.g. accidental release response).

- Training programmes for new staff, updates for existing staff.

- Audits of sites and site management systems.

- Sample testing of plants, soils and water in neighbouring properties or localities for the presence of migrated GMOs.
Definitions

The following definitions shall be inserted into the District Plan in Chapter 4. Meaning of Words -

Field Trials (tests) ** - means, in relation to a genetically modified organism, the carrying on of outdoor trials, on the effects of the organism under conditions similar to those of the environment into which the organism is likely to be released, but from which the organism, or any heritable material arising from it, could be retrieved or destroyed at the end of the trials.

Genetically Modified Organism and GMO** - means, unless expressly provided otherwise by regulations, any organism in which any of the genes or other genetic material:
(a) have been modified by in vitro techniques; or
(b) are inherited or otherwise derived, through any number of replications, from any genes or other genetic material which has been modified by in vitro techniques.

N.B. For the absence of doubt, this does not apply to GM products that are not viable (and are thus no longer GM organisms), or products that are dominantly non-GM but contain non-viable GM ingredients (such as processed foods).

Release** - means to allow the organism to move within New Zealand free of any restrictions other than those imposed in accordance with the Biosecurity Act 1993 or the Conservation Act 1987.

A Release may be without conditions (s34, HSNO Act) or subject to conditions set out s38A of the HSNO Act.

Environmental Protection Authority and EPA* - means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011.


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

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

* Definition taken from the Resource Management Act 1991
** Definition taken from the Hazardous Substances and New Organisms Act 1996